

SENATE BILL 2069
By Norris

AN ACT to amend Tennessee Code Annotated, Title 7 and
Title 47, Chapter 18.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Internet Spyware Control Act of 2005".

SECTION 2. As used in this act:

(1) "Context based triggering mechanism" means a software based trigger or program residing on a consumer's computer that displays an advertisement according to:

(A) the current Internet website accessed by a user; or

(B) the contents or characteristics of the current Internet website accessed by a user.

(2) "Division" means the division of consumer affairs in the department of commerce and insurance.

(3) "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio, as defined in the Internet Tax Freedom Act, Pub. L. No. 105-277.

(4) Except as provided in subdivision (5), "spyware" means software residing on a computer that:

(A) monitors the computer's usage;

(B)

(i) sends information about the computer's usage to a remote computer or server; or

(ii) displays or causes to be displayed an advertisement in response to the computer's usage if the advertisement:

(a) does not clearly identify the full legal name of the entity responsible for delivering the advertisement;

(b) uses a federally registered trademark as a trigger for the display of the advertisement by a person other than:

(i) the trademark owner;

(ii) an authorized agent or licensee of the trademark owner;

or

(iii) a recognized Internet search engine;

(c) uses a triggering mechanism to display the advertisement according to the Internet websites accessed by a user; or

(d) uses a context based triggering mechanism to display the advertisement that partially or wholly covers or obscures paid advertising or other content on an Internet website in a way that interferes with a user's ability to view the Internet website; and

(C) does not:

(i) obtain the consent of the user, at the time of, or after installation of the software but before the software does any of the actions described in subsection

(4)(B):

(a) to a license agreement:

(i) presented in full; and

(ii) written in plain language:

(b) to a notice of the collection of each specific type of information to be transmitted as a result of the software installation;

(c) to a clear and representative full-size example of each type of advertisement that may be delivered;

(d) to a truthful statement of the frequency with which each type of advertisement may be delivered; and

(e) for each type of advertisement delivered by the software, a clear description of a method by which a user may distinguish the advertisement by its appearance from an advertisement generated by other software services; and

(ii) provide a method:

(a) by which a user may quickly and easily disable and remove the software from the user's computer;

(b) that does not have other effects on the non-affiliated parts of the user's computer; and

(c) that uses obvious, standard, usual, and ordinary methods for removal of computer software.

(5) Notwithstanding subsection (4). "spyware" does not include:

(A) software designed and installed solely to diagnose or resolve technical difficulties;

(B) software or data that solely report to an Internet website information previously stored by the Internet website on the user's computer, including:

(i) cookies;

(ii) HTML code;

(iii) Java Scripts; or

(C) an operating system.

(6) "Usage" means:

(A) the Internet websites accessed by a user;

(B) the contents or characteristics of the Internet websites accessed by a user;

(C) a user's personal information, including:

(i) a first and last name of a user, whether:

(a) given at birth or adoption;

(b) assumed; or

(c) legally changed;

(ii) any of the following with respect to a user's home or other physical address:

(a) the street name;

(b) the name of the city or town; or

(c) the zip code;

(iii) an electronic mail address;

(iv) a telephone number;

(v) a Social Security number;

(vi) any personal identification number;

(vii) a credit card number;

(viii) any access code associated with a credit card;

(ix) a date of birth, birth certificate number, or place of birth; or

(x) a password or access code; or

(D) a user's submission to forms or Internet websites.

(7) "User" means:

(A) a computer owner; or

(B) a person who accesses an Internet website.

SECTION 3.

(a) A person may not:

(1) install spyware on another person's computer;

(2) cause spyware to be installed on another person's computer; or

(3) use a context-based triggering mechanism to display an

advertisement that partially or wholly covers or obscures paid advertising, or other content on an Internet website in a way that interferes with a user's ability to view the Internet website.

(b) It is not a defense to a violation of this section that a user may remove or hide an advertisement.

SECTION 4.

(a) An action for a violation of this act may be brought:

(1) against a person who:

(A) violates this act; or

(B) causes a violation of this act; and

(2) by any of the following who are adversely affected by a violation of this act;

(A) an Internet website owner or registrant;

(B) a trademark or copyright owner; or

(C) an authorized advertiser on an Internet website.

(b) In an action under subsection (a), a person may:

(1) obtain an injunction against committing any further violation of this act:

and

(2) recover the greater of:

(A) actual damages; or

(B) ten thousand dollars (\$10,000) for each separate violation of this act.

(c) In an action under subsection (a), a court may:

(1) increase the damages up to three (3) times the damages allowed by subsection (b) if the court finds the defendant willfully or knowingly violated this act: and

(2) award costs and reasonable attorney fees to a prevailing party.

(d) For purposes of this section each individual occurrence that results in the display of an advertisement described in subdivision (4)(B)(ii) of Section 2 is a separate violation.

SECTION 5.

(a) A person may not bring an action for a violation of this act against an Internet service provider for the routine transmission of:

(1) security information; or

(2) information that contains an advertisement violating this act.

(b) A person may not bring a class action under this act.

SECTION 6. The division shall establish procedures by which a person may report a violation of this act to the division, including:

(1) an Internet website; and

(2) a toll-free telephone number.

SECTION 7. This act shall take effect July 1, 2005, the public welfare requiring it.