

JAN 18 2006

A BILL FOR AN ACT

RELATING TO COMPUTER CRIME.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that computer-based
2 crimes involving spyware or adware software are on the rise.
3 Spyware and adware are computer software programs that track or
4 collect the online activities or personal identification of
5 internet users, change settings on a users' computer, or cause
6 advertising messages to pop up on a users' computer screen. Web
7 users are often unaware that spyware or adware is being
8 downloaded to their computers and it can be very difficult to
9 remove. More troubling, however, is that this type of software
10 enables third parties to have access to highly personal
11 information, modifies the computer systems or settings of users
12 who unknowingly download this type of software, and prevents the
13 owner or user of a computer from blocking the installation of or
14 disabling this type of software.

15 The purpose of this Act is to establish the criminal
16 offense of unauthorized distribution of spyware or adware to
17 protect Hawaii consumers from being victims of identity theft or



1 undertaking costly repairs to remove this type of software from
2 their computer systems or networks.

3 SECTION 2. Chapter 708, Hawaii Revised Statutes, is
4 amended by adding a new section to part IX to be appropriately
5 designated and to read as follows:

6 **"§708- Unlawful distribution of adware or spyware. (1)**

7 A person commits the offense of unlawful distribution of adware
8 or spyware if the person knowingly transmits or causes to be
9 transmitted computer software, adware, or spyware to a computer
10 owned or operated by another person and uses the software to:

11 (a) Modify, through deceptive means, the settings of a
12 computer that control:

13 (i) The web page that appears when an owner or
14 authorized operator launches an internet browser
15 or similar computer software used to access and
16 navigate the internet;

17 (ii) The default provider or web proxy that an owner
18 or authorized operator uses to access or search
19 the internet; or

20 (iii) The owner or authorized operator's list of
21 bookmarks used to access web pages;



- 1 (b) Collect, through deceptive means, personally
2 identifiable information about the owner or authorized
3 operator through:
- 4 (i) The use of a key stroke logging function that
5 records key strokes made by an owner or
6 authorized operator of a computer and transfers
7 that information from the computer to another
8 person;
- 9 (ii) The removal of, disabling of, or rendering
10 inoperative security or anti-virus computer
11 software that protects personally identifiable
12 information about the owner or authorized
13 operator; or
- 14 (iii) Preventing, through deceptive means, an owner or
15 authorized operator's reasonable efforts to block
16 the installation of, or to disable, computer
17 software by causing software that the owner or
18 authorized operator has properly removed or
19 disabled to automatically be reinstalled or
20 reactivated on the computer;
- 21 (c) Take control of an owner or authorized operator's
22 computer by:



- 1 (i) Accessing or using a modem, broadband, or other
2 internet service for the purpose of causing
3 damage to an owner or authorized operator's
4 computer or causing an owner or authorized
5 operator to incur financial charges for a service
6 that the owner or authorized operator did not
7 authorize; or
- 8 (ii) Opening multiple, sequential, or stand alone
9 advertisements on an owner or authorized
10 operator's internet browser without the
11 authorization of the owner or authorized operator
12 and which a reasonable computer user could not
13 close without turning off the computer or closing
14 the internet browser;
- 15 (d) Remove, disable, or render inoperative security or
16 anti-virus software installed on the computer through
17 deceptive means; or
- 18 (e) Misrepresent to the owner or authorized operator that:
19 (i) Computer software will be disabled or uninstalled
20 by the action of the owner or authorized operator
21 of the computer, and after the choice has been



1 made to disable or uninstall the software, the
2 installation proceeds; or

3 (ii) Computer software has been disabled.

4 (2) The provisions of this section shall not apply to:

5 (a) The installation of software and its respective
6 uninstall capabilities after proper notice and that
7 fall within the scope of a grant of authorization by
8 the owner or authorized operator;

9 (b) The installation of an upgrade to a software program
10 that has already been installed on the computer with
11 the authorization by the owner or authorized operator;

12 or

13 (c) The installation of software before the first retail
14 sale and delivery of the computer.

15 (3) Businesses, corporations, and organizations shall
16 provide notice to their employees of software that is installed
17 in company computers to monitor and control the computer
18 activity of their employees.

19 (4) Unlawful distribution of adware or spyware is a class B
20 felony. If convicted, the court may impose on a person one or
21 more of the following:

22 (a) A maximum fine of \$100,000 per offense;



1 (b) Reimbursement to victims for damages related to the
2 crime; and

3 (c) A maximum ten-year prison sentence per offense.

4 (5) For purposes of this section:

5 "Adware" means a computer program that, without the control
6 of the computer user, generates advertising that is unrelated to
7 either the program or internet website that the computer owner
8 or authorized operator is purposefully running or viewing.

9 "Deceptive means" means an intentionally and materially false
10 or fraudulent statement; a statement or description that
11 intentionally omits or misrepresents material information in
12 order to deceive an owner or authorized operator of a computer;
13 or an intentional and material failure to provide any notice to
14 the owner or authorized user of the computer regarding the
15 installation or execution of computer software in order to
16 deceive the owner or authorized operator of the computer.

17 "Internet" means the global information system that is linked
18 together by globally unique address space based on the Internet
19 Protocol, or its subsequent extensions, and that is able to
20 support communications using the transmission control
21 protocol/internet protocol suite, or its subsequent extensions,
22 or other internet protocol compatible protocols, and that



1 provides, uses, or makes accessible, either publicly or
2 privately high level services layered on the communications and
3 related infrastructure.

4 "Owner" or "authorized operator" means the owner or lessee of
5 a computer, or a person using a computer with the owner or
6 lessee's authorization, but does not include a person who owned
7 the computer prior to the first retail sale of the computer.

8 "Personally identifiable information" includes, but is not
9 limited to, the first name or first initial in combination with
10 the last name; a home or physical address, including street
11 name; an electronic mail address; credit or debit card number,
12 bank account number, or any password or access code associated
13 with a credit or debit card or bank account; social security
14 number, tax identification number, driver's license number,
15 passport number, or any other government-issued identification
16 number; or account balance, overdraft history, or payment
17 history that personally identifies an owner or authorized
18 operator of a computer.

19 "Spyware" means an executable computer program that
20 automatically, and without the control of the owner or
21 authorized operator of the computer gathers and transmits to the
22 provider of the program or a third party personally identifiable



1 information of the owner or authorized operator or information
 2 relating to computer usage, including, but not limited to,
 3 internet websites and addresses that are or have been visited by
 4 the owner or authorized operator."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act does not affect rights and duties that
 7 matured, penalties that were incurred, and proceedings that were
 8 begun, before its effective date.

9 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *CSIT*

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SB2019

Report Title:

Unlawful Distribution and Installation of Adware or Spyware

Description:

Creates a new criminal offense of unlawful distribution of adware or spyware if a person knowingly transmits prohibited computer software, adware, or software to a computer owned by another person. Provides penalties for a class B felony.

