

AMENDED IN ASSEMBLY MARCH 23, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1958

Introduced by Assembly Member Leslie

February 6, 2006

~~An act to amend Sections 22947.1 and 22947.2 of the Business and Professions Code, relating to computer spyware. An act to add Article 2.5 (commencing with Section 17545) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to the Internet.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1958, as amended, Leslie. ~~Computer spyware. The Internet: free gift offers.~~

Existing law makes it unlawful for any person to use the term "gift" in any manner that would be untrue or misleading. Existing law also prohibits the offering, as a part of an advertising plan or program, of any prize, gift, money, or other item of value as an inducement to visit a location, attend a sales presentation, or contact a sales agent, unless specified disclosure are made.

This bill would require an Internet advertisement that solicits consumers residing in this state to click or otherwise visit an advertisement in order to receive a free gift to clearly disclose the steps required for the consumer to redeem the free gift, as specified. The bill would require that the advertisement not permit a consumer to proceed until the consumer acknowledges that he or she has read the disclosure.

This bill would provide that if any part of these provisions or their application is deemed invalid, the invalidity would not affect other provisions.

~~Existing law prohibits a person or entity other than the authorized user of a computer owned by a person in California from, with actual knowledge, conscious avoidance of actual knowledge, or willfully, causing computer software to be copied onto the computer and using the software to (1) take control of the computer, as specified, (2) modify certain settings relating to the computer’s access to or use of the Internet, as specified, (3) collect, through intentionally deceptive means, personally identifiable information, as defined, (4) prevent, without authorization, an authorized user’s reasonable efforts to block the installation of or disable software, as specified, (5) intentionally misrepresent that the software will be uninstalled or disabled by an authorized user’s action, or (6) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus software installed on the computer. Existing law also prohibits a person or entity who is not an authorized user from inducing an authorized user to install a software component by intentionally misrepresenting that it is necessary for security or privacy or in order to open, view, or play a particular type of content. Existing law prohibits a person or entity who is not an authorized user from deceptively causing the copying and execution on the computer of software components with the intent of causing an authorized user to use the components in a way that violates any of these prohibitions.~~

~~This bill would make nonsubstantive, technical, and conforming changes to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Article 2.5 (commencing with Section 17545) is*
2 *added to Chapter 1 of Part 3 of Division 7 of the Business and*
3 *Professions Code, to read:*

4
5 *Article 2.5. Internet Gift Offers*

6
7 *17545. For purposes of this chapter, the following terms have*
8 *the following meanings:*

1 (a) "Advertisement" has the meaning set forth in subdivision
2 (a) of Section 22947.1.

3 (b) "Consumer" means an individual who resides in this state
4 and who uses a computer located in this state to redeem a free
5 gift offer.

6 (c) "Internet" has the meaning set forth in paragraph (6) of
7 subdivision (f) of Section 17538.

8 17545.1. (a) Any advertisement soliciting consumers over the
9 Internet to click or otherwise visit an advertisement in order to
10 receive a free gift shall clearly disclose the steps that the
11 consumer must take in order to redeem the free gift. The
12 disclosure shall include, but shall not be limited to, all of the
13 following information:

14 (1) The number of products that must be purchased before
15 receiving the free gift.

16 (2) An approximation of the combined dollar amount of the
17 purchases that must be made in order to receive the free gift.

18 (3) The telephone number and e-mail address of the company
19 offering the free gift.

20 (4) An estimated length of time before the consumer will
21 receive the free gift.

22 (b) The advertisement shall not permit the consumer to
23 proceed with redeeming the free gift until the consumer has
24 acknowledged that he or she has read the disclosure.

25 17545.4. Notwithstanding any other provision of law, a
26 violation of this article shall not be a crime.

27 17545.5. The provisions of this article are severable. If any
28 provision of this article or its application is held invalid, that
29 invalidity shall not affect any other provision or application that
30 can be given effect without the invalid provision or application.

31 ~~SECTION 1. Section 22947.1 of the Business and~~
32 ~~Professions Code is amended to read:~~

33 ~~22947.1. For purposes of this chapter, the following terms~~
34 ~~have the following meanings:~~

35 ~~(a) "Advertisement" means a communication, the primary~~
36 ~~purpose of which is the commercial promotion of a commercial~~
37 ~~product or service, including content on an Internet Web site~~
38 ~~operated for a commercial purpose.~~

39 ~~(b) "Authorized user," with respect to a computer, means a~~
40 ~~person who owns or is authorized by the owner or lessee to use~~

1 the computer. An “authorized user” does not include a person or
2 entity that has obtained authorization to use the computer solely
3 through the use of an end user license agreement.

4 (e) “Computer software” means a sequence of instructions
5 written in any programming language that is executed on a
6 computer.

7 (d) “Computer virus” means a computer program or other set
8 of instructions that is designed to degrade the performance of or
9 disable a computer or computer network and is designed to have
10 the ability to replicate itself on other computers or computer
11 networks without the authorization of the owners of those
12 computers or computer networks.

13 (e) “Consumer” means an individual who resides in this state
14 and who uses the computer in question primarily for personal,
15 family, or household purposes.

16 (f) “Damage” means any significant impairment to the
17 integrity or availability of data, software, a system, or
18 information.

19 (g) “Execute,” when used with respect to computer software,
20 means the performance of the functions or the carrying out of the
21 instructions of the computer software.

22 (h) “Intentionally deceptive” means any of the following:

23 (1) By means of an intentionally and materially false or
24 fraudulent statement.

25 (2) By means of a statement or description that intentionally
26 omits or misrepresents material information in order to deceive
27 the consumer.

28 (3) By means of an intentional and material failure to provide
29 any notice to an authorized user regarding the download or
30 installation of software in order to deceive the consumer.

31 (i) “Internet” means the global information system that is
32 logically linked together by a globally unique address space
33 based on the Internet Protocol (IP), or its subsequent extensions,
34 and that is able to support communications using the
35 Transmission Control Protocol/Internet Protocol (TCP/IP) suite,
36 or its subsequent extensions, or other IP-compatible protocols,
37 and that provides, uses, or makes accessible, either publicly or
38 privately, high level services layered on the communications and
39 related infrastructure described in this subdivision.

1 (j) ~~“Person” means any individual, partnership, corporation,~~
2 ~~limited liability company, or other organization, or any~~
3 ~~combination thereof.~~

4 (k) ~~“Personally identifiable information” means any of the~~
5 ~~following:~~

6 (1) ~~First name or first initial in combination with last name.~~

7 (2) ~~Credit or debit card numbers or other financial account~~
8 ~~numbers.~~

9 (3) ~~A password or personal identification number required to~~
10 ~~access an identified financial account.~~

11 (4) ~~Social Security number.~~

12 (5) ~~Any of the following information in a form that personally~~
13 ~~identifies an authorized user:~~

14 (A) ~~Account balances.~~

15 (B) ~~Overdraft history.~~

16 (C) ~~Payment history.~~

17 (D) ~~A history of Internet Web sites visited.~~

18 (E) ~~Home address.~~

19 (F) ~~Work address.~~

20 (G) ~~A record of a purchase or purchases.~~

21 ~~SEC. 2. Section 22947.2 of the Business and Professions~~
22 ~~Code is amended to read:~~

23 ~~22947.2. A person or entity that is not an authorized user, as~~
24 ~~defined in Section 22947.1, shall not, with actual knowledge,~~
25 ~~with conscious avoidance of actual knowledge, or willfully,~~
26 ~~cause computer software to be copied onto the computer of a~~
27 ~~consumer in this state and use the software to do any of the~~
28 ~~following:~~

29 (a) ~~Modify, through intentionally deceptive means, any of the~~
30 ~~following settings related to the computer’s access to, or use of,~~
31 ~~the Internet:~~

32 (1) ~~The page that appears when an authorized user launches an~~
33 ~~Internet browser or similar software program used to access and~~
34 ~~navigate the Internet.~~

35 (2) ~~The default provider or Web proxy the authorized user~~
36 ~~uses to access or search the Internet.~~

37 (3) ~~The authorized user’s list of bookmarks used to access~~
38 ~~Web pages.~~

39 (b) ~~Collect, through intentionally deceptive means, personally~~
40 ~~identifiable information that meets any of the following criteria:~~

- 1 ~~(1) It is collected through the use of a keystroke-logging~~
2 ~~function that records all keystrokes made by an authorized user~~
3 ~~who uses the computer and transfers that information from the~~
4 ~~computer to another person.~~
- 5 ~~(2) It includes all or substantially all of the Internet Web sites~~
6 ~~visited by an authorized user, other than Internet Web sites of the~~
7 ~~provider of the software, if the computer software was installed~~
8 ~~in a manner designed to conceal from all authorized users of the~~
9 ~~computer the fact that the software is being installed.~~
- 10 ~~(3) It is a data element described in paragraph (2), (3), or (4)~~
11 ~~of subdivision (k) of Section 22947.1, or in subparagraph (A) or~~
12 ~~(B) of paragraph (5) of subdivision (k) of Section 22947.1, that is~~
13 ~~extracted from the consumer's computer hard drive for a purpose~~
14 ~~wholly unrelated to any of the purposes of the software or service~~
15 ~~described to an authorized user.~~
- 16 ~~(e) Prevent, without the authorization of an authorized user,~~
17 ~~through intentionally deceptive means, an authorized user's~~
18 ~~reasonable efforts to block the installation of, or to disable,~~
19 ~~software, by causing software that the authorized user has~~
20 ~~properly removed or disabled to automatically reinstall or~~
21 ~~reactivate on the computer without the authorization of an~~
22 ~~authorized user.~~
- 23 ~~(d) Intentionally misrepresent that software will be uninstalled~~
24 ~~or disabled by an authorized user's action, with knowledge that~~
25 ~~the software will not be so uninstalled or disabled.~~
- 26 ~~(e) Through intentionally deceptive means, remove, disable, or~~
27 ~~render inoperative security, antispyware, or antivirus software~~
28 ~~installed on the computer.~~