

**SENATE BILL NO. 140**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

**BY SENATOR THERRIAULT**

**Introduced: 3/10/05**

**Referred: Labor and Commerce, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to spyware and unsolicited Internet advertising."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
4 to read:

5 FINDINGS, INTENT, AND PURPOSE. (a) The legislature finds that computer users  
6 have recently encountered a barrage of unwanted software programs, known as "spyware,"  
7 that attempt to take over their computers. Typically, spyware programs monitor the user's  
8 activities to determine what Internet websites the user is visiting. After identifying products  
9 or services that might interest the user, the spyware program shows pop-up advertisements  
10 that encourage the user to make purchases from companies that have paid advertising fees to  
11 the spyware provider.

12 (b) The legislature finds that these pop-ups advertisements are misleading and  
13 anticompetitive and intrude into a zone properly reserved for the website the user specifically  
14 requested.

15 (c) It is the intent of the legislature in this Act to prohibit spyware pop-up

1 advertisements on computers in this state. By prohibiting these pop-up advertisements, the  
 2 legislature in this Act seeks to undermine the economic incentives that encourage spyware  
 3 providers to sneak onto users' computers.

4 \* **Sec. 2.** AS 45.45 is amended by adding new sections to read:

5 **Article 10A. Deceptive Acts or Practices Relating to Spyware.**

6 **Sec. 45.45.792. Prohibited conduct relating to spyware.** (a) It is unlawful  
 7 for a person who is not the owner or authorized user of a computer to engage in  
 8 deceptive acts or practices described in this subsection using spyware. Deceptive acts  
 9 or practices under this subsection are

10 (1) causing a pop-up advertisement to be shown on the computer  
 11 screen of a user by means of a spyware program, knowing or with reckless disregard  
 12 for the risk that the pop-up advertisement is

13 (A) displayed in response to a user accessing a specific

14 (i) mark; or

15 (ii) Internet website address; and

16 (B) purchased or acquired by a person other than

17 (i) the mark owner;

18 (ii) a licensee of the mark;

19 (iii) an authorized agent of the owner of the mark;

20 (iv) an authorized user of the mark; or

21 (v) a person advertising the lawful sale, lease, or  
 22 transfer of products bearing the mark through a secondary marketplace  
 23 for the sale of goods or services; and

24 (2) purchasing advertising that violates (1) of this subsection if the  
 25 purchaser of the advertising

26 (A) receives notice of the violation from the mark owner; and

27 (B) fails to stop the violation.

28 (b) It is not a violation of this section for a person to display a pop-up  
 29 advertisement under (a)(1) of this section if the spyware program includes a function  
 30 that

31 (1) requests information about the user's state of residence before

1 displaying a pop-up advertisement to the user, and the user indicates a residence  
2 outside this state;

3 (2) implements a reasonably reliable automated system to determine  
4 the user's likely geographic location, according to current best practices in the field,  
5 and the system determines that it is unlikely that the user is located in this state; and

6 (3) does not prompt, ask, or otherwise encourage a user to indicate a  
7 residence outside this state.

8 (c) It is not a violation of (a)(2) of this section if a person purchases  
9 advertising that complies with the requirements of (b) of this section.

10 **Sec. 45.45.794. Removal of potentially harmful software.** Notwithstanding  
11 AS 45.45.792, a provider of computer software or an interactive computer service  
12 may, after notice to a customer, remove from or disable a program on the customer's  
13 computer that is used to

14 (1) violate AS 45.45.792; or

15 (2) collect information from the computer of the customer without the  
16 customer's knowledge.

17 **Sec. 45.45.798. Definitions.** In AS 45.45.792 - 45.45.798,

18 (1) "interactive computer service" means an information service,  
19 system, or access software provider that provides or enables computer access by  
20 multiple users to a computer server; "interactive computer service" includes an  
21 Internet or online service provider or a service or system providing access to the  
22 Internet, including a system operated by a library or educational institution;

23 (2) "Internet" means the combination of computer systems or networks  
24 that make up the international network for interactive communications services,  
25 including remote logins, file transfer, electronic mail, and newsgroups;

26 (3) "Internet or online service provider" means an interactive computer  
27 service that provides software or other material that enables a person to transmit,  
28 receive, display, forward, cache, search, subset, organize, reorganize, or translate  
29 content; select or analyze content; or allow or disallow content;

30 (4) "mark" means a registered trademark, registered service mark, or  
31 registered domain name in an Internet website address that is owned, licensed, or

1 lawfully used by a person doing business in this state;

2 (5) "pop-up advertisement" means material offering for sale or  
3 advertising the availability or quality of a property, good, or service that is displayed  
4 on a user's computer screen, without any request or consent of the user, separate from  
5 an Internet website that a user intentionally accesses;

6 (6) "spyware"

7 (A) means software on the computer of a user who resides in  
8 the state that

9 (i) collects information about an Internet website at the  
10 time the Internet website is being viewed in the state, unless the  
11 Internet website is the Internet website of the person who provides the  
12 software; and

13 (ii) uses the information collected contemporaneously  
14 to display a pop-up advertisement on the computer;

15 (B) does not mean

16 (i) an Internet website;

17 (ii) a service operated by an Internet or online service  
18 provider accessed by a user;

19 (iii) software designed and installed primarily to  
20 prevent, diagnose, detect, or resolve technical difficulties or prevent  
21 fraudulent activities;

22 (iv) software designed and installed to protect the  
23 security of the user's computer from unauthorized access or alteration;

24 (v) software or data that reports information to an  
25 Internet website previously stored by the Internet website on the user's  
26 computer, including a cookie; in this sub-subparagraph, "cookie"  
27 means a text file that is placed on a computer to record information that  
28 can be read or recognized when the user of the computer later accesses  
29 a particular Internet website, online location, or online service by an  
30 interactive computer service, Internet website, or a third party acting on  
31 behalf of an interactive computer service or an Internet website;

1 (vi) software that provides the user with the capability  
2 to search the Internet;

3 (vii) software installed on the user's computer with the  
4 consent of the user the primary purpose of which is to prevent access to  
5 certain Internet content;

6 (7) "user" means the owner or authorized user of a computer.

7 \* **Sec. 3.** AS 45.50.471(b) is amended by adding a new paragraph to read:

8 (51) violating AS 45.45.792 (deceptive acts or practices relating to  
9 spyware).