

SB3036



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB3036

Introduced 1/20/2006, by Sen. Dave Syverson - Peter J. Roskam -
Christine Radogno

SYNOPSIS AS INTRODUCED:

New Act

Creates the Consumer Protection Against Computer Spyware Act. Sets forth provisions for unauthorized collection or culling of personally identifiable information, unauthorized access to or modifications of computer settings and computer damage, unauthorized interference with installation or disabling computer software, and other prohibited conduct. Provides that certain persons may bring a civil action against a violator of the Act. Provides a civil penalty for violations of the Act. Permits the Attorney General to obtain a restraining order or injunction for violations of the Act.

LRB094 18891 LJB 54335 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Consumer Protection Against Computer Spyware Act.

6 Section 5. Definitions. In this Act:

7 "Advertisement" means a communication that includes the
8 promotion of a commercial product or service, including
9 communication on an Internet website operated for a commercial
10 purpose.

11 "Cause computer software to be copied" means to distribute
12 or transfer computer software or a component of computer
13 software. The term does not include:

14 (1) the transmission or routing of computer software or
15 a component of the software;

16 (2) the provision of intermediate temporary storage or
17 caching of software;

18 (3) the provision of a storage medium, such as a
19 compact disk;

20 (4) a website;

21 (5) the distribution of computer software by a third
22 party through a computer server; or

23 (6) the provision of an information location tool, such
24 as a directory, index, reference, pointer, or hypertext
25 link, through which the user of a computer is able to
26 locate computer software.

27 "Computer software" means a sequence of instructions
28 written in a programming language that is executed on a
29 computer. The term does not include:

30 (1) a web page; or

31 (2) a data component of a web page that cannot be
32 executed independently of that page.

1 "Damage" means, with respect to a computer, significant
2 impairment to the integrity or availability of data, computer
3 software, a system, or information.

4 "Execute" means, with respect to computer software, to
5 perform a function or carry out instructions.

6 "Keystroke-logging function" means a function of a
7 computer software program that records all keystrokes made by a
8 person using a computer and transfers that information from the
9 computer to another person.

10 "Owner or operator of a computer" means the owner or lessee
11 of a computer or an individual using a computer with the
12 authorization of the owner or lessee of the computer. "Owner or
13 operator of a computer" does not include the person who owned
14 the computer before the date on which the computer was sold if
15 a computer was sold at retail.

16 "Person" means any individual, partnership, corporation,
17 limited liability company, or other organization or a
18 combination of those organizations.

19 "Personally identifiable information", with respect to an
20 individual who is the owner or operator of a computer, means:

21 (1) the first name or first initial in combination with
22 the last name;

23 (2) a home or other physical address, including street
24 name;

25 (3) an electronic mail address;

26 (4) a credit or debit card number;

27 (5) a bank account number;

28 (6) a password or access code associated with a credit
29 or debit card or bank account;

30 (7) a social security number, tax identification
31 number, driver's license number, passport number, or other
32 government-issued identification number; or

33 (8) any of the following information if the information
34 alone or in combination with other information personally
35 identifies the individual:

36 (A) account balances;

- 1 (B) overdraft history; or
2 (C) payment history.

3 Section 10. Applicability of Act.

4 (a) Section 20, other than subdivision (1) of that Section,
5 and Sections 25 and 35 do not apply to a telecommunications
6 carrier, cable operator, computer hardware or software
7 provider, or provider of information service or interactive
8 computer service that monitors or has interaction with a
9 subscriber's Internet or other network connection or service or
10 a protected computer for the following:

- 11 (1) network or computer security purposes;
12 (2) diagnostics, technical support, or repair
13 purposes;
14 (3) authorized updates of computer software or system
15 firmware;
16 (4) authorized remote system management; or
17 (5) detection or prevention of unauthorized use of or
18 fraudulent or other illegal activities in connection with a
19 network, service, or computer software, including scanning
20 for and removing software proscribed under this Act.

21 (b) This Act does not apply to the following:

- 22 (1) the use of a navigation device, any interaction
23 with a navigation device, or the installation or use of
24 computer software on a navigation device by a multichannel
25 video programming distributor or video programmer in
26 connection with the provision of multichannel video
27 programming or other services offered over a multichannel
28 video programming system if the provision of the
29 programming or other service is subject to 47 U.S.C.
30 Section 338(i) or 551; or
31 (2) the collection or disclosure of subscriber
32 information by a multichannel video programming
33 distributor or video programmer in connection with the
34 provision of multichannel video programming or other
35 services offered over a multichannel video programming

1 system if the collection or disclosure of the information
2 is subject to 47 U.S.C. Section 338(i) or 551.

3 (c) In this Section, "multichannel video programming
4 distributor" has the meaning assigned by 47 U.S.C. Section
5 522(13).

6 Section 15. Unauthorized collection or culling of
7 personally identifiable information. If a person is not the
8 owner or operator of the computer, the person may not knowingly
9 cause computer software to be copied to a computer in this
10 State and use the software to do any of the following:

11 (1) collect, through intentionally deceptive means:

12 (A) personally identifiable information by using a
13 keystroke-logging function; or

14 (B) personally identifiable information in a
15 manner that correlates that information with
16 information regarding all or substantially all of the
17 websites visited by the owner or operator of the
18 computer, other than websites operated by the person
19 collecting the information; or

20 (2) gather, through intentionally deceptive means, the
21 following kinds of personally identifiable information
22 from the consumer's computer hard drive for a purpose
23 wholly unrelated to any of the purposes of the software or
24 service described to an owner or operator of the computer:

25 (A) a credit or debit card number;

26 (B) a bank account number;

27 (C) a password or access code associated with a
28 credit or debit card number or a bank account;

29 (D) a social security number;

30 (E) account balances; or

31 (F) overdraft history.

32 Section 20. Unauthorized access to or modifications of
33 computer settings; computer damage. If a person is not the
34 owner or operator of the computer, the person may not knowingly

1 cause computer software to be copied to a computer in this
2 State and use the software to do any of the following:

3 (1) Modify, through intentionally deceptive means, a
4 setting that controls:

5 (A) the page that appears when an Internet browser
6 or a similar software program is launched to access and
7 navigate the Internet;

8 (B) the default provider or web proxy used to
9 access or search the Internet; or

10 (C) a list of bookmarks used to access web pages.

11 (2) Take control of the computer by:

12 (A) accessing or using the computer's modem or
13 Internet service to:

14 (i) cause damage to the computer;

15 (ii) cause the owner or operator of the
16 computer to incur financial charges for a service
17 not previously authorized by the owner or
18 operator; or

19 (iii) cause a third party affected by the
20 conduct to incur financial charges for a service
21 not previously authorized by the third party; or

22 (B) opening, without the consent of the owner or
23 operator of the computer, an advertisement that:

24 (i) is in the owner's or operator's Internet
25 browser in a multiple, sequential, or stand-alone
26 form; and

27 (ii) cannot be closed by an ordinarily
28 reasonable person using the computer without
29 closing the browser or shutting down the computer.

30 (3) Modify settings on the computer that relate to
31 access to or use of the Internet and protection of
32 information for purposes of stealing personally
33 identifiable information of the owner or operator of the
34 computer.

35 (4) Modify security settings on the computer relating
36 to access to or use of the Internet for purposes of causing

1 damage to one or more computers.

2 Section 25. Unauthorized interference with installation or
3 disabling of computer software. If a person is not the owner or
4 operator of the computer, the person may not knowingly cause
5 computer software to be copied to a computer in this State and
6 use the software to do any of the following:

7 (1) Prevent, through intentionally deceptive means,
8 reasonable efforts of the owner or operator of the computer
9 to block the installation or execution of or to disable
10 computer software by causing computer software that the
11 owner or operator has properly removed or disabled to
12 automatically reinstall or reactivate on the computer.

13 (2) Intentionally misrepresent to another that
14 computer software will be uninstalled or disabled by the
15 actions of the owner or operator of the computer.

16 (3) Remove, disable, or render inoperative, through
17 intentionally deceptive means, security, antispyware, or
18 antivirus computer software installed on the computer.

19 (4) Prevent the owner's or operator's reasonable
20 efforts to block the installation of or to disable computer
21 software by:

22 (A) presenting the owner or operator with an option
23 to decline the installation of software knowing that,
24 when the option is selected, the installation process
25 will continue to proceed; or

26 (B) misrepresenting that software has been
27 disabled.

28 (5) Change the name, location, or other designation of
29 computer software to prevent the owner from locating and
30 removing the software.

31 (6) Create randomized or intentionally deceptive file
32 names or random or intentionally deceptive directory
33 folders, formats, or registry entries to avoid detection
34 and prevent the owner from removing computer software.

1 Section 30. Knowing violation. A person knowingly violates
2 Section 15, 20, or 25 if the person does either of the
3 following:

4 (1) acts with actual knowledge of the facts that
5 constitute the violation; or

6 (2) consciously avoids information that would
7 establish actual knowledge of those facts.

8 Section 35. Other prohibited conduct. If a person is not
9 the owner or operator of the computer, the person may not do
10 any of the following:

11 (1) induce the owner or operator of a computer in this
12 State to install a computer software component to the
13 computer by intentionally misrepresenting the extent to
14 which the installation is necessary for security or privacy
15 reasons, to open or view text, or to play a particular type
16 of musical or other content; or

17 (2) copy and execute or cause the copying and execution
18 of a computer software component to a computer in this
19 State in a deceptive manner with the intent of causing the
20 owner or operator of the computer to use the component in a
21 manner that violates this Act.

22 Section 40. Deceptive act or omission. For purposes of this
23 Act, a person is considered to have acted through intentionally
24 deceptive means if the person, with the intent to deceive an
25 owner or operator of a computer does any of the following:

26 (1) intentionally makes a materially false or
27 fraudulent statement;

28 (2) intentionally makes a statement or uses a
29 description that omits or misrepresents material
30 information; or

31 (3) intentionally and materially fails to provide to
32 the owner or operator any notice regarding the installation
33 or execution of computer software.

1 Section 45. Civil remedy.

2 (a) The following persons, if adversely affected by the
3 violation, may bring a civil action against a person who
4 violates this Act:

- 5 (1) a provider of computer software;
6 (2) an owner of a web page or trademark;
7 (3) a telecommunications carrier;
8 (4) a cable operator; or
9 (5) an Internet service provider.

10 (b) In addition to any other remedy provided by law and
11 except as provided by subsection (g) of this Section, a person
12 bringing an action under this Section may:

13 (1) seek injunctive relief to restrain the violator
14 from continuing the violation;

15 (2) recover damages in an amount equal to the greater
16 of:

17 (A) actual damages arising from the violation; or

18 (B) \$100,000 for each violation of the same nature;

19 or

20 (3) both seek injunctive relief and recover damages as
21 provided by this subsection (b).

22 (c) The circuit court may increase an award of actual
23 damages in an action brought under subsection (b) to an amount
24 not to exceed 3 times the actual damages sustained if the court
25 finds that the violations have occurred with a frequency as to
26 constitute a pattern or practice.

27 (d) A plaintiff who prevails in an action filed under
28 subsection (b) is entitled to recover reasonable attorney's
29 fees and court costs.

30 (e) Each separate violation of this Act is an actionable
31 violation.

32 (f) For purposes of subsection (b), violations are of the
33 same nature if the violations consist of the same course of
34 conduct or action, regardless of the number of times the
35 conduct or act occurred.

36 (g) In the case of a violation of Section 20 that causes a

1 telecommunications carrier or cable operator to incur costs for
2 the origination, transportation, or termination of a call
3 triggered using the modem of a customer of the
4 telecommunications carrier or cable operator as a result of the
5 violation and in addition to any other remedy provided by law,
6 a telecommunications carrier or cable operator bringing an
7 action under this Section may:

8 (1) apply to a court for an order to enjoin the
9 violation;

10 (2) recover the charges the telecommunications carrier
11 or cable operator is obligated to pay to a
12 telecommunications carrier, a cable operator, an other
13 provider of transmission capability, or an information
14 service provider as a result of the violation, including
15 charges for the origination, transportation, or
16 termination of the call;

17 (3) recover the costs of handling customer inquiries or
18 complaints with respect to amounts billed for calls as a
19 result of the violation;

20 (4) recover other costs, including court costs, and
21 reasonable attorney's fees; or

22 (5) both apply for injunctive relief and recover
23 charges and other costs as provided by this subsection (g).

24 Section 50. Civil penalty; injunction.

25 (a) A person who violates this Act is liable to the State
26 for a civil penalty in an amount not to exceed \$100,000 for
27 each violation. The Attorney General may bring suit to recover
28 the civil penalty imposed by this subsection (a).

29 (b) If it appears to the Attorney General that a person is
30 engaging in, has engaged in, or is about to engage in conduct
31 that violates this Act, the Attorney General may bring an
32 action in the name of this State against the person to restrain
33 the violation by a temporary restraining order or a permanent
34 or temporary injunction.

35 (c) The Attorney General is entitled to recover reasonable

1 expenses incurred in obtaining injunctive relief, civil
2 penalties, or both under this Section, including reasonable
3 attorney's fees and court costs.