

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, YOUNGBLOOD, ALLEN AND SIPTROTH, JUNE 13, 2005

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 19, 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.~~ PROTECTION OF CONSUMERS <—
4 FROM HAVING SPYWARE DECEPTIVELY INSTALLED ON THEIR COMPUTERS
5 AND FOR CRIMINAL AND CIVIL ENFORCEMENT.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 ~~Section 1. Title 18 of the Pennsylvania Consolidated~~ <—

9 ~~Statutes is amended by adding a section to read:~~

10 ~~§ 7617. Unlawful distribution of adware or spyware.~~

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

15 ~~(b) Grading.~~

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

~~(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,
adware or spyware shall be deemed a separate offense.~~

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

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

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

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

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

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

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

~~(c) Jurisdiction.—~~

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

~~(2) In addition to the authority conferred upon the
Attorney General under the act of October 15, 1980 (P.L.950,
No.164), known as the Commonwealth Attorneys Act, the~~

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

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

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

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

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

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

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

~~(1) a first and last name;~~

~~(2) a residential address;~~

~~(3) a mailing address;~~

~~(4) an electronic mail address;~~

~~(5) a telephone number;~~

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

~~(7) a Social Security number;~~

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

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

~~(10) a birth certificate number.~~

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

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

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

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

~~(i) the displaying of the previously selected
Internet homepage;~~

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

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

~~(4) performs a function to deliver or display~~

~~advertisements displayed as an Internet web page or other means excluding software that is an Internet web page or a component of an Internet web page.~~

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

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

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

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

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

SECTION 1. CHAPTER 76 OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED BY ADDING A SUBCHAPTER TO READ:

SUBCHAPTER F

SPYWARE

SEC.

7671. SCOPE.

7672. DEFINITIONS.

7673. COMPUTER SPYWARE PROHIBITIONS.

7674. CONTROL OR MODIFICATION.

7675. MISREPRESENTATION AND DECEPTION.

7676. NONAPPLICABILITY.

7677. CRIMINAL ENFORCEMENT.

7678. PENALTY.

7679. CIVIL RELIEF.

§ 7671. SCOPE.

THIS SUBCHAPTER DEALS WITH THE CONSUMER PROTECTION AGAINST

1 COMPUTER SPYWARE.

2 § 7672. DEFINITIONS.

3 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
4 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
5 CONTEXT CLEARLY INDICATES OTHERWISE:

6 "AUTHORIZED USER." WITH RESPECT TO A COMPUTER, A PERSON WHO
7 OWNS OR IS AUTHORIZED BY THE OWNER OR LESSEE TO USE THE
8 COMPUTER.

9 "CAUSE TO BE COPIED." TO DISTRIBUTE, TRANSFER OR PROCURE THE
10 COPYING OF COMPUTER SOFTWARE OR ANY COMPONENT THEREOF. THE TERM
11 SHALL NOT INCLUDE THE FOLLOWING:

12 (1) TRANSMISSION, ROUTING, PROVISION OF INTERMEDIATE
13 TEMPORARY STORAGE OR CACHING OF SOFTWARE.

14 (2) A STORAGE OR HOSTING MEDIUM, SUCH AS A COMPACT DISC,
15 INTERNET WEBSITE OR COMPUTER SERVER, THROUGH WHICH THE
16 SOFTWARE WAS DISTRIBUTED BY A THIRD PARTY.

17 (3) AN INFORMATION LOCATION TOOL, SUCH AS A DIRECTORY,
18 INDEX, REFERENCE, POINTER OR HYPERTEXT LINK, THROUGH WHICH
19 THE USER OF THE COMPUTER LOCATED THE SOFTWARE.

20 "COMMUNICATIONS PROVIDER." ENTITY PROVIDING COMMUNICATIONS
21 NETWORKS OR SERVICES THAT ENABLE CONSUMERS TO ACCESS THE
22 INTERNET OR DESTINATIONS ON THE PUBLIC SWITCHED TELEPHONE
23 NETWORK VIA A COMPUTER MODEM. THIS TERM SHALL INCLUDE CABLE
24 SERVICE PROVIDERS THAT ALSO PROVIDE TELEPHONE SERVICES AND
25 PROVIDERS OF VOICE OVER INTERNET PROTOCOL SERVICES.

26 "COMPUTER SOFTWARE." A SEQUENCE OF INSTRUCTIONS WRITTEN IN
27 ANY PROGRAMMING LANGUAGE THAT IS EXECUTED ON A COMPUTER. THE
28 TERM SHALL NOT INCLUDE A TEXT OR DATA FILE, AN INTERNET WEBSITE
29 OR A DATA COMPONENT OF AN INTERNET WEBSITE THAT IS NOT
30 EXECUTABLE INDEPENDENTLY OF THE INTERNET WEBSITE.

1 "COMPUTER VIRUS." A COMPUTER PROGRAM OR OTHER SET OF
2 INSTRUCTIONS THAT IS DESIGNED TO DEGRADE THE PERFORMANCE OF OR
3 DISABLE A COMPUTER OR COMPUTER NETWORK AND IS DESIGNED TO HAVE
4 THE ABILITY TO REPLICATE ITSELF ON OTHER COMPUTERS OR COMPUTER
5 NETWORKS WITHOUT THE AUTHORIZATION OF THE OWNERS OF THOSE
6 COMPUTERS OR COMPUTER NETWORKS.

7 "DAMAGE." ANY MATERIAL IMPAIRMENT TO THE INTEGRITY,
8 FUNCTIONALITY OR AVAILABILITY OF DATA, SOFTWARE, A COMPUTER, A
9 SYSTEM OR INFORMATION.

10 "DECEPTIVE" OR "DECEPTION." INCLUDES:

11 (1) AN INTENTIONALLY AND MATERIALLY FALSE OR FRAUDULENT
12 STATEMENT.

13 (2) A STATEMENT OR DESCRIPTION THAT INTENTIONALLY OMITTS
14 OR MISREPRESENTS MATERIAL INFORMATION IN ORDER TO DECEIVE THE
15 AUTHORIZED USER.

16 (3) AN INTENTIONAL AND MATERIAL FAILURE TO PROVIDE ANY
17 NOTICE TO AN AUTHORIZED USER REGARDING THE DOWNLOAD OR
18 INSTALLATION OF SOFTWARE IN ORDER TO DECEIVE THE AUTHORIZED
19 USER.

20 "EXECUTE." WITH RESPECT TO COMPUTER SOFTWARE, THE
21 PERFORMANCE OF THE FUNCTIONS OR THE CARRYING OUT OF THE
22 INSTRUCTIONS OF THE COMPUTER SOFTWARE.

23 "INTERNET." THE GLOBAL INFORMATION SYSTEM THAT IS LOGICALLY
24 LINKED TOGETHER BY A GLOBALLY UNIQUE ADDRESS SPACE BASED ON THE
25 INTERNET PROTOCOL (IP), OR ITS SUBSEQUENT EXTENSIONS, AND THAT
26 IS ABLE TO SUPPORT COMMUNICATIONS USING THE TRANSMISSION CONTROL
27 PROTOCOL/INTERNET PROTOCOL (TCP/IP) SUITE, OR ITS SUBSEQUENT
28 EXTENSIONS, OR OTHER IP-COMPATIBLE PROTOCOLS, AND THAT PROVIDES,
29 USES OR MAKES ACCESSIBLE, EITHER PUBLICLY OR PRIVATELY, HIGH-
30 LEVEL SERVICES LAYERED ON THE COMMUNICATIONS AND RELATED

1 INFRASTRUCTURE DESCRIBED IN THIS SUBCHAPTER.

2 "MESSAGE." A GRAPHICAL OR TEXT COMMUNICATION PRESENTED TO AN
3 AUTHORIZED USER OF A COMPUTER OTHER THAN COMMUNICATIONS
4 ORIGINATED AND SENT BY THE COMPUTER'S OPERATING SYSTEM OR
5 COMMUNICATIONS PRESENTED FOR ANY OF THE PURPOSES DESCRIBED IN
6 SECTION 7676 (RELATING TO NONAPPLICABILITY).

7 "PERSON." ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, LIMITED
8 LIABILITY COMPANY OR OTHER ORGANIZATION OR ANY COMBINATION
9 THEREOF.

10 "PERSONALLY IDENTIFIABLE INFORMATION." THE TERM SHALL
11 INCLUDE ANY OF THE FOLLOWING:

12 (1) FIRST NAME OR FIRST INITIAL IN COMBINATION WITH LAST
13 NAME.

14 (2) CREDIT OR DEBIT CARD NUMBERS OR OTHER FINANCIAL
15 ACCOUNT NUMBERS.

16 (3) A PASSWORD OR PERSONAL IDENTIFICATION NUMBER
17 REQUIRED TO ACCESS AN IDENTIFIED FINANCIAL ACCOUNT OTHER THAN
18 A PASSWORD, PERSONAL IDENTIFICATION NUMBER OR OTHER
19 IDENTIFICATION NUMBER TRANSMITTED BY AN AUTHORIZED USER TO
20 THE ISSUER OF THE ACCOUNT OR ITS AGENT.

21 (4) SOCIAL SECURITY NUMBER.

22 (5) ANY OF THE FOLLOWING INFORMATION IN A FORM THAT
23 PERSONALLY IDENTIFIES AN AUTHORIZED USER:

24 (I) ACCOUNT BALANCES.

25 (II) OVERDRAFT HISTORY.

26 (III) PAYMENT HISTORY.

27 (IV) A HISTORY OF INTERNET WEBSITES VISITED.

28 (V) HOME ADDRESS.

29 (VI) WORK ADDRESS.

30 (VII) A RECORD OF A PURCHASE OR PURCHASES.

1 "PROCURE THE COPYING." TO PAY OR PROVIDE OTHER CONSIDERATION
2 TO, OR INDUCE ANOTHER PERSON TO CAUSE SOFTWARE TO BE COPIED ONTO
3 A COMPUTER.

4 § 7673. COMPUTER SPYWARE PROHIBITIONS.

5 A PERSON OR ENTITY THAT IS NOT AN AUTHORIZED USER SHALL NOT,
6 WITH ACTUAL KNOWLEDGE, WITH CONSCIOUS AVOIDANCE OF ACTUAL
7 KNOWLEDGE, OR WILLFULLY CAUSE COMPUTER SOFTWARE TO BE COPIED OR
8 PROCURE THE COPYING ONTO THE COMPUTER OF AN AUTHORIZED USER IN
9 THIS COMMONWEALTH AND USE THE SOFTWARE TO DO ANY OF THE
10 FOLLOWING ACTS OR ANY OTHER ACTS DEEMED TO BE DECEPTIVE:

11 (1) MODIFY THROUGH DECEPTIVE MEANS ANY OF THE FOLLOWING
12 SETTINGS RELATED TO THE COMPUTER'S ACCESS TO OR USE OF THE
13 INTERNET:

14 (I) THE PAGE THAT APPEARS WHEN AN AUTHORIZED USER
15 LAUNCHES AN INTERNET BROWSER OR SIMILAR SOFTWARE PROGRAM
16 USED TO ACCESS AND NAVIGATE THE INTERNET.

17 (II) THE DEFAULT PROVIDER OR INTERNET WEBSITE PROXY
18 THAT THE AUTHORIZED USER USES TO ACCESS OR SEARCH THE
19 INTERNET.

20 (III) THE AUTHORIZED USER'S LIST OF BOOKMARKS USED
21 TO ACCESS INTERNET WEBSITE PAGES.

22 (2) COLLECT THROUGH DECEPTIVE MEANS PERSONALLY
23 IDENTIFIABLE INFORMATION THAT MEETS ANY OF THE FOLLOWING
24 CRITERIA:

25 (I) IT IS COLLECTED THROUGH THE USE OF A KEYSTROKE-
26 LOGGING FUNCTION THAT RECORDS ALL KEYSTROKES MADE BY AN
27 AUTHORIZED USER WHO USES THE COMPUTER AND TRANSFERS THAT
28 INFORMATION FROM THE COMPUTER TO ANOTHER PERSON.

29 (II) IT INCLUDES ALL OR SUBSTANTIALLY ALL OF THE
30 INTERNET WEBSITES VISITED BY AN AUTHORIZED USER, OTHER

1 THAN INTERNET WEBSITES OF THE PROVIDER OF THE SOFTWARE,
2 IF THE COMPUTER SOFTWARE WAS INSTALLED IN A MANNER
3 DESIGNED TO CONCEAL FROM ALL AUTHORIZED USERS OF THE
4 COMPUTER THE FACT THAT THE SOFTWARE IS BEING INSTALLED.

5 (III) IT IS A DATA ELEMENT DESCRIBED IN PARAGRAPH
6 (2), (3), (4) OR (5)(I) OR (II) OF THE DEFINITION OF
7 "PERSONALLY IDENTIFIABLE INFORMATION" THAT IS EXTRACTED
8 FROM THE AUTHORIZED USER'S COMPUTER HARD DRIVE FOR A
9 PURPOSE WHOLLY UNRELATED TO ANY OF THE PURPOSES OF THE
10 SOFTWARE OR SERVICE DESCRIBED TO AN AUTHORIZED USER.

11 (3) PREVENT, WITHOUT THE AUTHORIZATION OF AN AUTHORIZED
12 USER, THROUGH DECEPTIVE MEANS AN AUTHORIZED USER'S REASONABLE
13 EFFORTS TO BLOCK THE INSTALLATION OF OR TO DISABLE SOFTWARE
14 BY CAUSING SOFTWARE THAT THE AUTHORIZED USER HAS PROPERLY
15 REMOVED OR DISABLED TO AUTOMATICALLY REINSTALL OR REACTIVATE
16 ON THE COMPUTER WITHOUT THE AUTHORIZATION OF AN AUTHORIZED
17 USER.

18 (4) MISREPRESENT THAT SOFTWARE WILL BE UNINSTALLED OR
19 DISABLED BY AN AUTHORIZED USER'S ACTION WITH KNOWLEDGE THAT
20 THE SOFTWARE WILL NOT BE SO UNINSTALLED OR DISABLED.

21 (5) THROUGH DECEPTIVE MEANS, REMOVE, DISABLE OR RENDER
22 INOOPERATIVE SECURITY, ANTISPYWARE OR ANTIVIRUS SOFTWARE
23 INSTALLED ON THE COMPUTER.

24 § 7674. CONTROL OR MODIFICATION.

25 A PERSON OR ENTITY THAT IS NOT AN AUTHORIZED USER SHALL NOT,
26 WITH ACTUAL KNOWLEDGE, WITH CONSCIOUS AVOIDANCE OF ACTUAL
27 KNOWLEDGE, OR WILLFULLY CAUSE COMPUTER SOFTWARE TO BE COPIED OR
28 PROCURE THE COPYING ONTO THE COMPUTER OF AN AUTHORIZED USER IN
29 THIS COMMONWEALTH AND USE THE SOFTWARE TO DO ANY OF THE
30 FOLLOWING ACTS OR ANY OTHER ACTS DEEMED TO BE DECEPTIVE:

1 (1) TAKE CONTROL OF THE AUTHORIZED USER'S COMPUTER BY
2 DOING ANY OF THE FOLLOWING:

3 (I) TRANSMITTING OR RELAYING COMMERCIAL ELECTRONIC
4 MAIL OR A COMPUTER VIRUS FROM THE AUTHORIZED USER'S
5 COMPUTER, WHERE THE TRANSMISSION OR RELAYING IS INITIATED
6 BY A PERSON OTHER THAN THE AUTHORIZED USER AND WITHOUT
7 THE AUTHORIZATION OF AN AUTHORIZED USER.

8 (II) ACCESSING OR USING THE AUTHORIZED USER'S MODEM
9 OR INTERNET SERVICE FOR THE PURPOSE OF CAUSING DAMAGE TO
10 THE AUTHORIZED USER'S COMPUTER OR OF CAUSING AN
11 AUTHORIZED USER TO INCUR FINANCIAL CHARGES FOR A SERVICE
12 THAT IS NOT AUTHORIZED BY AN AUTHORIZED USER.

13 (III) USING THE AUTHORIZED USER'S COMPUTER AS PART
14 OF AN ACTIVITY PERFORMED BY A GROUP OF COMPUTERS FOR THE
15 PURPOSE OF CAUSING DAMAGE TO ANOTHER COMPUTER, INCLUDING,
16 BUT NOT LIMITED TO, LAUNCHING A DENIAL OF SERVICE ATTACK.

17 (IV) OPENING A SERIES OF STAND-ALONE MESSAGES IN THE
18 AUTHORIZED USER'S COMPUTER WITHOUT THE AUTHORIZATION OF
19 AN AUTHORIZED USER AND WITH KNOWLEDGE THAT A REASONABLE
20 COMPUTER USER CANNOT CLOSE THE ADVERTISEMENTS WITHOUT
21 TURNING OFF THE COMPUTER OR CLOSING THE INTERNET
22 APPLICATION.

23 (2) MODIFY ANY OF THE FOLLOWING SETTINGS RELATED TO THE
24 COMPUTER'S ACCESS TO OR USE OF THE INTERNET:

25 (I) AN AUTHORIZED USER'S SECURITY OR OTHER SETTINGS
26 THAT PROTECT INFORMATION ABOUT THE AUTHORIZED USER FOR
27 THE PURPOSE OF STEALING PERSONAL INFORMATION OF AN
28 AUTHORIZED USER.

29 (II) THE SECURITY SETTINGS OF THE COMPUTER FOR THE
30 PURPOSE OF CAUSING DAMAGE TO ONE OR MORE COMPUTERS.

1 (3) PREVENT, WITHOUT THE AUTHORIZATION OF AN AUTHORIZED
2 USER, AN AUTHORIZED USER'S REASONABLE EFFORTS TO BLOCK THE
3 INSTALLATION OF OR TO DISABLE SOFTWARE BY DOING ANY OF THE
4 FOLLOWING:

5 (I) PRESENTING THE AUTHORIZED USER WITH AN OPTION TO
6 DECLINE INSTALLATION OF SOFTWARE WITH KNOWLEDGE THAT,
7 WHEN THE OPTION IS SELECTED BY THE AUTHORIZED USER, THE
8 INSTALLATION NEVERTHELESS PROCEEDS.

9 (II) FALSELY REPRESENTING THAT SOFTWARE HAS BEEN
10 DISABLED.

11 (III) REQUIRING IN A DECEPTIVE MANNER THE USER TO
12 ACCESS THE INTERNET TO REMOVE THE SOFTWARE WITH KNOWLEDGE
13 OR RECKLESS DISREGARD OF THE FACT THAT THE SOFTWARE
14 FREQUENTLY OPERATES IN A MANNER THAT PREVENTS THE USER
15 FROM ACCESSING THE INTERNET.

16 (IV) CHANGING THE NAME, LOCATION OR OTHER
17 DESIGNATION INFORMATION OF THE SOFTWARE FOR THE PURPOSE
18 OF PREVENTING AN AUTHORIZED USER FROM LOCATING THE
19 SOFTWARE TO REMOVE IT.

20 (V) USING RANDOMIZED OR DECEPTIVE FILE NAMES,
21 DIRECTORY FOLDERS, FORMATS OR REGISTRY ENTRIES FOR THE
22 PURPOSE OF AVOIDING DETECTION AND REMOVAL OF THE SOFTWARE
23 BY AN AUTHORIZED USER.

24 (VI) CAUSING THE INSTALLATION OF SOFTWARE IN A
25 PARTICULAR COMPUTER DIRECTORY OR COMPUTER MEMORY FOR THE
26 PURPOSE OF EVADING AUTHORIZED USERS' ATTEMPTS TO REMOVE
27 THE SOFTWARE FROM THE COMPUTER.

28 (VII) REQUIRING, WITHOUT THE AUTHORITY OF THE OWNER
29 OF THE COMPUTER, THAT AN AUTHORIZED USER OBTAIN A SPECIAL
30 CODE OR DOWNLOAD SOFTWARE FROM A THIRD PARTY TO UNINSTALL

1 THE SOFTWARE.

2 § 7675. MISREPRESENTATION AND DECEPTION.

3 A PERSON OR ENTITY WHO IS NOT AN AUTHORIZED USER SHALL NOT DO
4 ANY OF THE FOLLOWING OR ANY OTHER MISREPRESENTING AND DECEPTIVE
5 ACTS WITH REGARD TO THE COMPUTER OF AN AUTHORIZED USER IN THIS
6 COMMONWEALTH:

7 (1) INDUCE AN AUTHORIZED USER TO INSTALL A SOFTWARE
8 COMPONENT ONTO THE COMPUTER BY MISREPRESENTING THAT
9 INSTALLING SOFTWARE IS NECESSARY FOR SECURITY OR PRIVACY
10 REASONS OR IN ORDER TO OPEN, VIEW OR PLAY A PARTICULAR TYPE
11 OF CONTENT.

12 (2) CAUSING THE COPYING AND EXECUTION ON THE COMPUTER OF
13 A COMPUTER SOFTWARE COMPONENT WITH THE INTENT OF CAUSING AN
14 AUTHORIZED USER TO USE THE COMPONENT IN A WAY THAT VIOLATES
15 ANY OTHER PROVISION OF THIS SECTION.

16 § 7676. NONAPPLICABILITY.

17 (1) NOTHING IN SECTION 7674 (RELATING TO CONTROL OR
18 MODIFICATION) OR 7675 (RELATING TO MISREPRESENTATION AND
19 DECEPTION) SHALL APPLY TO ANY MONITORING OF OR INTERACTION
20 WITH A USER'S INTERNET OR OTHER NETWORK CONNECTION OR
21 SERVICE, OR A PROTECTED COMPUTER, BY A CABLE OPERATOR,
22 COMPUTER HARDWARE OR SOFTWARE PROVIDER OR PROVIDER OF
23 INFORMATION SERVICE OR INTERACTIVE COMPUTER SERVICE FOR
24 NETWORK OR COMPUTER SECURITY PURPOSES, DIAGNOSTICS, TECHNICAL
25 SUPPORT, REPAIR, AUTHORIZED UPDATES OF SOFTWARE OR SYSTEM
26 FIRMWARE, NETWORK MANAGEMENT OR MAINTENANCE, AUTHORIZED
27 REMOTE SYSTEM MANAGEMENT OR DETECTION OR PREVENTION OF THE
28 UNAUTHORIZED USE OF OR FRAUDULENT OR OTHER ILLEGAL ACTIVITIES
29 IN CONNECTION WITH A NETWORK, SERVICE OR COMPUTER SOFTWARE,
30 INCLUDING SCANNING FOR AND REMOVING SOFTWARE PROSCRIBED UNDER

1 THIS SUBCHAPTER.

2 (2) NOTHING IN THIS SUBCHAPTER SHALL LIMIT THE RIGHTS OF
3 PROVIDERS OF WIRE AND ELECTRONIC COMMUNICATIONS UNDER 18
4 U.S.C. § 2511 (RELATING TO INTERCEPTION AND DISCLOSURE OF
5 WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS PROHIBITED).

6 § 7677. CRIMINAL ENFORCEMENT.

7 (A) DISTRICT ATTORNEYS.--THE DISTRICT ATTORNEYS OF THE
8 SEVERAL COUNTIES SHALL HAVE AUTHORITY TO INVESTIGATE AND TO
9 INSTITUTE CRIMINAL PROCEEDINGS FOR ANY VIOLATIONS OF THIS ACT.

10 (B) ATTORNEY GENERAL.--IN ADDITION TO THE AUTHORITY
11 CONFERRED UPON THE ATTORNEY GENERAL UNDER THE ACT OF OCTOBER 15,
12 1980 (P.L.950, NO.164), KNOWN AS THE COMMONWEALTH ATTORNEYS ACT,
13 THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO INVESTIGATE AND
14 INSTITUTE CRIMINAL PROCEEDINGS FOR ANY VIOLATION OF THIS
15 SUBCHAPTER. A PERSON CHARGED WITH A VIOLATION OF THIS SUBCHAPTER
16 BY THE ATTORNEY GENERAL SHALL NOT HAVE STANDING TO CHALLENGE THE
17 AUTHORITY OF THE ATTORNEY GENERAL TO INVESTIGATE OR PROSECUTE
18 THE CASE, AND, IF ANY SUCH CHALLENGE IS MADE, THE CHALLENGE
19 SHALL BE DISMISSED AND NO RELIEF SHALL BE AVAILABLE IN THE
20 COURTS OF THIS COMMONWEALTH TO THE PERSON MAKING THE CHALLENGE.

21 (C) PROCEEDINGS AGAINST PERSONS OUTSIDE COMMONWEALTH.--IN
22 ADDITION TO THE POWERS CONFERRED UPON THE DISTRICT ATTORNEYS AND
23 THE ATTORNEY GENERAL IN SUBSECTIONS (A) AND (B), DISTRICT
24 ATTORNEYS AND THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO
25 INVESTIGATE AND INITIATE CRIMINAL PROCEEDINGS AGAINST PERSONS
26 FOR VIOLATIONS OF THIS ACT IN ACCORDANCE WITH SECTION 102
27 (RELATING TO TERRITORIAL APPLICABILITY).

28 § 7678. PENALTY.

29 ANY PERSON THAT VIOLATES THE PROVISIONS OF SECTIONS 7673(2)
30 (RELATING TO COMPUTER SPYWARE PROHIBITIONS) AND 7574(1)(I), (II)

1 AND (III) AND (2)(I) AND (II) (RELATING TO CONTROL OR
2 MODIFICATION) SHALL BE GUILTY OF A FELONY OF THE SECOND DEGREE
3 AND, UPON CONVICTION THEREOF, SHALL BE SENTENCED TO IMPRISONMENT
4 FOR NOT LESS THAN ONE NOR MORE THAN TEN YEARS OR A FINE,
5 NOTWITHSTANDING SECTION 1101 (RELATING TO FINES), OF NOT MORE
6 THAN \$25,000, OR BOTH.

7 § 7679. CIVIL RELIEF.

8 (A) GENERAL RULE.--SUBJECT TO THE LIMITATION SET FORTH IN
9 SUBSECTION (G), THE FOLLOWING PERSONS MAY BRING A CIVIL ACTION
10 AGAINST A PERSON WHO VIOLATES THIS ACT:

11 (1) A PROVIDER OF COMPUTER SOFTWARE WHO IS ADVERSELY
12 AFFECTED BY THE VIOLATION.

13 (2) AN INTERNET SERVICE PROVIDER WHO IS ADVERSELY
14 AFFECTED BY THE VIOLATION.

15 (3) A TRADEMARK OWNER WHOSE TRADEMARK IS USED WITHOUT
16 THE AUTHORIZATION OF THE OWNER TO DECEIVE USERS IN THE COURSE
17 OF ANY OF THE DECEPTIVE PRACTICES PROHIBITED BY THIS SECTION.

18 (4) THE ATTORNEY GENERAL.

19 (B) ADDITIONAL REMEDIES.--IN ADDITION TO ANY OTHER REMEDY
20 PROVIDED BY LAW, A PERMITTED PERSON BRINGING AN ACTION UNDER
21 THIS SECTION MAY:

22 (1) SEEK INJUNCTIVE RELIEF TO RESTRAIN THE VIOLATOR FROM
23 CONTINUING THE VIOLATION.

24 (2) RECOVER DAMAGES IN AN AMOUNT EQUAL TO THE GREATER
25 OF:

26 (I) ACTUAL DAMAGES ARISING FROM THE VIOLATION.

27 (II) UP TO \$100,000 FOR EACH VIOLATION, AS THE COURT
28 CONSIDERS JUST.

29 (3) SEEK BOTH INJUNCTIVE RELIEF AND RECOVERY OF DAMAGES
30 AS PROVIDED BY THIS SUBSECTION.

1 (C) INCREASE BY COURT.--THE COURT MAY INCREASE AN AWARD OF
2 ACTUAL DAMAGES IN AN ACTION BROUGHT UNDER THIS SECTION TO AN
3 AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES SUSTAINED IF
4 THE COURT FINDS THAT THE VIOLATIONS HAVE OCCURRED WITH A
5 FREQUENCY WITH RESPECT TO A GROUP OF VICTIMS AS TO CONSTITUTE A
6 PATTERN OR PRACTICE.

7 (D) FEES AND COSTS.--A PLAINTIFF WHO PREVAILS IN AN ACTION
8 FILED UNDER THIS SECTION IS ENTITLED TO RECOVER REASONABLE
9 ATTORNEY FEES AND COURT COSTS.

10 (E) COMMUNICATIONS PROVIDER RELIEF.--IN THE CASE OF A
11 VIOLATION OF SECTION 7674(1)(II) (RELATING TO CONTROL OR
12 MODIFICATION) THAT CAUSES A COMMUNICATIONS PROVIDER TO INCUR
13 COSTS FOR THE ORIGINATION, TRANSPORT OR TERMINATION OF A CALL
14 TRIGGERED USING THE MODEM OF A CUSTOMER OF THE COMMUNICATIONS
15 PROVIDER AS A RESULT OF A VIOLATION, THE COMMUNICATIONS PROVIDER
16 MAY BRING A CIVIL ACTION AGAINST THE VIOLATOR TO RECOVER ANY OR
17 ALL OF THE FOLLOWING:

18 (1) THE CHARGES THE CARRIER IS OBLIGATED TO PAY TO
19 ANOTHER CARRIER OR TO AN INFORMATION SERVICE PROVIDER AS A
20 RESULT OF THE VIOLATION, INCLUDING, BUT NOT LIMITED TO,
21 CHARGES FOR THE ORIGINATION, TRANSPORT OR TERMINATION OF THE
22 CALL.

23 (2) COSTS OF HANDLING CUSTOMER INQUIRIES OR COMPLAINTS
24 WITH RESPECT TO AMOUNTS BILLED FOR CALLS.

25 (3) COSTS AND A REASONABLE ATTORNEY FEE.

26 (4) AN ORDER TO ENJOIN THE VIOLATION.

27 (F) MULTIPLE VIOLATIONS.--FOR PURPOSES OF A CIVIL ACTION
28 UNDER THIS SECTION, ANY SINGLE ACTION OR CONDUCT THAT VIOLATES
29 MORE THAN ONE PROVISION OF THIS SUBCHAPTER SHALL BE CONSIDERED
30 MULTIPLE VIOLATIONS BASED ON THE NUMBER OF SUCH PARAGRAPHS

1 VIOLATED.

2 (G) UNFAIR TRADE PRACTICE.--A VIOLATION OF THIS SUBCHAPTER
3 SHALL BE DEEMED TO BE AN UNFAIR OR DECEPTIVE ACT OR PRACTICE IN
4 VIOLATION OF THE ACT OF DECEMBER 17, 1968 (P.L.1224, NO.387),
5 KNOWN AS THE UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW.
6 THE OFFICE OF ATTORNEY GENERAL SHALL HAVE EXCLUSIVE AUTHORITY TO
7 BRING AN ACTION UNDER THE UNFAIR TRADE PRACTICES AND CONSUMER
8 PROTECTION LAW FOR A VIOLATION OF THAT ACT.

9 SECTION 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.