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# A BILL FOR AN ACT

RELATING TO 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 through  
16           deceptive means, security or anti-virus software  
17           installed on the computer;
- 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 to  
12 deceive an owner or authorized operator of a computer; or an  
13 intentional and material failure to provide any notice to the  
14 owner or authorized user of the computer regarding the  
15 installation or execution of computer software to deceive the  
16 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:

- 10 (a) The first name or first initial in combination with  
11 the last name;
- 12 (b) A home or physical address, including street name;
- 13 (c) An electronic mail address;
- 14 (d) Credit or debit card number, bank account number, or  
15 any password or access code associated with a credit  
16 or debit card or bank account;
- 17 (e) Social security number, tax identification number,  
18 driver's license number, passport number, or any other  
19 government-issued identification number; or
- 20 (f) Account balance, overdraft history, or payment history  
21 that personally identifies an owner or authorized  
22 operator of a computer.



1        "Spyware" means an executable computer program that  
 2        automatically, and without the control of the owner or  
 3        authorized operator of the computer, gathers and transmits to  
 4        the provider of the program or a third party personally  
 5        identifiable information of the owner or authorized operator or  
 6        information relating to computer usage, including, but not  
 7        limited to, Internet websites and addresses that are or have  
 8        been visited by the owner or authorized operator."

9        SECTION 3. New statutory material is underscored.

10       SECTION 4. 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 5. This Act shall take effect upon its approval.

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**Report Title:**

Adware; Spyware; Unlawful distribution.

**Description:**

Creates a new criminal offense of unlawful distribution of adware or spyware if a person knowingly transmits prohibited computer software, adware, or spyware to a computer to obtain the owner's personally identifiable information or control the computer, and makes the offense a class B felony.

