

HOUSE No. 332

The Commonwealth of Massachusetts

PRESENTED BY:

Jennifer M. Callahan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing for the control of spyware.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jennifer M. Callahan	18th Worcester
Bruce E. Tarr	First Essex and Middlesex
William Lantigua	16th Essex
Richard J. Ross	9th Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 350 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PROVIDING FOR THE CONTROL OF SPYWARE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 21. (1) as used in this section the following terms shall have the following
2 meanings:—

3 “Context based triggering mechanism” a software based trigger or program residing on a
4 consumer’s computer that displays and advertising according to:

5 (a) the current internet website accessed by a user or

6 (b) The contents or characteristics of the current internet website accessed by a user

7 “Department” the department of telecommunications and energy

8 “Internet” as defined in the Internet Tax Freedom Act Public Law 105-277

9 “Spyware” except as provided in subsection 151 software residing on a computer that

10 (a) monitors the computer’s usage

11 (b) (i) sends information about the computer’s usage to a remote computer or server or

- 12 (ii) displays or causes to be displayed an advertisement in response to the computer's usage of the
13 advertisement
- 14 (a) does not clearly identify the full legal name of the entity responsible for delivering the
15 advertisement
- 16 (b) uses a federally registered trademark as a trigger for the display of the advertisement by a person
17 other than:
- 18 (I) the trademark owner
- 19 (II) and authorized agent or licensee of the trademark owner or
- 20 (III) a recognized internet search engine
- 21 (c) uses a triggering mechanism to display the advertisement according to the internet website
22 accessed by a user or
- 23 (d) uses a context based triggering mechanism to display the advertisement that partially or wholly
24 covers or obscures paid advertising or other content on an internet website in a way that interferes
25 with a user's ability to view the internet website
- 26 (c) does not:
- 27 (i) obtain the consent of the user, at the time of, or after installation of the software but before the
28 software does any of the actions described in subsection 4 to b:
- 29 (A) to a license agreement:
- 30 (I) presented in full and
- 31 (II) written in plain language

32 (B) to a notice of the collection of each specific type of information to be transmitted as a result of
33 the software installation;

34 (C) to a clear and representative full-size example of each type of advertisement that may be
35 delivered;

36 (D) to a truthful statement of the frequency with each type of advertisement that may be delivered
37 and

38 (E) for each type of advertisement delivered by the software, a clear description of a method by
39 which a user may distinguish the advertisement by its appearance from an advertisement
40 generated by other software services, and provide a method:

41 (A) by which a user may quickly and easily disable and remove the software from
42 the user computer

43 (B) that does not have any other effects on the non-affiliated parts of the user's
44 computer and

45 (C) that uses obvious, standard, usual and ordinary method for removal of
46 computer

47 Spyware shall not include:

48 (A) software designed and installed solely to diagnose or resolve technical difficulties;

49 (B) software or data that solely report to an internet website information previously stored by the
50 internet website on the user's computer including:

51 (i) cookies

52 (ii) HTML code; or

- 53 (iii) Java Scripts; or
- 54 (c) an operating system.
- 55 (6) “Usage” means:
- 56 (a) the internet websites accessed by a user;
- 57 (b) the contents or characteristics of the internet websites accessed by a user;
- 58 (c) a user’s personal information, including:
- 59 (i) a first and last name of a user, whether;
- 60 (A) given at birth or adoption;
- 61 (B) assumed; or
- 62 (C) legally changed;
- 63 (ii) any of the following with respect to a user’s home or other physical address:
- 64 (A) the street name;
- 65 (B) the name of the city or town; or
- 66 (C) the zip code;
- 67 (iii) an electronic mail address;
- 68 (iv) a telephone number;
- 69 (v) a social security number;
- 70 (vi) any personal identification number;

- 71 (vii) a credit card number
- 72 (viii) any access code associated with a credit card;
- 73 (ix) a date of birth, birth certificate number, or place of birth; or
- 74 (x) a password or access code; or
- 75 (d) a user's submission to forms or internet websites.

76 (7) "User" means:

- 77 (a) a computer owner; or
- 78 (b) a person who accesses an internet website.

79 A person may not:

- 80 (a) install spyware on another person's computer
- 81 (b) cause spyware to be installed on another person's computer or
- 82 (c) use a context based triggering mechanism to display an advertisement that partially or wholly covers
- 83 or obscures paid advertising or other content on an internet website in a way that interferes with a user's
- 84 ability to view the internet website.

85 It shall not be a defense to a violation of this section that a user may remove or hide the

86 advertisement.

87 An action for a violation of this section may be brought against a person who violates this chapter

88 or causes a violation in violation of this section by any of the following who are adversely affected by

89 such violation:

- 90 (a) an internet website owner or registrant

91 (b) a trademark or copyright owner

92 (c) an authorized advertiser on an internet website

93 If an action under this section, a person may obtain an injunction against any further violations
94 and recover the greater of actual damages or \$10,000 for each separate violation.

95 A court may increase such damages 3 times if it finds the defendant willfully or knowingly
96 violated this section and may award costs and reasonable attorney fees to a prevailing party.

97 For the purposes of this section a separate violation occurs for each occurrence that results in the
98 display of an advertisement.

99 A person may not bring an action for a violation of this section against an internet service
100 provides for the routine transmission of security information or information that contains an
101 advertisement violating this section.

102 The department shall establish procedures by which a person may report a violation of this section to the
103 department including an internet website and a toll-free telephone number.

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