

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 755

Session of
2007

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YOUNGBLOOD, HESS AND MURT, MARCH 19, 2007

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 19, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for protection of consumers
3 from having spyware deceptively installed on their computers
4 and for criminal and civil enforcement.

5 The General Assembly of the Commonwealth of Pennsylvania

6 hereby enacts as follows:

7 Section 1. Chapter 76 of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended by adding a subchapter to read:

9 SUBCHAPTER F

10 SPYWARE

11 Sec.

12 7671. Scope of subchapter.

13 7672. Definitions.

14 7673. Computer spyware prohibitions.

15 7674. Control or modification.

16 7675. Misrepresentation and deception.

1 7676. Nonapplicability.

2 7677. Criminal enforcement.

3 7678. Penalty.

4 7679. Civil relief.

5 § 7671. Scope of subchapter.

6 This subchapter deals with consumer protection against
7 computer spyware.

8 § 7672. Definitions.

9 The following words and phrases when used in this subchapter
10 shall have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Authorized user." With respect to a computer, a person who
13 owns or is authorized by the owner or lessee to use the
14 computer.

15 "Cause to be copied." To distribute, transfer or procure the
16 copying of computer software or any component thereof. The term
17 shall not include the following:

18 (1) Transmission, routing, provision of intermediate
19 temporary storage or caching of software.

20 (2) A storage or hosting medium, such as a compact disc,
21 Internet website or computer server, through which the
22 software was distributed by a third party.

23 (3) An information location tool, such as a directory,
24 index, reference, pointer or hypertext link, through which
25 the user of the computer located the software.

26 "Communications provider." An entity that provides
27 communications networks or services that enable consumers to
28 access the Internet or destinations on the public switched
29 telephone network via a computer modem. This term shall include
30 cable service providers that also provide telephone services and

1 providers of Voice over Internet Protocol services.

2 "Computer software." A sequence of instructions written in
3 any programming language that is executed on a computer. The
4 term shall not include a text or data file, an Internet website
5 or a data component of an Internet website that is not
6 executable independently of the Internet website.

7 "Computer virus." A computer program or other set of
8 instructions that is designed to degrade the performance of or
9 disable a computer or computer network and is designed to have
10 the ability to replicate itself on other computers or computer
11 networks without the authorization of the owners of those
12 computers or computer networks.

13 "Damage." Any material impairment to the integrity,
14 functionality or availability of data, software, a computer, a
15 system or information.

16 "Deceptive" or "deception." Includes:

17 (1) An intentionally and materially false or fraudulent
18 statement.

19 (2) A statement or description that intentionally omits
20 or misrepresents material information in order to deceive the
21 authorized user.

22 (3) An intentional and material failure to provide any
23 notice to an authorized user regarding the download or
24 installation of software in order to deceive the authorized
25 user.

26 "Execute." With respect to computer software, the
27 performance of the functions or the carrying out of the
28 instructions of the computer software.

29 "Internet." The global information system that is logically
30 linked together by a globally unique address space based on the

1 Internet Protocol (IP), or its subsequent extensions, and that
2 is able to support communications using the Transmission Control
3 Protocol/Internet Protocol (TCP/IP) suite, or its subsequent
4 extensions, or other IP-compatible protocols, and that provides,
5 uses or makes accessible, either publicly or privately, high-
6 level services layered on the communications and related
7 infrastructure described in this subchapter.

8 "Message." A graphical or text communication presented to an
9 authorized user of a computer other than communications
10 originated and sent by the computer's operating system or
11 communications presented for any of the purposes described in
12 section 7676 (relating to nonapplicability).

13 "Person." Any individual, partnership, corporation, limited
14 liability company or other organization or any combination
15 thereof.

16 "Personally identifiable information." The term shall
17 include any of the following:
18 (1) First name or first initial in combination with last
19 name.
20 (2) Credit or debit card numbers or other financial
21 account numbers.
22 (3) A password or personal identification number
23 required to access an identified financial account other than
24 a password, personal identification number or other
25 identification number transmitted by an authorized user to
26 the issuer of the account or its agent.

27 (4) Social Security number.
28 (5) Any of the following information in a form that
29 personally identifies an authorized user:
30 (i) Account balances.

- (ii) Overdraft history.
- (iii) Payment history.
- (iv) A history of Internet websites visited.
- (v) Home address.
- (vi) Work address.
- (vii) A record of a purchase or purchases.

7 "Procure the copying." To pay or provide other consideration
8 to, or induce another person to cause software to be copied onto
9 a computer.

10 § 7673. Computer spyware prohibitions.

11 A person or entity that is not an authorized user shall not,
12 with actual knowledge or with conscious avoidance of actual
13 knowledge, willfully cause computer software to be copied or
14 procure the copying onto the computer of an authorized user in
15 this Commonwealth and use the software to do any of the
16 following acts or any other acts deemed to be deceptive:

17 (1) Modify through deceptive means any of the following
18 settings related to the computer's access to or use of the
19 Internet:

20 (i) The page that appears when an authorized user
21 launches an Internet browser or similar software program
22 used to access and navigate the Internet.

23 (ii) The default provider or Internet website proxy
24 that the authorized user uses to access or search the
25 Internet.

26 (iii) The authorized user's list of bookmarks used
27 to access Internet website pages.

28 (2) Collect through deceptive means personally
29 identifiable information that meets any of the following
30 criteria:

1 (i) Is collected through the use of a keystroke-
2 logging function that records all keystrokes made by an
3 authorized user who uses the computer and transfers that
4 information from the computer to another person.

5 (ii) Includes all or substantially all of the
6 Internet websites visited by an authorized user, other
7 than Internet websites of the provider of the software,
8 if the computer software was installed in a manner
9 designed to conceal from all authorized users of the
10 computer the fact that the software is being installed.

11 (iii) Is a data element described in paragraph (2),
12 (3), (4) or (5)(i) or (ii) of the definition of
13 "personally identifiable information" that is extracted
14 from the authorized user's computer hard drive for a
15 purpose wholly unrelated to any of the purposes of the
16 software or service described to an authorized user.

17 (3) Prevent, without the authorization of an authorized
18 user, through deceptive means an authorized user's reasonable
19 efforts to block the installation of or to disable software
20 by causing software that the authorized user has properly
21 removed or disabled to automatically reinstall or reactivate
22 on the computer without the authorization of an authorized
23 user.

24 (4) Misrepresent that software will be uninstalled or
25 disabled by an authorized user's action with knowledge that
26 the software will not be so uninstalled or disabled.

27 (5) Through deceptive means, remove, disable or render
28 inoperative security, antispyware or antivirus software
29 installed on the computer.

30 § 7674. Control or modification.

1 A person or entity that is not an authorized user shall not,
2 with actual knowledge, with conscious avoidance of actual
3 knowledge, or willfully cause computer software to be copied or
4 procure the copying onto the computer of an authorized user in
5 this Commonwealth and use the software to do any of the
6 following acts or any other acts deemed to be deceptive:

7 (1) Take control of the authorized user's computer by
8 doing any of the following:

9 (i) Transmitting or relaying commercial electronic
10 mail or a computer virus from the authorized user's
11 computer, where the transmission or relaying is initiated
12 by a person other than the authorized user and without
13 the authorization of an authorized user.

14 (ii) Accessing or using the authorized user's modem
15 or Internet service for the purpose of causing damage to
16 the authorized user's computer or of causing an
17 authorized user to incur financial charges for a service
18 that is not authorized by an authorized user.

19 (iii) Using the authorized user's computer as part
20 of an activity performed by a group of computers for the
21 purpose of causing damage to another computer, including,
22 but not limited to, launching a denial of service attack.

23 (iv) Opening a series of stand-alone messages in the
24 authorized user's computer without the authorization of
25 an authorized user and with knowledge that a reasonable
26 computer user cannot close the advertisements without
27 turning off the computer or closing the Internet
28 application.

29 (2) Modify any of the following settings related to the
30 computer's access to or use of the Internet:

1 (i) An authorized user's security or other settings
2 that protect information about the authorized user for
3 the purpose of stealing personal information of an
4 authorized user.

5 (ii) The security settings of the computer for the
6 purpose of causing damage to one or more computers.

7 (3) Prevent, without the authorization of an authorized
8 user, an authorized user's reasonable efforts to block the
9 installation of or to disable software by doing any of the
10 following:

11 (i) Presenting the authorized user with an option to
12 decline installation of software with knowledge that,
13 when the option is selected by the authorized user, the
14 installation nevertheless proceeds.

15 (ii) Falsely representing that software has been
16 disabled.

17 (iii) Requiring in a deceptive manner the user to
18 access the Internet to remove the software with knowledge
19 or reckless disregard of the fact that the software
20 frequently operates in a manner that prevents the user
21 from accessing the Internet.

22 (iv) Changing the name, location or other
23 designation information of the software for the purpose
24 of preventing an authorized user from locating the
25 software to remove it.

26 (v) Using randomized or deceptive file names,
27 directory folders, formats or registry entries for the
28 purpose of avoiding detection and removal of the software
29 by an authorized user.

30 (vi) Causing the installation of software in a

1 ~~particular computer directory or computer memory for the~~
2 ~~purpose of evading authorized users' attempts to remove~~
3 ~~the software from the computer.~~

4 (vii) Requiring, without the authority of the owner
5 of the computer, that an authorized user obtain a special
6 code or download software from a third party to uninstall
7 the software.

8 § 7675. Misrepresentation and deception.

9 A person or entity who is not an authorized user shall not do
10 any of the following or any other misrepresenting and deceptive
11 acts with regard to the computer of an authorized user in this
12 Commonwealth:

13 (1) Induce an authorized user to install a software
14 component onto the computer by misrepresenting that
15 installing software is necessary for security or privacy
16 reasons or in order to open, view or play a particular type
17 of content.

18 (2) Causing the copying and execution on the computer of
19 a computer software component with the intent of causing an
20 authorized user to use the component in a way that violates
21 any other provision of this section.

22 § 7676. Nonapplicability.

23 (1) Nothing in section 7674 (relating to control or
24 modification) or 7675 (relating to misrepresentation and
25 deception) shall apply to any monitoring of or interaction
26 with a user's Internet or other network connection or
27 service, or a protected computer, by a cable operator,
28 computer hardware or software provider or provider of
29 information service or interactive computer service for
30 network or computer security purposes, diagnostics, technical

1 support, repair, authorized updates of software or system
2 firmware, network management or maintenance, authorized
3 remote system management or detection or prevention of the
4 unauthorized use of or fraudulent or other illegal activities
5 in connection with a network, service or computer software,
6 including scanning for and removing software proscribed under
7 this subchapter.

8 (2) Nothing in this subchapter shall limit the rights of
9 providers of wire and electronic communications under 18
10 U.S.C. § 2511 (relating to interception and disclosure of
11 wire, oral, or electronic communications prohibited).

12 § 7677. Criminal enforcement.

13 (a) District attorneys.--The district attorneys of the
14 several counties shall have authority to investigate and to
15 institute criminal proceedings for any violations of this act.

16 (b) Attorney General.--In addition to the authority
17 conferred upon the Attorney General under the act of October 15,
18 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act,
19 the Attorney General shall have the authority to investigate and
20 institute criminal proceedings for any violation of this
21 subchapter. A person charged with a violation of this subchapter
22 by the Attorney General shall not have standing to challenge the
23 authority of the Attorney General to investigate or prosecute
24 the case, and, if any such challenge is made, the challenge
25 shall be dismissed and no relief shall be available in the
26 courts of this Commonwealth to the person making the challenge.

27 (c) Proceedings against persons outside Commonwealth.--In
28 addition to the powers conferred upon the district attorneys and
29 the Attorney General in subsections (a) and (b), district
30 attorneys and the Attorney General shall have the authority to

1 investigate and initiate criminal proceedings against persons
2 for violations of this act in accordance with section 102
3 (relating to territorial applicability).

4 § 7678. Penalty.

5 Any person that violates the provisions of sections 7673(2)
6 (relating to computer spyware prohibitions) and 7674(1)(i), (ii)
7 and (iii) and (2)(i) and (ii) (relating to control or
8 modification) shall be guilty of a felony of the second degree
9 and, upon conviction thereof, shall be sentenced to imprisonment
10 for not less than one nor more than ten years or a fine,
11 notwithstanding section 1101 (relating to fines), of not more
12 than \$25,000, or both.

13 § 7679. Civil relief.

14 (a) General rule.--Subject to the limitation set forth in
15 subsection (g), the following persons may bring a civil action
16 against a person who violates this act:

17 (1) A provider of computer software who is adversely
18 affected by the violation.

19 (2) An Internet service provider who is adversely
20 affected by the violation.

21 (3) A trademark owner whose trademark is used without
22 the authorization of the owner to deceive users in the course
23 of any of the deceptive practices prohibited by this section.

24 (4) The Attorney General.

25 (b) Additional remedies.--In addition to any other remedy
26 provided by law, a permitted person bringing an action under
27 this section may:

28 (1) Seek injunctive relief to restrain the violator from
29 continuing the violation.

30 (2) Recover damages in an amount equal to the greater

1 of:

2 (i) Actual damages arising from the violation.

3 (ii) Up to \$100,000 for each violation, as the court
4 considers just.

5 (3) Seek both injunctive relief and recovery of damages
6 as provided by this subsection.

7 (c) Increase by court.--The court may increase an award of
8 actual damages in an action brought under this section to an
9 amount not to exceed three times the actual damages sustained if
10 the court finds that the violations have occurred with a
11 frequency with respect to a group of victims as to constitute a
12 pattern or practice.

13 (d) Fees and costs.--A plaintiff who prevails in an action
14 filed under this section is entitled to recover reasonable
15 attorney fees and court costs.

16 (e) Communications provider relief.--In the case of a
17 violation of section 7674(1)(ii) (relating to control or
18 modification) that causes a communications provider to incur
19 costs for the origination, transport or termination of a call
20 triggered using the modem of a customer of the communications
21 provider as a result of a violation, the communications provider
22 may bring a civil action against the violator to recover any or
23 all of the following:

24 (1) The charges the carrier is obligated to pay to
25 another carrier or to an information service provider as a
26 result of the violation, including, but not limited to,
27 charges for the origination, transport or termination of the
28 call.

29 (2) Costs of handling customer inquiries or complaints
30 with respect to amounts billed for calls.

1 (3) Costs and a reasonable attorney fee.

2 (4) An order to enjoin the violation.

3 (f) Multiple violations.--For purposes of a civil action
4 under this section, any single action or conduct that violates
5 more than one provision of this subchapter shall be considered
6 multiple violations based on the number of such paragraphs
7 violated.

8 (g) Unfair trade practice.--A violation of this subchapter
9 shall be deemed to be an unfair or deceptive act or practice in
10 violation of the act of December 17, 1968 (P.L.1224, No.387),
11 known as the Unfair Trade Practices and Consumer Protection Law.
12 The Office of Attorney General shall have exclusive authority to
13 bring an action under the Unfair Trade Practices and Consumer
14 Protection Law for a violation of that act.

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