Representative Stephen H. Urquhart proposes the following substitute bill:

1 # SPYWARE REGULATION

2 ## 2004 GENERAL SESSION

3 ## STATE OF UTAH

4 ## Sponsor: Stephen H. Urquhart

5

6 **LONG TITLE**

7 **General Description:**

8   This bill enacts provisions within the Commerce and Trade Code relating to certain

9 uses of spyware.

10 **Highlighted Provisions:**

11   This bill:

12   ‣ defines terms;

13   ‣ prohibits spyware from delivering advertisements to a computer under certain

14 circumstances;

15   ‣ requires spyware to provide removal procedures;

16   ‣ allows a website, trademark, or copyright owner to bring an action to enforce the

17 requirements; and

18   ‣ requires the Division of Consumer Protection to collect complaints.

19 **Monies Appropriated in this Bill:**

20   None

21 **Other Special Clauses:**

22   None

23 **Utah Code Sections Affected:**

24 ENACTS:

25   **13-39-101**, Utah Code Annotated 1953

26   **13-39-102**, Utah Code Annotated 1953

27   **13-39-201**, Utah Code Annotated 1953

28   **13-39-301**, Utah Code Annotated 1953

29   **13-39-302**, Utah Code Annotated 1953

30   **13-39-401**, Utah Code Annotated 1953

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

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

34   **CHAPTER 39. SPYWARE CONTROL ACT**

35   **Part 1. General Provisions**

36   **13-39-101. Title.**

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

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

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

40   As used in this chapter:

41   (1) "Division" means the Division of Consumer Protection in the Department of

42   Commerce.

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

44   (3) "Spyware" means software residing on a computer that:

45   (a) monitors the computer's usage;

46   (b) (i) records information about the computer's usage; or

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

48   (c) causes an advertisement to appear when a user accesses an Internet website if the

49   advertisement:

50   (i) does not clearly identify the full legal name of the entity responsible for delivering

51   the advertisement;

52   (ii) uses a federally registered trademark as a trigger for the display of an advertisement

53   by a person other than:

54   (A) the trademark owner; or

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

56   (iii) uses a triggering mechanism to display advertisements according to the Internet

57   websites accessed by a user; or

58   (iv) covers or obscures paid advertising or other content on an Internet website in a

59   way that interferes with:

60   (A) an authorized advertiser's ability to reach a user; or

61   (B) a user's ability to view an Internet website; and

62   (d) does not:

63   (i) obtain the consent of the user, after installation of the software but before the

64   software does any of the actions described in Subsections (3)(a) through (c), to:

65   (A) a license agreement:

66   (I) presented in full; and

67   (II) written in plain language;

68   (B) a notice of the collection of each specific type of information to be transmitted as a

69   result of the software installation;

70   (C) a clear and representative full-size example of each type of advertisement that may

71   be delivered;

72   (D) a truthful statement of the frequency with which each type of advertisement may be

73   delivered; and

74   (E) for each type of advertisement delivered by the software, a clear description of a

75   method by which a user may distinguish the advertisement by its appearance from

76   advertisements generated by other software services; and

77   (ii) provide a method:

78   (A) by which a user may easily disable and remove the software from the user's

79   computer;

80   (B) that does not have other effects on the user's computer; and

81   (C) that uses usual and ordinary methods for removal of computer software.

82   (4) "User" means a person who accesses an Internet website.

83   Section 3. Section **13-39-201** is enacted to read:

84   **Part 2. Prohibition of Spyware**

85   **13-39-201. Prohibition on spyware.**

86   (1) A person may not:

87   (a) create spyware;

88   (b) cause spyware to be created;

89   (c) install spyware on another person's computer; or

90   (d) cause spyware to be installed on another person's computer.

91   (2) It is not a defense to a violation of this section that a user may remove or hide an

92   advertisement caused by spyware.

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

94   **Part 3. Enforcement**

95   **13-39-301. Private action.**

96   (1) An action for a violation of this chapter may be brought:

97   (a) against a person who violates this chapter; and

98   (b) by any of the following who are adversely affected by a violation of this chapter:

99   (i) an Internet website owner or registrant; or

100   (ii) a trademark or copyright owner.

101   (2) In an action under Subsection (1), a person may:

102   (a) obtain an injunction against committing any further violation of this chapter; and

103   (b) recover the greater of:

104   (i) actual damages; or

105   (ii) $10,000 for each separate violation of this chapter.

106   (3) In an action under Subsection (1), a court may:

107   (a) increase the damages up to three times the damages allowed by Subsection (2) if the

108   court finds the defendant willfully or knowingly violated this chapter; and

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

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

111   **13-39-302. Limitations on actions.**

112   (1) A person may not bring an action for a violation of this chapter against an Internet

113   service provider for the routine transmission of information that contains an advertisement

114   violating this chapter.

115   (2) A person may not bring a class action under this chapter.

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

117   **Part 4. Duties of Division**

118   **13-39-401. Information gathering -- Evaluations.**

119   The division shall:

120   (1) establish procedures by which a person may report a violation of this chapter to the

121   division, including:

122   (a) an Internet website; and

123   (b) a toll-free telephone number; and

124   (2) make recommendations to the Public Utilities and Technology Interim Committee

125   if the division finds a need for additional provisions to this chapter.

Legislative Review Note
      as of   2-10-04 4:02 PM

This bill regulates software that creates advertisements on a computer as a result of visiting
certain Internet websites, and that collects information regarding the computer's Internet use.
Case law surrounding regulation of Internet activities is evolving. State regulations of Internet
activities have been challenged for violating principles such as the Commerce Clause of the
United States Constitution. Some courts have indicated that the need for national uniformity
limits a state's ability to regulate Internet activities. Under other court rulings, however, this bill
could be upheld if a court determined that the benefits this bill provides to Utahans outweigh
the burden the bill places on interstate commerce.

                                              Office of Legislative Research and General Counsel