Reprinted
March 1, 2005

HOUSE BILL No. 1714

DIGEST OF HB 1714 (Updated February 28, 2005 7:37 pm - DI 106)

Citations Affected: IC 24-4.8.

Synopsis: Computer spyware. Prohibits certain uses of spyware. Authorizes a provider of computer software, a web site owner, or a trademark or copyright holder harmed by a prohibited use of spyware to bring a civil action against the person who committed the prohibited act. Permits a person who brings a cause of action for unlawful spyware installation to receive injunctive relief and the greater of actual damages or $100,000 per violation.

Effective: July 1, 2005.

Moses, Koch, Pierce, Cherry

January 19, 2005, read first time and referred to Committee on Technology, Research and Development.
February 21, 2005, amended, reported — Do Pass.
February 28, 2005, read second time, amended, ordered engrossed.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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HOUSE BILL No. 1714

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

ARTICLE 4.8. PROHIBITED SPYWARE

Chapter 1. Definitions.

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Advertisement" means a communication that has the primary purpose of promoting a commercial product or service.

Sec. 3. (a) "Owner or operator" means the person who owns or leases a computer, or a person who uses a computer with the authorization of the person who owns or leases the computer.

(b) The term does not include a manufacturer, distributer, wholesaler, retail merchant, or any other person who owns or leases a computer before the first retail sale of the computer.

Sec. 4. (a) "Computer software" means a sequence of instructions written in any programming language that is executed

on a computer.

(b) The term does not include computer software that is a web page, or a data component of a web page that is not executable independently of the web page.

Sec. 5. "Damage" means a significant impairment to the integrity or availability of data, computer software, a system, or information.

Sec. 6. "Execute" means to perform a function or carry out an instruction of computer software.

Sec. 7. "Intentionally deceptive means" means any of the following:

(1) A materially false statement that a person knows to be false.

(2) A statement or description made by a person who omits or misrepresents material information with the intent to deceive an owner or operator of a computer.

(3) The failure to provide notice to an owner or operator of a computer regarding the installation or execution of computer software with the intent to deceive the owner or operator.

Sec. 8. "Internet" has the meaning set forth in IC 5-22-2-13.5.

Sec. 9. "Person" means an individual, a partnership, a corporation, a limited liability company, or another organization.

Sec. 10. "Personally identifying information" means the following information that refers to a person who is an owner or operator of a computer:

(1) Identifying information (as defined in IC 35-43-5-1).

(2) An electronic mail address.

(3) Any of the following information in a form that personally identifies an owner or operator of a computer:

(A) An account balance.

(B) An overdraft history.

(C) A payment history.

Sec. 11. (a) Except as provided in subsection (b), "transmit" means to transfer, send, or otherwise make available computer software, or a computer software component, through a network, the Internet, a wireless transmission, or any other medium, including a disk or data storage device.

(b) "Transmit" does not include an action by a person who provides:

(1) the Internet connection, telephone connection, or other means of connection for an owner or operator, including a compact disk or DVD on which computer software to

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establish or maintain a connection is made available;

(2) the storage or hosting of computer software or an Internet web page through which the computer software was made available; or

(3) an information location tool, including a directory, index, reference, pointer, or hypertext link, through which the owner or operator of the computer located the software;

unless the person receives a direct economic benefit from the execution of the computer software.

Chapter 2. Prohibited Conduct

Sec. 1. This chapter does not apply to a person who monitors or interacts with an owner or operator's Internet connection, Internet service, network connection, or computer if the person is a telecommunications carrier, cable operator, computer hardware or software provider, or other computer service provider who monitors or interacts with an owner or operator's Internet connection, Internet service, network connection, or computer for one (1) or more of the following purposes:

(1) Network security.

(2) Computer security.

(3) Diagnosis.

(4) Technical support.

(5) Maintenance.

(6) Repair.

(7) Authorized updates of software or system firmware.

(8) Authorized remote system management.

(9) Detection or prevention of the unauthorized, illegal, or fraudulent use of a network, service, or computer software, including scanning for and removing computer software that facilitates a violation of this chapter.

Sec. 2. A person who is not the owner or operator of the computer may not knowingly or intentionally:

(1) transmit computer software to the computer; and

(2) by means of the computer software transmitted under subdivision (1), do any of the following:

(A) Use intentionally deceptive means to modify computer settings that control:

(i) the page that appears when an owner or operator opens an Internet browser or similar computer software used to access and navigate the Internet;

(ii) the Internet service provider, search engine, or web proxy that an owner or operator uses to access or search

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the Internet; or

(iii) the owner or operator's list of bookmarks used to access web pages.

(B) Use intentionally deceptive means to collect personally identifiable information:

(i) through the use of computer software that records a keystroke made by an owner or operator and transfers that information from the computer to another person; or

(ii) in a manner that correlates the personally identifiable information with data respecting all or substantially all of the web sites visited by the owner or operator of the computer, not including a web site operated by the person collecting the personally identifiable information.

(C) Extract from the hard drive of an owner or operator's computer:

(i) a credit card number, debit card number, bank account number, or any password or access code associated with these numbers;

(ii) a Social Security number, tax identification number, driver's license number, passport number, or any other government issued identification number; or

(iii) the account balance or overdraft history of a person in a form that identifies the person.

(D) Use intentionally deceptive means to prevent reasonable efforts by an owner or operator to block or disable the installation or execution of computer software.

(E) Knowingly or intentionally misrepresent that computer software will be uninstalled or disabled by an owner or operator's action.

(F) Use intentionally deceptive means to remove, disable, or otherwise make inoperative security, antispyware, or antivirus computer software installed on the computer.

(G) Take control of another person's computer with the intent to cause damage to the computer or cause the owner or operator to incur a financial charge for a service that the owner or operator has not authorized, by:

(i) accessing or using the computer's modem or Internet service; or

(ii) without the authorization of the owner or operator, opening multiple, sequential, standalone advertisements

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in the owner or operator's Internet browser that a reasonable computer user cannot close without turning off the computer or closing the browser.

(H) Modify:

(i) computer settings that protect information about a person with the intent of obtaining personally identifiable information without the permission of the owner or operator; or

(ii) security settings with the intent to cause damage to a computer.

(I) Prevent reasonable efforts by an owner or operator to block or disable the installation or execution of computer software by:

(i) presenting an owner or operator with an option to decline installation of computer software knowing that the computer software will be installed even if the owner or operator attempts to decline installation; or

(ii) falsely representing that computer software has been disabled.

Sec. 3. A person who is not the owner or operator may not knowingly or intentionally do any of the following:

(1) Induce the owner or operator to install computer software on the owner or operator's computer by knowingly or intentionally misrepresenting the extent to which installing the computer software is necessary for:

(A) computer security;

(B) computer privacy; or

(C) opening, viewing, or playing a particular type of content.

(2) Use intentionally deceptive means to execute or cause the execution of computer software with the intent to cause the owner or operator to use the computer software in a manner that violates subdivision (1).

Chapter 3. Relief and Damages.

Sec. 1. In addition to any other remedy provided by law, a provider of computer software, the owner of a web site, or the owner of a trademark who is adversely affected by reason of the violation may bring a civil action against a person who violates IC 24-4.8-2:

(1) to enjoin further violations of IC 24-4.8-2; and

(2) to recover the greater of:

(A) actual damages; or

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(B) one hundred thousand dollars ($100,000);

for each violation of IC 24-4.8-2.

Sec. 2. For purposes of section 1 of this chapter, conduct that violates more than one (1) subdivision, clause, or item of IC 24-4.8-2 constitutes a separate violation for each separate subdivision, clause, or item violated. However, a single action or course of conduct that causes repeated violations of a single subdivision, clause, or item of IC 24-4.8-2 constitutes one (1) violation.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Technology, Research and Development, to which was referred House Bill 1714, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1714 as introduced.)

MURPHY, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1714 be amended to read as follows:

Page 5, line 35, delete "an".

Page 5, line 36, delete "owner or operator,".

(Reference is to HB 1714 as printed February 22, 2005.)

MOSES

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