

**13-40-402 Spyware protection violations.**

- (1) The attorney general, an Internet service provider, or a software company that expends resources in good faith assisting authorized users harmed by a violation of Part 3, Spyware Protection, or a trademark owner whose mark is used to deceive authorized users in violation of Part 3, Spyware Protection, may bring a civil action against a person who violates Part 3, Spyware Protection, to recover:
  - (a) actual damages and liquidated damages of at least \$1,000 per violation of Part 3, Spyware Protection, not to exceed \$1,000,000 for a pattern or practice of violations; and
  - (b) attorney fees and costs.
- (2) The court may increase a damage award to an amount equal to not more than three times the amount otherwise recoverable under Subsection (1) if the court determines that the defendant committed the violation willfully and knowingly.
- (3) The court may reduce liquidated damages recoverable under Subsection (1) to a minimum of \$100, not to exceed \$100,000 for each violation, if the court finds that the defendant established and implemented practices and procedures reasonably designed to prevent a violation of Part 3, Spyware Protection.
- (4) In the case of a violation of Subsection 13-40-301(6)(a) that causes a telecommunications carrier or provider of voice over Internet protocol service to incur costs for the origination, transport, or termination of a call triggered using the modem or Internet-capable device of a customer of the telecommunications carrier or provider of voice over Internet protocol as a result of the violation, the telecommunications carrier or provider of voice over Internet protocol may bring a civil action against the violator:
  - (a) to recover the charges the telecommunications carrier or provider of voice over Internet protocol is required to pay to another carrier or to an information service provider as a result of the violation, including charges for the origination, transport, or termination of the call;
  - (b) to recover the costs of handling customer inquiries or complaints with respect to amounts billed for the calls;
  - (c) to recover reasonable attorney fees and costs; and
  - (d) for injunctive relief.
- (5) For purposes of a civil action under Subsections (1), (2), and (3), a single action or conduct that violates more than one provision of Part 3, Spyware Protection, shall be considered as multiple violations based on the number of provisions violated.

Enacted by Chapter 200, 2010 General Session