



Senate
Office of the Secretary

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

15 MAR 17 P2:38

SENATE
S. No. 2708

RECEIVED BY: *[Signature]*

Introduced by Senator Miriam Defensor Santiago

AN ACT
REGULATING THE UNAUTHORIZED INSTALLATION
OF COMPUTER SOFTWARE AND REQUIRING THE CLEAR DISCLOSURE
TO COMPUTER USERS OF CERTAIN COMPUTER SOFTWARE FEATURES
THAT MAY POSE A THREAT TO USER PRIVACY

EXPLANATORY NOTE

Computer users are increasingly finding software installed on their computers that they did not know was installed and that they cannot uninstall. Moreover, there is an increasing capacity and tendency for users of the Internet to have unauthorized software surreptitiously installed on their computers without their knowledge. There are reports that technology has now freely made available predatory and eavesdropping software which has the capacity to collect and transfer data from a user's computer to another computer without the knowledge of the user.

It is the responsibility of the State to protect its citizens from unscrupulous individuals who now use technology and the internet to take advantage of unknowing customers. This bill aims to protect computer users by providing them with the ability to make an informed decision with regards to matters affecting the use of their personal computers. It shall protect their privacy and the security of their personal information. It shall:

(a) regulate the unauthorized or surreptitious installation of computer software;

(b) require the clear disclosure to computer users of certain computer software features that may pose a threat to a user's privacy or the speed or operation of their computer;

(c) give computer users the rights and capacity to:

(i) know what software is being installed on their computer;

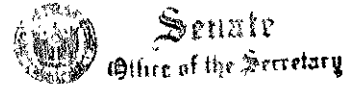
(ii) refuse to have the software installed; and

(iii) be able to uninstall any software.¹


MIRIAM DEFENSOR SANTIAGO
RP

¹ This bill was originally filed during the Fourteenth Congress, First Regular session.

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)



'15 MAR 17 P2:38

SENATE
S. No. 2708

RECEIVED BY. J

Introduced by Senator Miriam Defensor Santiago

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled

1 AN ACT
2 REGULATING THE UNAUTHORIZED INSTALLATION
3 OF COMPUTER SOFTWARE AND REQUIRING THE CLEAR DISCLOSURE
4 TO COMPUTER USERS OF CERTAIN COMPUTER SOFTWARE FEATURES
5 THAT MAY POSE A THREAT TO USER PRIVACY

6 SECTION 1. *Short Title.* - This Act may be cited as the "Anti-Spyware Act of
7 2015."

8 SECTION 2. *Definition of Terms.* - For purposes of this Act, the term:

9 1. "Advertisement" means a commercial promotion for a product or service,
10 but does not include promotions for products or services that appear on computer
11 software help or support pages that are displayed in response to a request by the user.

12 2. "Advertising feature" means a function of computer software that, when
13 installed on a computer, delivers advertisements to the user of that computer.

14 3. "Adware" means software which causes advertisements to be displayed on
15 a user's computer.

16 4. "Affirmative consent" means consent expressed through action by the user
17 of a computer other than default action specified by the installation sequence and
18 independent from any other consent solicited from the user during the installation
19 process.

1 5. “Authorized user”, when used with respect to a computer, means the owner
2 or lessee of a computer, or someone using or accessing a computer with the actual or
3 apparent authorization of the owner or lessee.

4 6. “Computer software” means any program designed to cause a computer to
5 perform a desired function or functions and does not include any cookie.

6 7. “Cookie” means a text file:

7 (a) that is placed on a computer by an Internet service provider,
8 interactive computer service or Internet website; and

9 (b) the sole function of which is to record information that can be read
10 or recognized by an Internet service provider, interactive computer service or
11 Internet website when the user of the computer uses or accesses such provider,
12 service or website.

13 8. “Distributed computing feature” means a function of computer software
14 that, when installed on a computer, transmits information or messages, other than
15 personal or network information about the user of the computer, to any other
16 computer without the knowledge or direction of the user and for purposes unrelated
17 to the tasks or functions the user intentionally performs using the computer.

18 9. “First retail sale” means the first sale of a computer, for a purpose other
19 than resale, after the manufacture, production or importation of the computer. For
20 purposes of this definition, each subsequent lease of a computer is to be considered
21 as a first retail sale.

22 10. “Information collection feature” means a function of computer software
23 that, when installed on a computer, collects personal or network information about
24 the user of the computer and transmits such information to any other party on an
25 automatic basis or at the direction of a party other than the user of the computer.

26 11. “Install” means:

1 a. To write computer software to a computer's persistent storage
2 medium, such as the computer's hard disk, in such a way that the computer
3 software is retained on the computer after the computer is turned off and
4 subsequently restarted; or

5 b. To write computer software to a computer's temporary memory,
6 such as random access memory, in such a way that the software is retained
7 and continues to operate after the user of the computer turns off or exits the
8 Internet service, interactive computer service or Internet website from which
9 the computer software was obtained.

10 12. "Network information" means:

11 a. An Internet protocol address or domain name of a user's computer;

12 or

13 b. A Uniform Resource Locator or other information that identifies
14 Internet web sites or other online resources accessed by a user of a computer.

15 13. "Personal information" means:

16 a. A first and last name, whether given at birth or adoption, assumed or
17 legally changed;

18 b. A home or other physical address including street name, name of a
19 city or town and postcode;

20 c. An electronic mail address or online username;

21 d. A telephone number;

22 e. Any personal identification number;

23 f. A credit card number, including the access code associated with the
24 credit card or both;

25 g. A birth date, birth certificate number or place of birth; or

26 h. Any password or access code.

1 14. “Settings modification feature” means a function of computer software
2 that, when installed on a computer:

3 a. Modifies an existing user setting, without direction from the user of the
4 computer, with respect to another computer software application previously installed
5 on that computer; or

6 b. Enables a user setting with respect to another computer software application
7 previously installed on that computer to be modified in the future without advance
8 notification to and consent from the user of the computer.

9 15. “User of a computer” means a computer’s lawful owner or an individual
10 who operates a computer with the authorization of the computer’s lawful owner.

11 SECTION 3. *Requirement of notice prior to installation of software.* - It is
12 unlawful for any person who is not the user of a computer to install computer
13 software on that computer, or to authorize, permit or cause the installation of
14 computer software on that computer, unless:

15 a. The user of the computer has received notice that satisfies the requirements
16 of Section 4; and

17 b. The user of the computer has granted consent that satisfies the requirements
18 of Section 5; and

19 3. The computer software’s removal procedures satisfy the requirements of
20 Section 6.

21 SECTION 4. *Requirement of notice.* - For purposes of Section 3, notice to the
22 user of a computer must:

1 1. Include a clear notification, displayed on the screen until the user either
2 grants or denies consent to installation, of the name and general nature of the
3 computer software that will be installed if the user grants consent; and

4 2. Include a separate disclosure, with respect to each information collection,
5 advertising, distributed computing and settings modification feature contained in the
6 computer software, that remains displayed on the screen until the user either grants or
7 denies consent to that feature; and

8 3. In the case of an information collection feature, provides a clear description
9 of:

10 a. The type of personal or network information to be collected and
11 transmitted by the computer software; and

12 b. The purpose for which the personal or network information is to be
13 collected, transmitted and used; and

14 4. In the case of an advertising feature, provides:

15 a. A representative example of the type of advertisement that may be
16 delivered by the computer software; and

17 b. A clear description of the estimated frequency with which each type
18 of advertisement may be delivered or the factors on which the frequency will
19 depend; and

20 c. A clear description of how the user can distinguish each type of
21 advertisement that the computer software delivers from advertisements
22 generated by other software, Internet website operators or services; and

23 5. In the case of a distributed computing feature, provides a clear
24 description of:

25 a. The types of information or messages the computer software will
26 cause the computer to transmit; and

1 b. The estimated frequency with which the computer software will
2 cause the computer to transmit such messages or information or the factors on
3 which the frequency will depend; and

4 c. The estimated volume of such information or messages, and the
5 likely impact, if any, on the processing or communications capacity of the
6 user's computer; and

7 d. The nature, volume and likely impact on the computer's processing
8 capacity of any computational or processing tasks the computer software will
9 cause the computer to perform in order to generate the information or
10 messages the computer software will cause the computer to transmit; and

11 6. In the case of a settings modification feature, provides a clear description of
12 the nature of the modification, its function and any collateral effects the modification
13 may produce, and procedures the user may follow to turn off such feature or uninstall
14 the computer software.

15 SECTION 5. *Requirement of Consent.* -For purposes of Section 3, consent
16 means:

17 1. Consent by the user of the computer to the installation of the computer
18 software; and

19 2. Separate affirmative consent by the user of the computer to each
20 information collection feature, advertising feature, distributed computing feature and
21 settings modification feature contained in the computer software.

22 SECTION 6. *Removal Procedures.* - For purposes of Section 3, computer
23 software must:

1 1. Appear in the 'Add/Remove Programs' menu or any like feature, if any,
2 provided by each operating system with which the computer software functions; and

3 2. Be capable of being removed completely using the normal procedures for
4 removing computer software provided by each operating system with which the
5 computer software functions; and

6 3. In the case of computer software with an advertising feature, include an
7 easily identifiable link clearly associated with each advertisement that the software
8 causes to be displayed, such that selection of the link by the user of the computer
9 generates an on-screen window that informs the user about how to turn off the
10 advertising feature or uninstall the computer software.

11 SECTION 7. *Prohibited Acts.* - The following acts are hereby declared
12 prohibited and unlawful:

13 1. Surreptitious installation of software. - It is unlawful for a person who is not
14 an authorized user of a computer to cause the installation of software on the computer
15 in a manner designed to:

16 a. Conceal from the user of the computer the fact that the software is
17 being installed; or

18 b. Prevent the user of the computer from having an opportunity to
19 knowingly grant or withhold consent to the installation.

20 c. Exceptions:

21 i. the installation of software that falls within the scope of a
22 previous grant of authorization by an authorized user; or

23 ii. the installation of an upgrade to a software program that has
24 already been installed on the computer with the authorization of an
25 authorized user; or

1 iii. the installation of software before the first retail sale of the
2 computer.

3 2. Deceptive installation of software. - It is unlawful for any person who is not
4 the user of a computer to install computer software on that computer, or to authorize,
5 permit, or cause the installation of computer software on that computer, if the design
6 or operation of the computer software is intended, or may reasonably be expected, to
7 confuse or mislead the user of the computer concerning the identity of the person or
8 service responsible for the functions performed or content displayed by such
9 computer software.

10 3. Misleading inducements to install software. - It is unlawful for a person
11 who is not an authorized user of a computer to induce an authorized user of the
12 computer to consent to the installation of software on the computer by means of a
13 materially false or misleading representation concerning:

14 a. The identity of an operator of an Internet website or online service at
15 which the software is made available for download from the Internet; or

16 b. The identity of the author or publisher of the software; or

17 c. The nature or function of the software; or

18 d. The consequences of not installing the software.

19 4. Preventing reasonable efforts to remove software. - It is unlawful for a
20 person who is not an authorized user of a computer to authorize or cause the
21 installation of software on the computer if the software is designed to prevent
22 reasonable efforts by an authorized user of the computer to remove or disable the
23 software once it has been installed.

24 5. Surreptitious information collection unlawful. - It is unlawful for a person
25 who is not an authorized user of a computer to authorize or cause the installation on
26 that computer of software that collects information about the user of the computer or

1 about the user's internet browsing behavior or other use of the computer and
2 transmits such information to any other person on an automatic basis or at the
3 direction of a person other than an authorized user of the computer, if the software's
4 collection and transmission of such information is not functionally related to or in
5 support of a software capability or function that an authorized user of the computer
6 has chosen or consented to execute or enable, and either:

7 a. There has been no notification, prior to the software beginning to
8 collect and transmit such information, to an authorized user of the computer
9 explaining the type of information the software will collect and transmit and
10 the types of ways the information may be used and distributed; or

11 b. Notification pursuant to paragraph (a) was not provided in a manner
12 reasonably calculated to provide actual notice to an authorized user of the
13 computer; or

14 c. Notification pursuant to paragraph (a) occurred at a time or in a
15 manner that did not enable an authorized user of the computer to consider the
16 information contained in the notification before choosing whether to permit
17 the collection or transmission of information.

18 d. Exception - This section must not be interpreted as prohibiting a
19 person from authorizing or causing the installation of software that collects
20 and transmits information that is reasonably needed to determine whether or
21 not the user of a computer is licensed or authorized to use the software.

22 6. Intentional transmission of information by user. - Information must not be
23 construed as having been collected and transmitted on an automatic basis or at the
24 direction of a person other than a user of the computer, within the meaning of this
25 Act, if the collection or transmission of the information is intentionally initiated by an

1 authorized user for the purpose of allowing the direct or indirect access to the
2 information by an intended recipient.

3 7. Adware that conceals its operation. - It is unlawful for a person who is not
4 an authorized user of a computer to authorize or cause the installation on that
5 computer of software if:

6 a. The software causes advertisements to be displayed to the user:

7 i. at a time when the user is not accessing an Internet website or
8 online service operated by the publisher of the software; and

9 ii. in a manner or at a time such that a reasonable user would not
10 understand that the software is responsible for delivering the
11 advertisements; and

12 b. The advertisements referred to in paragraph (a) do not contain a label
13 or other reasonable means of identifying to the user of the computer, each time
14 such an advertisement is displayed, which software is responsible for the
15 advertisement's delivery.

16 8. Other practices that thwart user control of computer. - It is unlawful for a
17 person who is not an authorized user of a computer, knowingly and without the
18 authorization of an authorized user of the computer:

19 a. To utilize the computer to send unsolicited information or material
20 from the user's computer to other computers; or

21 b. To divert an authorized user's internet browser away from the
22 internet website the user intended to view to one or more other websites,
23 unless such diversion has been authorized by the website the user intended to
24 view; or

25 c. To display an advertisement, series of advertisements or other
26 content on the computer through Windows in an internet browser, in such a

1 manner that the user of the computer cannot end the display of such
2 advertisements or content without turning off the computer or terminating all
3 sessions of the Internet browser, provided that this paragraph does not apply to
4 the display of content related to the functionality or identity of the Internet
5 browser; or

6 d. To covertly modify settings relating to the use of the computer or to
7 the computer's access to or use of the Internet, including:

8 i. altering the default Web page that initially appears when a
9 user of the computer launches an Internet browser; or

10 ii. altering the default provider or Web proxy used to access or
11 search the Internet; or

12 iii. altering bookmarks used to store Internet website addresses;
13 or

14 iv. altering settings relating to security measures that protect the
15 computer and the information stored on the computer against
16 unauthorized access or use; and

17 v. removing, disabling, or rendering inoperative security or
18 privacy protection technology installed on the computer.

19 SECTION 8. *Limitation of ability to remove software.* - Software that enables
20 an authorized user of a computer, such as a parent or system administrator, to choose
21 to prevent another user of the same computer from uninstalling or disabling the
22 software is not to be considered in order to prevent reasonable efforts to uninstall or
23 disable the software within the meaning of this section, provided that at least one
24 authorized user retains the ability to uninstall or disable the software.

1 SECTION 9. *Limitations on liability.* - A person does not commit an offence
2 against any provision of this Act solely because the person provided:

3 1. The internet connection, telephone connection or other transmission or
4 routing function through which software was delivered to a computer for installation;

5 2. The storage or hosting of software or of an internet website through which
6 software was made available for installation to a computer; or

7 3. An information location tool, such as a directory, index, reference, pointer
8 or hypertext link, through which an authorized user of a computer located software
9 available for installation.

10 SECTION 10. *Network security.* - A provider of a network or online service
11 that an authorized user of a computer uses or subscribes to has not committed an
12 offence against this Act where the purpose of the provider's action is to:

13 1. Protect the security of the network, service or computer; or

14 2. Facilitate diagnostics, technical support, maintenance, network management
15 or repair; or

16 3. Prevent or detect unauthorized, fraudulent or otherwise unlawful uses of the
17 network or service.

18 SECTION 11. *Pre-installed software.* - Any provision to the contrary
19 notwithstanding, the provisions of this Act shall not apply to a person who installs, or
20 authorizes, permits or causes the installation of computer software on a computer
21 before the first retail sale of the computer is deemed to be in compliance with this
22 Act if the authorized user of the computer receives notice that would satisfy the
23 requirements of Section 4 and grants consent that would satisfy the requirements of
24 Section 5 prior to:

1 1. The initial collection of personal or network information, in the case
2 of any information collection feature contained in the computer software; and

3 2. The initial generation of an advertisement on the computer, in the
4 case of any advertising feature contained in the computer software; and

5 3. The initial transmission of information or messages, in the case of
6 any distributed computing feature contained in the computer software; and

7 4. The initial modification of user settings, in the case of any settings
8 modification feature.

9 SECTION 12. *Penalties.* - A person who commits any of the prohibited acts
10 enumerated above shall be punishable with a penalty of imprisonment for a period of
11 not exceeding 6 months or a fine of not less than Fifty Thousand Pesos (₱50,000.00)
12 but not more than One Hundred Thousand Pesos (₱100,000.00), or both, at the
13 discretion of the court.

14 SECTION 13. *Separability Clause.* - If any provision, or part hereof, is
15 declared invalid or unconstitutional, the remainder of the law not otherwise affected
16 shall remain valid and subsisting.

17 SECTION 14. *Repealing Clause.* - Any law, presidential decree or issuance,
18 executive order, letter of instruction, administrative order, rule or regulation contrary
19 to or inconsistent with, the provisions of this Act, are hereby modified, repealed, or
20 amended accordingly.

21 SECTION 15. *Effectivity Clause.* - This Act shall take effect fifteen (15) days
22 after its publication in at least two (2) newspapers of general circulation.

Approved,

/dpmMarch2015