

**CS FOR SENATE BILL NO. 140(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/14/05

Referred: Rules

Sponsor(s): SENATORS THERRIAULT, Elton, Ellis, Kookesh, Wagoner, Dyson, Gary Stevens, Olson, Stedman, Bunde, Ben Stevens, Cowdery, Seekins

**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.** AS 45.45 is amended by adding new sections to read:

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

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

9 (1) causing a pop-up advertisement to be shown on the computer  
10 screen of a user by means of a spyware program, knowing that the pop-up  
11 advertisement is

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

13 (i) mark; or

14 (ii) Internet website address; and

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

- 1 (i) the mark owner;
- 2 (ii) a licensee of the mark;
- 3 (iii) an authorized agent of the owner of the mark;
- 4 (iv) an authorized user of the mark; or
- 5 (v) a person advertising the lawful sale, lease, or
- 6 transfer of products bearing the mark through a secondary marketplace
- 7 for the sale of goods or services; and
- 8 (2) purchasing advertising that violates (1) of this subsection if the
- 9 purchaser of the advertising

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

11 (B) fails to stop the violation.

12 (b) It is not a violation of this section for a person to display a pop-up

13 advertisement under (a)(1) of this section if the spyware program includes a function

14 that

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

16 displaying a pop-up advertisement to the user, and the user indicates a residence

17 outside this state;

18 (2) implements a reasonably reliable automated system to determine

19 the user's likely geographic location, according to current best practices in the field,

20 and the system determines that it is unlikely that the user is located in this state; and

21 (3) does not prompt, ask, or otherwise encourage a user to indicate a

22 residence outside this state.

23 (c) It is not a violation of (a)(2) of this section if a person purchases

24 advertising that complies with the requirements of (b) of this section.

25 **Sec. 45.45.794. Removal of potentially harmful software.** Notwithstanding

26 AS 45.45.792, a provider of computer software or an interactive computer service

27 may, after notice to a customer, remove from or disable a program on the customer's

28 computer that is used to

29 (1) violate AS 45.45.792; or

30 (2) collect information from the computer of the customer without the

31 customer's knowledge.

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

2                   (1) "interactive computer service" means an information service,  
3 system, or access software provider that provides or enables computer access by  
4 multiple users to a computer server; "interactive computer service" includes an  
5 Internet or online service provider or a service or system providing access to the  
6 Internet, including a system operated by a library or educational institution;

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

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

14                  (4) "mark" means a registered trademark, registered service mark, or  
15 registered domain name in an Internet website address that is owned, licensed, or  
16 lawfully used by a person doing business in this state;

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

21                  (6) "spyware"

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

24                                 (i) collects information about an Internet website at the  
25 time the Internet website is being viewed in the state, unless the  
26 Internet website is the Internet website of the person who provides the  
27 software; and

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

30                         (B) does not mean

31                                 (i) an Internet website;

1 (ii) a service operated by an Internet or online service  
2 provider accessed by a user;

3 (iii) software designed and installed primarily to  
4 prevent, diagnose, detect, or resolve technical difficulties or prevent  
5 fraudulent activities;

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

8 (v) software or data that reports information to an  
9 Internet website previously stored by the Internet website on the user's  
10 computer, including a cookie; in this sub-subparagraph, "cookie"  
11 means a text file that is placed on a computer to record information that  
12 can be read or recognized when the user of the computer later accesses  
13 a particular Internet website, online location, or online service by an  
14 interactive computer service, Internet website, or a third party acting on  
15 behalf of an interactive computer service or an Internet website;

16 (vi) software that provides the user with the capability  
17 to search the Internet;

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

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

22 \* **Sec. 2.** AS 45.50.471(b) is amended by adding a new paragraph to read:

23 (51) violating AS 45.45.792 (deceptive acts or practices relating to  
24 spyware).