

SENATE BILL NO. 2261

1 AN ACT TO CREATE THE INTERNET SPYWARE CONTROL ACT OF 2007; TO  
2 ENACT DEFINITIONS; TO PROSCRIBE CERTAIN INTERNET BEHAVIOR; TO  
3 PRESCRIBE REMEDIES AND DAMAGES; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 **SECTION 1.** This act shall be known and may be cited as the  
6 "Internet Spyware Control Act of 2007."

7 **SECTION 2.** The following terms shall have the meanings  
8 ascribed unless the context clearly requires otherwise:

9 (a) "Context-based triggering mechanism" means a  
10 software based trigger or program residing on a consumer's  
11 computer that displays an advertisement according to the current  
12 Internet Web site accessed by a user or the contents or  
13 characteristics of the current Internet Web site accessed by a  
14 user.

15 (b) "Division" means the Division of Consumer  
16 Protection in the Office of the Attorney General.

17 (c) "Internet" means collectively the myriad of  
18 computer and telecommunications facilities, including equipment  
19 and operating software, which comprise the interconnected  
20 worldwide network of networks that employ the Transmission Control  
21 Protocol/Internet Protocol, or any predecessor or successor  
22 protocols to such protocol, to communicate information of all  
23 kinds by wire or radio, as defined in the Internet Tax Freedom  
24 Act, Public Law No. 105-277.

25 (d) Except as provided in paragraph (e), "spyware"  
26 means software residing on a computer that:

27 (i) Monitors the computer's usage;

28                   (ii) 1. Sends information about the computer's  
29 usage to a remote computer or server; or  
30                   2. Displays or causes to be displayed an  
31 advertisement in response to the computer's usage if the  
32 advertisement uses:  
33                   a. A federally registered trademark as a  
34 trigger for the display of the advertisement by a person other  
35 than the trademark owner or an authorized agent, licensee of the  
36 trademark owner or a recognized Internet search engine;  
37                   b. Uses a triggering mechanism to  
38 display the advertisement according to the Internet Web sites  
39 accessed by a user; or  
40                   c. Uses a context-based triggering  
41 mechanism to display the advertisement that partially or wholly  
42 covers or obscures paid advertising or other content on an  
43 Internet Web site in a way that interferes with a user's ability  
44 to view the Internet Web site.  
45           (e) "Spyware" does not include:  
46           (i) Software designed and installed solely to  
47 diagnose or resolve technical difficulties;  
48           (ii) Software or data that solely report to an  
49 Internet Web site information previously stored by the Internet  
50 Web site on the user's computer, including cookies, HTML code,  
51 Java Scripts or an operating system;  
52           (iii) Software that displays or causes to be  
53 displayed an advertisement if the advertisement clearly identifies  
54 the full legal name of the entity responsible for delivering the  
55 advertisement;  
56           (iv) Software to which the consent of the user to  
57 a license agreement has been obtained as described in Section 3 of  
58 this act.  
59           (f) "Usage" means:  
60           (i) The Internet Web sites accessed by a user;

61                   (ii) The contents or characteristics of the  
62 Internet Web sites accessed by a user;  
63                   (iii) A user's personal information, including:  
64                   1. A first and last name of a user, whether  
65 given at birth or adoption, assumed or legally changed;  
66                   2. Any of the following with respect to a  
67 user's home or other physical address:  
68                   a. The street name;  
69                   b. The name of the city or town; or  
70                   c. The zip code.  
71                   3. An electronic mail address;  
72                   4. A telephone number;  
73                   5. A social security number;  
74                   6. Any personal identification number;  
75                   7. A credit card number and any access code  
76 associated with a credit card;  
77                   8. A date of birth, birth certificate number  
78 or place of birth;  
79                   9. A password or access code; or  
80                   10. A user's submission to forms on Internet  
81 Web sites.

82                   (g) "User" means a computer owner or a person who  
83 accesses an Internet Web site.

84                   **SECTION 3.** In order for a license agreement to be effective  
85 in exempting software from the definition of spyware as provided  
86 in Section 2(e)(iv) of this act, the license agreement must:

87                   (a) Be presented in full and written in plain language  
88 to notify the user of the collection of each specific type of  
89 information to be transmitted as a result of the software  
90 installation, at the time of or after installation of the  
91 software, but before the software does any of the actions  
92 described in Section 2(d)(ii); and

93                   (b) Contain:

94 (i) A clear and representative full-size example  
95 of each type of advertisement that may be delivered;

96 (ii) A truthful statement of the frequency with  
97 which each type of advertisement may be delivered;

98 (iii) For each type of advertisement delivered by  
99 the software, a clear description of a method by which a user may  
100 distinguish the advertisement by its appearance from an  
101 advertisement generated by other software services; and

102 (c) Provide a method by which a user may quickly and  
103 easily disable and remove the software from the user's computer  
104 that does not have other effects on the nonaffiliated parts of the  
105 user's computer, and that uses obvious, standard, usual and  
106 ordinary methods for removal of computer software.

107 **SECTION 4.** (1) A person may not:

108 (a) Install spyware on another person's computer;

109 (b) Cause spyware to be installed on another person's  
110 computer; or

111 (c) Use a context-based triggering mechanism to display  
112 an advertisement that partially or wholly covers or obscures paid  
113 advertising, or other content on an Internet Web site in a way  
114 that interferes with a user's ability to view the Internet Web  
115 site.

116 (2) It is not a defense to a violation of this section that  
117 a user may remove or hide an advertisement.

118 **SECTION 5.** (1) An action for a violation of this act may be  
119 brought against a person who violates this act or causes a  
120 violation of this act and by any of the following who are  
121 adversely affected by a violation of this act:

122 (a) An Internet Web site owner or registrant;

123 (b) A trademark or copyright owner; or

124 (c) An authorized advertiser on an Internet Web site.

125 (2) In an action under this section, a person may obtain an  
126 injunction prohibiting any further violation of this act and

127 recover the greater of actual damages or Ten Thousand Dollars  
128 (\$10,000.00) for each separate violation of this act.

129 (3) In an action under this section, a court may increase  
130 the damages up to three (3) times the damages allowed by this  
131 section if the court finds the defendant willfully or knowingly  
132 violated this act; the court also may award costs and reasonable  
133 attorney fees to a prevailing party.

134 (4) For purposes of this section, each individual occurrence  
135 that results in the display of a spyware advertisement is a  
136 separate violation.

137 **SECTION 6.** A person may not bring an action for a violation  
138 of this act against an Internet service provider for the routine  
139 transmission of security information or information that contains  
140 an advertisement violating this act.

141 **SECTION 7.** The division shall establish procedures by which  
142 a person may report a violation of this act to the division,  
143 including an Internet Web site and a toll-free telephone number.

144 **SECTION 8.** This act shall take effect and be in force from  
145 and after July 1, 2007.