

**SPYWARE REGULATION**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Stephen H. Urquhart**

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**LONG TITLE**

**General Description:**

This bill enacts provisions within the Commerce and Trade Code relating to certain uses of spyware.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits spyware from delivering advertisements to a computer under certain circumstances;
- ▶ requires spyware to provide removal procedures;
- ▶ allows a website, trademark, or copyright owner to bring an action to enforce the requirements; and
- ▶ requires the Division of Consumer Protection to collect complaints.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

- 13-39-101**, Utah Code Annotated 1953
- 13-39-102**, Utah Code Annotated 1953
- 13-39-201**, Utah Code Annotated 1953
- 13-39-301**, Utah Code Annotated 1953
- 13-39-302**, Utah Code Annotated 1953

13-39-401, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section 13-39-101 is enacted to read:

**CHAPTER 39. SPYWARE CONTROL ACT**

**Part 1. General Provisions**

**13-39-101. Title.**

This chapter is known as the "Spyware Control Act."

Section 2. Section 13-39-102 is enacted to read:

**13-39-102. Definitions.**

As used in this chapter:

(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 Protection in the Department of Commerce.

(3) "Internet" is as defined in the Internet Tax Freedom Act, Pub. L. No. 105-277.

(4) Except as provided in Subsection (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; or

(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. Section **13-39-201** is enacted to read:

**Part 2. Prohibited Conduct**

**13-39-201. Prohibited conduct.**

- (1) A person may not:
  - (a) install spyware on another person's computer;
  - (b) cause spyware to be installed on another person's computer; or
  - (c) 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.
- (2) It is not a defense to a violation of this section that a user may remove or hide an advertisement.

Section 4. Section **13-39-301** is enacted to read:

**Part 3. Enforcement**

**13-39-301. Private action.**

- (1) An action for a violation of this chapter may be brought:
  - (a) against a person who:
    - (i) violates this chapter; or
    - (ii) causes a violation of this chapter; and
  - (b) by any of the following who are adversely affected by a violation of this chapter:
    - (i) an Internet website owner or registrant;
    - (ii) a trademark or copyright owner; or
    - (iii) an authorized advertiser on an Internet website.
- (2) In an action under Subsection (1), a person may:

- (a) obtain an injunction against committing any further violation of this chapter; and
- (b) recover the greater of:
  - (i) actual damages; or
  - (ii) \$10,000 for each separate violation of this chapter.
- (3) In an action under Subsection (1), a court may:
  - (a) increase the damages up to three times the damages allowed by Subsection (2) if the court finds the defendant willfully or knowingly violated this chapter; and
  - (b) award costs and reasonable attorney fees to a prevailing party.
- (4) For purposes of this section, a separate violation occurs for each individual occurrence that results in the display of an advertisement described in Subsection 13-39-102(4)(b)(ii).

Section 5. Section **13-39-302** is enacted to read:

**13-39-302. Limitations on actions.**

- (1) A person may not bring an action for a violation of this chapter against an Internet service provider for the routine transmission of:
  - (a) security information; or
  - (b) information that contains an advertisement violating this chapter.
- (2) A person may not bring a class action under this chapter.

Section 6. Section **13-39-401** is enacted to read:

**Part 4. Duties of Division**

**13-39-401. Information gathering -- Evaluations.**

The division shall:

- (1) establish procedures by which a person may report a violation of this chapter to the division, including:
  - (a) an Internet website; and
  - (b) a toll-free telephone number; and
- (2) make recommendations to the Public Utilities and Technology Interim Committee if the division finds a need for additional provisions to this chapter.

