
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1697 Session of
2005

INTRODUCED BY SAYLOR, BAKER, BOYD, CREIGHTON, DENLINGER, GOOD,
HARRIS, R. MILLER, MUNDY, THOMAS, WANSACZ, BARRAR,
CALTAGIRONE, CLYMER, CORNELL, FAIRCHILD, GEORGE, GILLESPIE,
HUTCHINSON, M. KELLER, MANN, S. MILLER, O'NEILL, PETRARCA,
PICKETT, RAYMOND, ROHRER, RUBLEY, SCAVELLO, WALKO, WASHINGTON
AND YOUNGBLOOD, JUNE 13, 2005

REFERRED TO COMMITTEE ON COMMERCE, JUNE 13, 2005

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for the offense of unlawful
3 distribution of adware or spyware.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 18 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 7617. Unlawful distribution of adware or spyware.

9 (a) Offense defined.--A person commits an offense if the
10 person intentionally or knowingly transmits prohibited computer
11 software, adware or spyware to a computer owned by another
12 person or offered for sale without the computer owner's consent.

13 (b) Grading.--

14 (1) Except as otherwise provided in paragraph (2), a
15 violation of this section shall be graded as follows:

16 (i) A person convicted of a first offense under this

section commits a misdemeanor of the third degree punishable by a fine of \$1,000 and imprisonment for up to six months.

(ii) A person convicted of a second offense under this section commits a misdemeanor of the second degree punishable by a fine of \$5,000 and imprisonment for up to two years.

(iii) A person convicted of a third or subsequent offense under this section commits a misdemeanor of the first degree punishable by a fine of \$10,000 and imprisonment for up to five years.

(2) A violation of this section by a commercial entity that uses or subcontracts for the use of software to advertise itself or its product shall be graded as follows:

(i) A commercial entity convicted of a first offense under this section commits a misdemeanor of the third degree punishable by a fine of \$2,500 and imprisonment for up to one year.

(ii) A commercial entity convicted of a second offense under this section commits a misdemeanor of the second degree punishable by a fine of \$7,500 and imprisonment for up to two years.

(iii) A commercial entity convicted of a third or subsequent offense under this section commits a misdemeanor of the first degree punishable by a fine of \$15,000 and imprisonment for up to five years.

(c) Separate offenses.--For purposes of all criminal penalties or fines established for violations of this section, the prohibited activity specified under subsection (a) as it applies to each transmission of prohibited computer software,

1 adware or spyware shall be deemed a separate offense.

2 (d) Restitution.--Upon conviction of an offense under this
3 section, the sentence shall include an order for restitution to
4 the victim for any of the following:

5 (1) The cost of repairing or replacing the affected
6 computer, computer system, computer network, computer
7 software, computer program, computer database, Internet
8 website or telecommunication device.

9 (2) Lost profits for the period that the computer,
10 computer system, computer network, computer software,
11 computer program, computer database, Internet website or
12 telecommunication device is not usable.

13 (3) The cost of replacing or restoring the data lost or
14 damaged as a result of a violation of this section.

15 (4) The profit realized by the defendant through the
16 violation of this section.

17 (5) The cost of restoring the victim's financial
18 credibility equal to that experienced by the victim prior to
19 the violation of this section.

20 (6) The cost associated with any purchases or
21 transactions completed relating to a violation of this
22 section.

23 (e) Jurisdiction.--

24 (1) The district attorneys of the several counties shall
25 have the authority to investigate and to institute criminal
26 proceedings for any violation of this section.

27 (2) In addition to the authority conferred upon the
28 Attorney General under the act of October 15, 1980 (P.L.950,
29 No.164), known as the Commonwealth Attorneys Act, the
30 Attorney General shall have the authority to investigate and

1 to institute criminal proceedings for a violation of this
2 section. A person charged with a violation of this section by
3 the authority of the Attorney General shall not have standing
4 to challenge the authority of the Attorney General to
5 investigate or prosecute the case, and, if any such challenge
6 is made, the challenge shall be dismissed and no relief shall
7 be available in the courts of this Commonwealth to the person
8 making the challenge.

9 (f) Prosecution not prohibited.--Prosecution for an offense
10 under this section shall not prohibit prosecution under any
11 other section of this title.

12 (g) Definitions.--As used in this section, the following
13 words and phrases shall have the meanings given to them in this
14 subsection:

15 "Adware." A computer program that, without the control of
16 the computer user, generates advertising that is unrelated to
17 either a program that the computer user is purposefully running
18 or an Internet web page that a user is purposefully viewing.

19 "Commercial entity." A corporation, partnership, limited
20 liability company, association, joint venture, public
21 corporation or any other legal entity.

22 "Internet homepage." The first page of an Internet website
23 that is displayed after starting a web browser.

24 "Personal information." Information regarding a person
25 including any of the following:

26 (1) a first and last name;

27 (2) a residential address;

28 (3) a mailing address;

29 (4) an electronic mail address;

30 (5) a telephone number;

1 (6) a credit card or bank account number or any password
2 or access code associated with a credit card or bank account;

3 (7) a Social Security number;

4 (8) account balance information, including payment and
5 overdraft history;

6 (9) any credit or debit card purchase information; or

7 (10) a birth certificate number.

8 "Prohibited computer software." Computer software, or any
9 component thereof, that does any of the following:

10 (1) collects personal information about an owner or
11 operator of that protected computer and transfers such
12 information to any person other than the computer owner or
13 operator;

14 (2) monitors or analyzes the content of the Internet web
15 pages accessed by an owner or operator of a computer and
16 transfers such information to any person other than the
17 computer owner or operator;

18 (3) modifies default computer settings or computer
19 settings previously selected by the owner or operator of the
20 computer that affects any of the following:

21 (i) the displaying of the previously selected
22 Internet homepage;

23 (ii) internet connection settings, the modification
24 of which can result in financial charges to the owner or
25 operator without the owner or operator's knowledge; or

26 (iii) the actions or operations of any service
27 offered by a provider of a service used to search the
28 Internet, or files and data stored on the computer; or

29 (4) performs a function to deliver or display
30 advertisements displayed as an Internet web page or other

1 means excluding software that is an Internet web page or a
2 component of an Internet web page.

3 "Spyware." An executable computer program that automatically
4 and without the control of a computer user gathers and transmits
5 to the provider of the program or to a third party either of the
6 following:

7 (1) Personal information or data of a user.

8 (2) Data regarding computer usage, including, but not
9 limited to, which Internet web sites are or have been visited
10 by a user.

11 "Transmit." To download, upload, transfer, acquire or copy
12 data from a main source to a local device.

13 Section 2. This act shall take effect in 60 days.