

LC02715

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

RELATING TO CRIMINAL OFFENSES

Introduced By: Representatives Kennedy, Lewiss, Kilmartin, Costantino, and Fox

Date Introduced: March 10, 2005

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 11 of the General Laws entitled "Criminal Offenses" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 52.1

4 SOFTWARE FRAUD

5 **11-52.1-1. Definitions. – As used in this chapter:**

6 (1) "Advertisement" means a communication, the purpose of which is the promotion of a
7 commercial product or service, including a communication on an internet website that is operated
8 for a commercial purpose.

9 (2) "Computer software" means a sequence of instructions written in any programming
10 language that is executed on a computer. "Computer software" does not include computer
11 software that is a web page, or are data components of web pages that are not executable
12 independently of the web page.

13 (3) "Computer virus" means a computer program or other set of instructions that is
14 designed to degrade the performance of or disable a computer or computer network and is
15 designed to have the ability to replicate itself on other computers or computer networks without
16 the authorization of the owners of those computers or computer networks.

17 (4) "Damage" means any significant impairment to the integrity or availability of data,
18 computer software, a system, or information.

19 (5) "Execute" means the performance of the functions or the carrying out of the

1 instructions of the computer software.

2 (6) "Intentionally deceptive" means any of the following:

3 (a) An intentionally and materially false or fraudulent statement;

4 (b) A statement or description that intentionally omits or misrepresents material
5 information in order to deceive an owner or operator; and

6 (c) An intentional and material failure to provide any notice to an owner or operator
7 regarding the installation or execution of computer software in order to deceive the owner or
8 operator.

9 (7) "Internet" means the global information system that is logically linked together by a
10 globally unique address space based on the internet protocol (IP), or it is subsequent extensions,
11 and that is able to support communications using the transmission control protocol/internet
12 protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that
13 provides, uses, or makes accessible, either publicly or privately, high level services layered on the
14 communications and related infrastructure described in this subsection.

15 (8) "Owner or operator" means the owner or lessee of a computer, or someone using such
16 computer with the owner's or lessee's authorization. "Owner or operator" does not include any
17 person who owns a computer before the first retail sale of such computer.

18 (9) "Person" means any individual, partnership, corporation, limited liability company, or
19 other organization, or any combination thereof.

20 (10) "Personally identifiable information" means any of the following with respect to an
21 individual who is an owner or operator:

22 (a) First name or first initial in combination with last name;

23 (b) A home or other physical address including street name;

24 (c) An electronic mail address;

25 (d) A credit or debit card number, bank account number, or a password or access code
26 associated with a credit or debit card or bank account;

27 (e) Social security number, tax identification number, driver's license number, passport
28 number, or any other government-issued identification number; and

29 (f) Any of the following information in a form that personally identifies an owner or
30 operator:

31 (i) Account balances;

32 (ii) Overdraft history; and

33 (iii) Payment history.

34 (11) "Transmit" means to transfer, send, or make available computer software, or any

1 component thereof, via the internet or any other medium, including local area networks of
2 computers, other nonwire transmission, and disc or other data storage device. "Transmit" does
3 not include any action by a person providing:

4 (a) The internet connection, telephone connection, or other means of transmission
5 capability such as a compact disk or digital video disk through which the software was made
6 available; or

7 (b) The storage or hosting of the software program or a web page through which the
8 software was made available.

9 **11-52.1-2. Unlawful modification of computer settings.** – It is unlawful for a person
10 who is not an owner or operator to transmit computer software to the owner or operator's
11 computer with actual knowledge or with conscious avoidance of actual knowledge and to use
12 such software to do any of the following:

13 (1) Modify, through intentionally deceptive means, settings that control any of the
14 following:

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

17 (b) The default provider or web proxy the owner or operator uses to access or search the
18 internet; and

19 (c) The owner or operator's list of bookmarks used to access web pages;

20 (2) Collect, through intentionally deceptive means, personally identifiable information:

21 (a) Through the use of a keystroke-logging function that records all keystrokes made by
22 an owner or operator and transfers that information from the computer to another person;

23 (b) In a manner that correlates such information with data respecting all or substantially
24 all of the websites visited by an owner or operator, other than websites operated by the person
25 collecting such information; and

26 (c) Described in subsection (10)(d), (e), or (f)(i) or (ii) of section 11-52.1-1 by extracting
27 the information from the owner or operator's hard drive;

28 (3) Prevent, through intentionally deceptive means, an owner or operator's reasonable
29 efforts to block the installation or execution of, or to disable, computer software by causing the
30 software that the owner or operator has properly removed or disabled automatically to reinstall or
31 reactive on the computer;

32 (4) Intentionally misrepresent that the computer software will be uninstalled or disabled
33 by an owner or operator's action; and

34 (5) Through intentionally deceptive means, remove, disable, or render inoperative

1 security, antispyware, or antivirus computer software installed on the computer.

2 **11-52.1-3. Unlawful control of a computer.** – It is unlawful for a person who is not an
3 owner or operator to transmit computer software to the owner or operator's computer with actual
4 knowledge or with conscious avoidance of actual knowledge and to use the software to do any of
5 the following:

6 (1) Take control of the computer by:

7 (a) Accessing or using the modem or internet service for such computer to cause damage
8 to the computer or cause an owner or operator to incur financial charges for a service that is not
9 authorized by the owner or operator;

10 (b) Opening multiple, sequential, stand-alone advertisements in the owner or operator's
11 internet browser without the authorization of an owner or operator and that a reasonable computer
12 user cannot close without turning off the computer or closing the internet browser;

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

15 (a) Settings that protect information about the owner or operator in order to steal the
16 owner or operator's personally identifiable information; and

17 (b) Security settings in order to cause damage to a computer; and

18 (3) Prevent an owner or operator's reasonable efforts to block the installation of, or to
19 disable, computer software by doing any of the following:

20 (a) Presenting the owner or operator with an option to decline installation of computer
21 software with knowledge that, when the option is selected, the installation nevertheless proceeds;
22 and

23 (b) Falsely representing that computer software has been disabled.

24 **11-52.1-4. Deceptive sale of software.** – It is unlawful for a person who is not an owner
25 or operator to do any of the following with regard to the owner or operator's computer:

26 (1) Induce an owner or operator to install a computer software component onto the
27 computer by intentionally misrepresenting the extent to which installing the software is necessary
28 for security or privacy reasons or in order to open, view, or play a particular type of content; and

29 (2) Deceptively cause the execution on the computer of a computer software component
30 with the intent of causing an owner or operator to use the component in a manner that violates
31 any other provision of this section.

32 **11-52.1-5. Exemptions.** – Section 11-52.1-3 or 11-5.1-4 does not apply to any
33 monitoring of, or interaction with, a subscriber's internet or other network connection or service,
34 or a computer, by a telecommunications carrier, cable operator, computer hardware or software

1 provider, or provider of information service or interactive computer service for network or
2 computer security purposes, diagnostics, technical support, maintenance, repair, authorized
3 updates of software or system firmware, authorized remote system management, or detection or
4 prevention of the unauthorized use of a fraudulent or other illegal activities in connection with a
5 network, service, or computer software, including scanning for and removing software under this
6 chapter.

7 **11-52.1-6. Civil action.** – (1) A person who is injured under this chapter may bring a
8 civil action in the superior court to enjoin further violations, or to seek up to one thousand dollars
9 (\$1,000) per violation, or actual damages, whichever is greater. The injured individuals may not
10 bring their cause of action as a class action. Nothing in this section prohibits the attorney general
11 from bringing a class action suit under section 6-13.1-5.

12 (2) In an action under subsection (1) of this section, a court may increase the damages up
13 to three (3) times the damages allowed by subsection (1) of this section if the defendant has
14 engaged in a pattern and practice of violating this chapter. The court may also award costs and
15 reasonable attorneys' fees to the prevailing party.

16 **11-52.1-7. Legislative intent.** – It is the intent of the legislature that this chapter is a
17 matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes,
18 ordinances, and other laws adopted by a city, county, city and county, municipality, or local
19 agency regarding spyware and notices to consumers from computer software providers regarding
20 information collection.

21 **11-52.1-8. Severability.** – If any one or more sections, clauses, sentences or parts of this
22 chapter shall for any reason be adjudged unconstitutional or otherwise invalid in any court, that
23 judgment shall not affect, impair or invalidate the remaining provisions of this chapter but shall
24 be confined in its operation to the specific provisions so held unconstitutional or invalid and the
25 inapplicability or invalidity of any section, clause or provisions of this chapter in any one or more
26 instances or circumstances shall not be taken to affect or prejudice in any way its applicability or
27 validity in any other instance.

28 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL OFFENSES

- 1 This act would prohibit the installation of software on consumer's computer which would
- 2 collect the user's personal identifiable information.
- 3 This act would take effect upon passage.

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