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REFERENCE TITLE: computer spyware

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HB 2414

Introduced by
Representatives Paton, Huffman, Senators Bee, Martin: Representatives
Allen J, Anderson, McClure, Murphy, Nelson, Pierce, Prezelski, Rosati,
Sinema, Tully, Weiers JP, Senators Jarrett, Tibshraeny, Verschoor

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 29; RELATING
TO COMPUTER SPYWARE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, Arizona Revised Statutes, is amended by adding
3 chapter 29, to read:

4 CHAPTER 29

5 COMPUTER SPYWARE

6 ARTICLE 1. GENERAL PROVISIONS

7 44-8101. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ADVERTISEMENT" MEANS A COMMUNICATION THE PRIMARY PURPOSE OF WHICH
10 IS THE COMMERCIAL PROMOTION OF A COMMERCIAL PRODUCT OR SERVICE, INCLUDING
11 COMMUNICATION ON AN INTERNET WEB SITE THAT IS OPERATED FOR A COMMERCIAL
12 PURPOSE.

13 2. "COMPUTER SOFTWARE" MEANS A SEQUENCE OF INSTRUCTIONS THAT IS
14 WRITTEN IN ANY PROGRAMMING LANGUAGE AND THAT IS EXECUTED ON A COMPUTER AND
15 DOES NOT INCLUDE A WEB PAGE OR DATA COMPONENTS OF WEB PAGES THAT ARE NOT
16 EXECUTABLE INDEPENDENTLY OF THE WEB PAGE.

17 3. "DAMAGE" MEANS ANY SIGNIFICANT IMPAIRMENT TO THE INTEGRITY OR
18 AVAILABILITY OF DATA, COMPUTER SOFTWARE, A SYSTEM OR INFORMATION.

19 4. "EXECUTE" MEANS THE PERFORMANCE OF THE FUNCTIONS OR THE CARRYING
20 OUT OF THE INSTRUCTIONS OF THE COMPUTER SOFTWARE.

21 5. "INTENTIONALLY DECEPTIVE" MEANS ANY OF THE FOLLOWING:

22 (a) BY MEANS OF AN INTENTIONALLY AND MATERIALLY FALSE OR FRAUDULENT
23 STATEMENT.

24 (b) BY MEANS OF A STATEMENT OR DESCRIPTION THAT INTENTIONALLY OMITTS OR
25 MISREPRESENTS MATERIAL INFORMATION IN ORDER TO DECEIVE AN OWNER OR OPERATOR
26 OF A COMPUTER.

27 (c) BY MEANS OF AN INTENTIONAL AND MATERIAL FAILURE TO PROVIDE ANY
28 NOTICE TO AN OWNER OR OPERATOR OF A COMPUTER REGARDING THE INSTALLATION OR
29 EXECUTION OF COMPUTER SOFTWARE IN ORDER TO DECEIVE THE OWNER OR OPERATOR.

30 6. "INTERNET" MEANS THE GLOBAL INFORMATION SYSTEM THAT IS LOGICALLY
31 LINKED TOGETHER BY A GLOBALLY UNIQUE ADDRESS SPACE BASED ON THE INTERNET
32 PROTOCOL, OR ITS SUBSEQUENT EXTENSIONS, AND THAT IS ABLE TO SUPPORT
33 COMMUNICATIONS USING THE TRANSMISSION CONTROL PROTOCOL/INTERNET PROTOCOL
34 SUITE, OR IT SUBSEQUENT EXTENSIONS, OR OTHER INTERNET PROTOCOL COMPATIBLE
35 PROTOCOLS, AND THAT PROVIDES, USES OR MAKES ACCESSIBLE, EITHER PUBLICLY OR
36 PRIVATELY, HIGH LEVEL SERVICES LAYERED ON THE COMMUNICATIONS AND RELATED
37 INFRASTRUCTURE DESCRIBED IN THIS PARAGRAPH.

38 7. "OWNER OR OPERATOR" MEANS THE OWNER OR LESSEE OF A COMPUTER OR
39 SOMEONE USING THE COMPUTER WITH THE OWNER'S OR LESSEE'S AUTHORIZATION. OWNER
40 OR OPERATOR DOES NOT INCLUDE ANY PERSON WHO OWNS A COMPUTER BEFORE THE FIRST
41 RETAIL SALE OF THE COMPUTER.

42 8. "PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, LIMITED
43 LIABILITY COMPANY OR OTHER ORGANIZATION OR ANY COMBINATION OF THESE ENTITIES.

44 9. "PERSONALLY IDENTIFIABLE INFORMATION" MEANS ANY OF THE FOLLOWING
45 WITH RESPECT TO AN INDIVIDUAL WHO IS AN OWNER OR OPERATOR OF A COMPUTER:

46 (a) FIRST NAME OR FIRST INITIAL IN COMBINATION WITH LAST NAME.

- 1 (b) A HOME OR OTHER PHYSICAL ADDRESS INCLUDING STREET NAME.
- 2 (c) AN ELECTRONIC MAIL ADDRESS.
- 3 (d) A CREDIT OR DEBIT CARD NUMBER OR BANK ACCOUNT NUMBER OR ANY
- 4 PASSWORD OR ACCESS CODE ASSOCIATED WITH A CREDIT OR DEBIT CARD OR BANK
- 5 ACCOUNT.
- 6 (e) A SOCIAL SECURITY NUMBER, TAX IDENTIFICATION NUMBER, DRIVER
- 7 LICENSE NUMBER, PASSPORT NUMBER OR ANY OTHER GOVERNMENT ISSUED IDENTIFICATION
- 8 NUMBER.
- 9 (f) ANY OF THE FOLLOWING INFORMATION IN A FORM THAT PERSONALLY
- 10 IDENTIFIES AN OWNER OR OPERATOR OF A COMPUTER:
- 11 (i) ACCOUNT BALANCES.
- 12 (ii) OVERDRAFT HISTORY.
- 13 (iii) PAYMENT HISTORY.
- 14 10. "TRANSMIT" MEANS TO TRANSFER, SEND OR MAKE AVAILABLE COMPUTER
- 15 SOFTWARE, OR ANY COMPONENT OF COMPUTER SOFTWARE, VIA THE INTERNET OR ANY
- 16 OTHER MEDIUM, INCLUDING LOCAL AREA NETWORKS OF COMPUTERS, ANY OTHER NON-WIRE
- 17 TRANSMISSION AND A DISK OR OTHER DATA STORAGE DEVICE. TRANSMIT DOES NOT
- 18 INCLUDE ANY ACTION BY A PERSON PROVIDING ANY OF THE FOLLOWING:
- 19 (a) THE INTERNET CONNECTION, TELEPHONE CONNECTION OR OTHER MEANS OF
- 20 TRANSMISSION CAPABILITY SUCH AS A COMPACT DISK OR DIGITAL VIDEO DISK THROUGH
- 21 WHICH THE SOFTWARE WAS MADE AVAILABLE.
- 22 (b) THE STORAGE OR HOSTING OF THE SOFTWARE PROGRAM OR AN INTERNET WEB
- 23 PAGE THROUGH WHICH THE SOFTWARE WAS MADE AVAILABLE.
- 24 (c) AN INFORMATION LOCATION TOOL, SUCH AS A DIRECTORY, INDEX,
- 25 REFERENCE, POINTER OR HYPERTEXT LINK, THROUGH WHICH THE USER OF THE COMPUTER
- 26 LOCATED THE SOFTWARE, UNLESS THE PERSON RECEIVES A DIRECT ECONOMIC BENEFIT
- 27 FROM THE EXECUTION OF THE SOFTWARE ON THE COMPUTER.
- 28 44-8102. Prohibited activities; applicability
- 29 A. IT IS UNLAWFUL FOR ANY PERSON WHO IS NOT AN OWNER OR OPERATOR OF A
- 30 COMPUTER TO TRANSMIT COMPUTER SOFTWARE TO A COMPUTER, WITH ACTUAL KNOWLEDGE
- 31 OR WITH CONSCIOUS AVOIDANCE OF ACTUAL KNOWLEDGE, AND TO USE THE SOFTWARE TO
- 32 DO ANY OF THE FOLLOWING:
- 33 1. MODIFY, THROUGH INTENTIONALLY DECEPTIVE MEANS, SETTINGS THAT
- 34 CONTROL ANY OF THE FOLLOWING:
- 35 (a) THE PAGE THAT APPEARS WHEN AN OWNER OR OPERATOR OF A COMPUTER
- 36 LAUNCHES AN INTERNET BROWSER OR SIMILAR COMPUTER SOFTWARE USED TO ACCESS AND
- 37 NAVIGATE THE INTERNET.
- 38 (b) THE DEFAULT PROVIDER OR WEB PROXY THAT AN OWNER OR OPERATOR OF A
- 39 COMPUTER USES TO ACCESS OR SEARCH THE INTERNET.
- 40 (c) AN OWNER OR OPERATOR'S LIST OF BOOKMARKS USED TO ACCESS WEB PAGES.
- 41 2. COLLECT, THROUGH INTENTIONALLY DECEPTIVE MEANS, PERSONALLY
- 42 IDENTIFIABLE INFORMATION:
- 43 (a) THROUGH THE USE OF A KEYSTROKE LOGGING FUNCTION THAT RECORDS ALL
- 44 KEYSTROKES MADE BY AN AUTHORIZED USER WHO USES THE COMPUTER AND TRANSFERS
- 45 THAT INFORMATION FROM THE COMPUTER TO ANOTHER PERSON.

1 (b) IN A MANNER THAT CORRELATES THE INFORMATION WITH DATA RESPECTING
2 ALL OR SUBSTANTIALLY ALL OF THE WEB SITES VISITED BY AN OWNER OR OPERATOR OF
3 THE COMPUTER, OTHER THAN WEB SITES OPERATED BY THE PERSON COLLECTING THE
4 INFORMATION.

5 (c) WITH RESPECT ONLY TO INFORMATION DESCRIBED IN SECTION 44-8101,
6 PARAGRAPH 9, SUBDIVISION (d), SUBDIVISION (e) OR SUBDIVISION (f), ITEM (i) OR
7 (ii), BY EXTRACTING SUCH INFORMATION FROM THE HARD DRIVE OF AN OWNER OR
8 OPERATOR'S COMPUTER.

9 3. PREVENT, THROUGH INTENTIONALLY DECEPTIVE MEANS, AN OWNER OR
10 OPERATOR'S REASONABLE EFFORTS TO BLOCK THE INSTALLATION OR EXECUTION OF, OR
11 TO DISABLE, COMPUTER SOFTWARE BY CAUSING SOFTWARE THAT AN OWNER OR OPERATOR
12 OF THE COMPUTER HAS PROPERLY REMOVED OR DISABLED AUTOMATICALLY TO REINSTALL
13 OR REACTIVATE ON THE COMPUTER.

14 4. INTENTIONALLY MISREPRESENT THAT COMPUTER SOFTWARE WILL BE
15 UNINSTALLED OR DISABLED BY AN OWNER OR OPERATOR'S ACTION.

16 5. THROUGH INTENTIONALLY DECEPTIVE MEANS, REMOVE, DISABLE OR RENDER
17 INOPERATIVE SECURITY, ANTISPYWARE OR ANTIVIRUS COMPUTER SOFTWARE INSTALLED ON
18 THE COMPUTER.

19 6. TAKE CONTROL OF THE COMPUTER BY:

20 (a) ACCESSING OR USING THE MODEM OR INTERNET SERVICE FOR THE COMPUTER
21 FOR THE PURPOSE OF CAUSING DAMAGE TO THE COMPUTER OR CAUSING AN OWNER OR
22 OPERATOR TO INCUR FINANCIAL CHARGES FOR A SERVICE THAT THE OWNER OR OPERATOR
23 OF THE COMPUTER HAS NOT AUTHORIZED.

24 (b) OPENING MULTIPLE, SEQUENTIAL, STAND ALONE ADVERTISEMENTS IN AN
25 OWNER OR OPERATOR'S INTERNET BROWSER WITHOUT THE AUTHORIZATION OF AN OWNER OR
26 OPERATOR AND THAT A REASONABLE COMPUTER USER CANNOT CLOSE WITHOUT TURNING OFF
27 THE COMPUTER OR CLOSING THE INTERNET BROWSER.

28 7. MODIFY ANY OF THE FOLLOWING SETTINGS RELATED TO THE COMPUTER'S
29 ACCESS TO, OR USE OF, THE INTERNET:

30 (a) SETTINGS THAT PROTECT INFORMATION ABOUT AN OWNER OR OPERATOR OF
31 THE COMPUTER FOR THE PURPOSE OF STEALING PERSONALLY IDENTIFIABLE INFORMATION
32 OF THE OWNER OR OPERATOR.

33 (b) SECURITY SETTINGS FOR THE PURPOSE OF CAUSING DAMAGE TO A COMPUTER.

34 8. PREVENT AN OWNER OR OPERATOR'S REASONABLE EFFORTS TO BLOCK THE
35 INSTALLATION OF, OR TO DISABLE, COMPUTER SOFTWARE, BY DOING EITHER OF THE
36 FOLLOWING:

37 (a) PRESENTING THE OWNER OR OPERATOR WITH AN OPTION TO DECLINE
38 INSTALLATION OF COMPUTER SOFTWARE WITH KNOWLEDGE THAT, WHEN THE OPTION IS
39 SELECTED, THE INSTALLATION NEVERTHELESS PROCEEDS.

40 (b) FALSELY REPRESENTING THAT COMPUTER SOFTWARE HAS BEEN DISABLED.

41 B. IT IS UNLAWFUL FOR ANY PERSON WHO IS NOT AN OWNER OR OPERATOR OF A
42 COMPUTER TO DO EITHER OF THE FOLLOWING WITH REGARD TO THE COMPUTER:

43 1. INDUCE AN OWNER OR OPERATOR TO INSTALL A COMPUTER SOFTWARE
44 COMPONENT ON THE COMPUTER BY INTENTIONALLY MISREPRESENTING THE EXTENT TO
45 WHICH INSTALLING THE SOFTWARE IS NECESSARY FOR SECURITY OR PRIVACY REASONS OR
46 IN ORDER TO OPEN, VIEW OR PLAY A PARTICULAR TYPE OF CONTENT.

1 2. DECEPTIVELY CAUSE THE EXECUTION ON THE COMPUTER OF A COMPUTER
2 SOFTWARE COMPONENT WITH THE INTENT OF CAUSING AN OWNER OR OPERATOR TO USE THE
3 COMPONENT IN A MANNER THAT VIOLATES ANY OTHER PROVISION OF THIS SECTION.

4 C. NOTHING IN THIS SECTION APPLIES TO ANY MONITORING OF, OR
5 INTERACTION WITH, A SUBSCRIBER'S INTERNET OR OTHER NETWORK CONNECTION OR
6 SERVICE, OR A COMPUTER, BY A TELECOMMUNICATIONS CARRIER, CABLE OPERATOR,
7 COMPUTER HARDWARE OR SOFTWARE PROVIDER OR PROVIDER OF INFORMATION SERVICE OR
8 INTERACTIVE COMPUTER SERVICE FOR NETWORK OR COMPUTER SECURITY PURPOSES,
9 DIAGNOSTICS, TECHNICAL SUPPORT, MAINTENANCE, REPAIR, AUTHORIZED UPDATES OF
10 SOFTWARE OR SYSTEM FIRMWARE, AUTHORIZED REMOTE SYSTEM MANAGEMENT OR DETECTION
11 OR PREVENTION OF THE UNAUTHORIZED USE OF OR FRAUDULENT OR OTHER ILLEGAL
12 ACTIVITIES IN CONNECTION WITH A NETWORK, SERVICE OR COMPUTER SOFTWARE,
13 INCLUDING SCANNING FOR AND REMOVING SOFTWARE PRESCRIBED UNDER THIS CHAPTER.

14 44-8103. Statewide concern

15 IT IS THE INTENT OF THE LEGISLATURE THAT THIS CHAPTER IS A MATTER OF
16 STATEWIDE CONCERN. THIS CHAPTER SUPERSEDES AND PREEMPTS ALL RULES,
17 REGULATIONS, CODES, ORDINANCES AND OTHER LAWS ADOPTED BY A CITY, COUNTY, CITY
18 AND COUNTY, MUNICIPALITY OR LOCAL AGENCY REGARDING SPYWARE AND NOTICES TO
19 CONSUMERS FROM COMPUTER SOFTWARE PROVIDERS REGARDING INFORMATION COLLECTION.

20 44-8104. Attorney general action; damages

21 A. THE ATTORNEY GENERAL MAY BRING AN ACTION AGAINST A PERSON THAT
22 VIOLATES THIS CHAPTER TO RECOVER EITHER OR BOTH OF THE FOLLOWING:

23 1. ACTUAL DAMAGES.

24 2. LIQUIDATED DAMAGES OF ONE THOUSAND DOLLARS FOR EACH VIOLATION OF
25 THIS CHAPTER, NOT TO EXCEED TO ONE MILLION DOLLARS PER INCIDENT.

26 B. THE ATTORNEY GENERAL MAY ALSO RECOVER REASONABLE ATTORNEY FEES AND
27 COSTS.

28 C. THE COURT MAY INCREASE A DAMAGE AWARD TO AN AMOUNT EQUAL TO NOT
29 MORE THAN THREE TIMES THE AMOUNT OTHERWISE AVAILABLE UNDER THIS SECTION IF
30 THE COURT DETERMINES THAT THE DEFENDANT COMMITTED THE VIOLATION WILFULLY AND
31 KNOWINGLY.

32 D. IF THE COURT FINDS THAT THE DEFENDANT ESTABLISHED AND IMPLEMENTED
33 PRACTICES AND PROCEDURES REASONABLY DESIGNED TO EFFECTIVELY PREVENT A
34 VIOLATION OF THIS CHAPTER, THE COURT SHALL REDUCE THE LIQUIDATED DAMAGES
35 RECOVERABLE UNDER SUBSECTION A TO A MAXIMUM OF ONE HUNDRED DOLLARS PER
36 VIOLATION, NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS PER INCIDENT.