

AMENDED IN ASSEMBLY MAY 11, 2004
AMENDED IN ASSEMBLY APRIL 22, 2004
AMENDED IN ASSEMBLY MARCH 25, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2787

Introduced by Assembly Member Leslie
(Coauthors: Assembly Members Bates and Samuelian)
(Coauthors: Senators Battin, Bowen, and Oller)

February 20, 2004

An act to add Chapter 22.2 (commencing with Section 22580) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2787, as amended, Leslie. Computer spyware: deceptive practices: regulation.

Existing law provides for the regulation of various businesses by the Department of Consumer Affairs.

This bill would prohibit a person or entity conducting business in California from hijacking *or causing to be hijacked* a user's computer; ~~from inhibiting the termination of a program from a user's computer, and from surreptitious surveillance of a user's computer in this state, and would define various terms for these purposes.~~ The bill would exempt a person or entity offering Internet service from controlling the deceptive or unfair practices of others unless those practices are done at the direction of that other person or entity. *The bill would authorize a consumer to bring an action against a person or entity that violates the prohibition to recover actual damages, liquidated damages of*

\$1,000 per violation, and reasonable attorney’s fees and costs. The bill would also make a person or entity who violates the prohibition subject to an administrative fine by the Department of Consumer Affairs of \$1,000 per violation.

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

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

1 SECTION 1. Chapter 22.2 (commencing with Section
2 22580) is added to Division 8 of the Business and Professions
3 Code, to read:

4
5 CHAPTER 22.2. PROTECTION AGAINST COMPUTER SPYWARE ACT

6
7 22580. This chapter shall be known as and may be cited as the
8 Protection Against Computer Spyware Act.

9 22580.1. ~~For purposes of this chapter, the following terms~~
10 ~~shall have the following meaning:~~

11 (a) ~~“Hijack” means the use of a personal computer by a third~~
12 ~~party that occurs through the download of an unauthorized~~
13 ~~program that consumes the user’s computing resources or resets~~
14 ~~the user’s existing configurations without the user’s consent, or~~
15 ~~through coercion or deception.~~

16 (b) ~~“Inhibit termination” means preventing a computer user~~
17 ~~from severing or terminating a relationship with the provider of the~~
18 ~~program by preventing the user from removing or deactivating a~~
19 ~~program, or otherwise rendering a program ineffective.~~

20 (c) ~~“Personal financial information” means personally~~
21 ~~identifiable financial information, and includes all of the~~
22 ~~following:~~

23 (1) ~~Credit card numbers or information.~~

24 (2) ~~Social security numbers.~~

25 (3) ~~Information a consumer provides on a form filled out on the~~
26 ~~computer.~~

27 (4) ~~Account balance information, payment history, overdraft~~
28 ~~history, and credit or debit card purchase information.~~

29 (d) ~~“Surreptitious surveillance” means any practice whereby~~
30 ~~a person or entity intrusively and surreptitiously collects and uses~~
31 ~~personally identifiable information about users that is wholly~~



1 ~~unrelated to the purpose of the software as described to the user and~~
2 ~~that is done without the consent of the user.~~

3 ~~22580.2.~~

4 ~~22580.1. A person or entity conducting business in this state~~
5 ~~may not hijack, or cause to be hijacked, a user's computer in this~~
6 ~~state.~~

7 ~~22580.3.—A person or entity conducting business in this state~~
8 ~~may not inhibit, or cause to be inhibited, the termination of a~~
9 ~~program from a user's computer in this state.~~

10 ~~22580.4.—A person or entity conducting business in this state~~
11 ~~may not engage in surreptitious surveillance of, or cause~~
12 ~~surreptitious surveillance of, a user's computer in this state.~~

13 ~~22580.5.—This chapter shall not impose an obligation on a~~
14 ~~person or entity offering Internet service to control the deceptive~~
15 ~~or unfair practices of other persons or entities unless those~~
16 ~~practices are done at the direction of that other person or entity.~~

17 ~~22580.6.—The provisions of this chapter are severable. If any~~
18 ~~provision of this chapter or its application is held invalid, that~~
19 ~~invalidity shall not affect any other provision or application that~~
20 ~~can be given effect without the invalid provision or application.~~

21 ~~22580.2. (a) In addition to any other remedy available at law,~~
22 ~~a consumer may bring an action against a person or entity that~~
23 ~~violates this chapter to recover either or both of the following:~~

24 ~~(1) Actual damages.~~

25 ~~(2) Liquidated damages of one thousand dollars (\$1,000) for~~
26 ~~each violation. A prevailing plaintiff is entitled to recover~~
27 ~~reasonable attorney's fees and costs.~~

28 ~~(b) Violation of this chapter by a person or entity is subject to~~
29 ~~an administrative fine by the Department of Consumer Affairs of~~
30 ~~one thousand dollars (\$1,000) for each violation.~~

