

JAN 25 2006

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 SECTION 1. Chapter 481B, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . UNAUTHORIZED CONTROL OF A COMPUTER**

5 **§481B-A Definitions.** For purposes of this part:

6 "Advertisement" means a communication, the primary purpose
7 of which is the commercial promotion of a commercial product or
8 service, including content on an internet web site operated for
9 a commercial purpose.

10 "Authorized user", with respect to a computer, means a
11 person who owns or is authorized by the owner or lessee to use
12 the computer. An "authorized user" does not include a person or
13 entity that has obtained authorization to use the computer
14 solely through the use of an end user license agreement.

15 "Computer software" means a sequence of instructions
16 written in any programming language that is executed on a
17 computer.



1 "Computer virus" means 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 "Consumer" means an individual who resides in this State
8 and who uses the computer in question primarily for personal,
9 family, or household purposes.

10 "Damage" means any significant impairment to the integrity
11 or availability of data, software, a system, or information.

12 "Execute", when used with respect to computer software,
13 means the performance of the functions or the carrying out of
14 the instructions of the computer software.

15 "Intentionally deceptive" means any of the following:

16 (1) By means of an intentionally and materially false or
17 fraudulent statement;

18 (2) By means of a statement or description that
19 intentionally omits or misrepresents material
20 information in order to deceive the consumer; or

21 (3) By means of an intentional and material failure to
22 provide any notice to an authorized user regarding the



1 download or installation of software in order to
2 deceive the consumer.

3 "Internet" means the global information system that is
4 logically linked together by a globally unique address space
5 based on the internet protocol, or its subsequent extensions,
6 and that is able to support communications using the
7 Transmission Control Protocol/Internet Protocol suite, or its
8 subsequent extensions, or other internet protocol-compatible
9 protocols, and that provides, uses, or makes accessible, either
10 publicly or privately, high level services layered on the
11 communications and related infrastructure described in this
12 subdivision.

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

16 "Personally identifiable information" means any of the
17 following data elements:

- 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;

- 1 (3) A password or personal identification number required
- 2 to access an identified financial account;
- 3 (4) Social security number; or
- 4 (5) Any of the following information in a form that
- 5 personally identifies an authorized user:
- 6 (A) Account balances;
- 7 (B) Overdraft history;
- 8 (C) Payment history;
- 9 (D) A history of web sites visited;
- 10 (E) Home address;
- 11 (F) Work address; or
- 12 (G) A record of a purchase or purchases.

13 **§481B-B Prohibited acts; unauthorized installation of**
14 **software.** A person or entity that is not an authorized user
15 shall not, with actual knowledge, with conscious avoidance of
16 actual knowledge, or wilfully, cause computer software to be
17 copied onto the computer of a consumer in this State and use the
18 software to do any of the following:

- 19 (1) Modify, through intentionally deceptive means, any of
- 20 the following settings related to the computer's
- 21 access to, or use of, the internet:

1 (A) The page that appears when an authorized user
2 launches an internet browser or similar software
3 program used to access and navigate the internet;

4 (B) The default provider or web proxy the authorized
5 user uses to access or search the internet; or

6 (C) The authorized user's list of bookmarks used to
7 access web pages;

8 (2) Collect, through intentionally deceptive means,
9 personally identifiable information that meets any of
10 the following criteria:

11 (A) It is collected through the use of a keystroke-
12 logging function that records all keystrokes made
13 by an authorized user who uses the computer and
14 transfers that information from the computer to
15 another person;

16 (B) It includes all or substantially all of the web
17 sites visited by an authorized user, other than
18 web sites of the provider of the software, if the
19 computer software was installed in a manner
20 designed to conceal from all authorized users of
21 the computer the fact that the software is being
22 installed; or



1 (C) It is a data element of personally identifiable
2 information that is extracted from the consumer's
3 computer hard drive for a purpose wholly
4 unrelated to any of the purposes of the software
5 or service described to an authorized user;

6 (3) Prevent, without the authorization of an authorized
7 user, through intentionally deceptive means, an
8 authorized user's reasonable efforts to block the
9 installation of, or to disable, software, by causing
10 software that the authorized user has properly removed
11 or disabled to automatically reinstall or reactivate
12 on the computer without the authorization of an
13 authorized user;

14 (4) Intentionally misrepresent that software will be
15 uninstalled or disabled by an authorized user's
16 action, with knowledge that the software will not be
17 so uninstalled or disabled; or

18 (5) Through intentionally deceptive means, remove,
19 disable, or render inoperative security, antispymware,
20 or antivirus software installed on the computer.

21 **§481B-C Prohibited acts; fraudulent inducement to install**
22 **software.** (a) A person or entity that is not an authorized

1 user shall not, with actual knowledge, with conscious avoidance
2 of actual knowledge, or wilfully, cause computer software to be
3 copied onto the computer of a consumer in this State and use the
4 software to do any of the following:

5 (1) Take control of the consumer's computer by doing any
6 of the following:

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

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

19 (C) Using the consumer's computer as part of an
20 activity performed by a group of computers for
21 the purpose of causing damage to another



1 computer, including, but not limited to,
2 launching a denial of service attack; or
3 (D) Opening multiple, sequential, stand-alone
4 advertisements in the consumer's internet browser
5 without the authorization of an authorized user
6 and with knowledge that a reasonable computer
7 user cannot close the advertisements without
8 turning off the computer or closing the
9 consumer's internet browser.

10 (2) Modify any of the following settings related to the
11 computer's access to, or use of, the internet:

12 (A) An authorized user's security or other settings
13 that protect information about the authorized
14 user for the purpose of stealing personal
15 information of an authorized user; or

16 (B) The security settings of the computer for the
17 purpose of causing damage to one or more
18 computers; or

19 (3) Prevent, without the authorization of an authorized
20 user, an authorized user's reasonable efforts to block
21 the installation of, or to disable, software, by doing
22 any of the following:



1 (A) Presenting the authorized user with an option to
2 decline installation of software with knowledge
3 that, when the option is selected by the
4 authorized user, the installation nevertheless
5 proceeds; or

6 (B) Falsely representing that software has been
7 disabled.

8 (b) Nothing in this section shall apply to any monitoring
9 of, or interaction with, a subscriber's internet or other
10 network connection or service, or a protected computer, by a
11 telecommunications carrier, cable operator, computer hardware or
12 software provider, or provider of information service or
13 interactive computer service for network or computer security
14 purposes, diagnostics, technical support, repair, authorized
15 updates of software or system firmware, authorized remote system
16 management, or detection or prevention of the unauthorized use
17 of or fraudulent or other illegal activities in connection with
18 a network, service, or computer software, including scanning for
19 and removing software proscribed under this chapter.

20 **§481B-D Prohibited acts; inducement for unlawful use of**
21 **computer.** (a) A person or entity, who is not an authorized

1 user shall not do any of the following with regard to the
2 computer of a consumer in this State:

3 (1) Induce an authorized user to install a software
4 component onto the computer by intentionally
5 misrepresenting that installing software is necessary
6 for security or privacy reasons or in order to open,
7 view, or play a particular type of content.

8 (2) Deceptively causing the copying and execution on the
9 computer of a computer software component with the
10 intent of causing an authorized user to use the
11 component in a way that violates any other provision
12 of this section.

13 (b) Nothing in this section shall apply to any monitoring
14 of, or interaction with, a subscriber's internet or other
15 network connection or service, or a protected computer, by a
16 telecommunications carrier, cable operator, computer hardware or
17 software provider, or provider of information service or
18 interactive computer service for network or computer security
19 purposes, diagnostics, technical support, repair, authorized
20 updates of software or system firmware, authorized remote system
21 management, or detection or prevention of the unauthorized use
22 of or fraudulent or other illegal activities in connection with



1 a network, service, or computer software, including scanning for
2 and removing software proscribed under this chapter.

3 **§481B-E Enforcement; penalties.** (a) The attorney general
4 or the prosecuting attorney of the respective county may bring
5 an action to recover up to \$2,500 for each violation of this
6 part.

7 (b) Any person injured by a violation of this part may
8 bring an action to recover the greater of three times the amount
9 of actual damages suffered or \$5,000."

10 SECTION 2. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun, before its effective date.

13 SECTION 3. If any provision of this Act, or the
14 application thereof to any person or circumstance is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act, which can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 4. In codifying the new sections added by section
20 1 of this Act, the revisor of statutes shall substitute
21 appropriate section numbers for the letters used in designating
22 the new sections in this Act.

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

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Report Title:

Consumer Protection; Spyware

Description:

Prohibits the unauthorized access to or control of a computer or the inducing, by misrepresentation, authorized person to load software. Authorizes attorney general or prosecuting attorney to seek up to \$2,500 per violation. Authorizes private action to recover \$5,000 per violation or 5 times the amount of damage cause, whichever is greater.

