

MAR 7 2005  
Place On Calendar

HOUSE FILE 614  
BY COMMITTEE ON COMMERCE,  
REGULATION AND LABOR

(SUCCESSOR TO HF 465)

Passed House, Date 3-30-05 Passed Senate, Date \_\_\_\_\_  
Vote: Ayes 98 Nays 0 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved 5/3/05

**A BILL FOR**

1 An Act relating to the transmission, installation, and use of  
2 computer software through deceptive or unauthorized means.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

HF 614

1 Section 1. NEW SECTION. 714F.1 LEGISLATIVE INTENT.

2 It is the intent of the general assembly to protect owners  
3 and operators of computers in this state from the use of  
4 spyware and malware that is deceptively or surreptitiously  
5 installed on the owner's or the operator's computer.

6 Sec. 2. NEW SECTION. 714F.2 TITLE.

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

9 Sec. 3. NEW SECTION. 714F.3 DEFINITIONS.

10 For purposes of this chapter, unless the context otherwise  
11 requires:

12 1. "Advertisement" means a communication, the primary  
13 purpose of which is the commercial promotion of a commercial  
14 product or service, including content on an internet website  
15 operated for a commercial purpose.

16 2. "Computer software" means a sequence of instructions  
17 written in any programming language that is executed on a  
18 computer. "Computer software" does not include computer  
19 software that is a web page or data components of a web page  
20 that are not executable independently of the web page.

21 3. "Damage" means any significant impairment to the  
22 integrity or availability of data, software, a system, or  
23 information.

24 4. "Execute", when used with respect to computer software,  
25 means the performance of the functions or the carrying out of  
26 the instructions of the computer software.

27 5. "Intentionally deceptive" means any of the following:

28 a. An intentionally and materially false or fraudulent  
29 statement.

30 b. A statement or description that intentionally omits or  
31 misrepresents material information in order to deceive an  
32 owner or operator of a computer.

33 c. An intentional and material failure to provide a notice  
34 to an owner or operator regarding the installation or  
35 execution of computer software for the purpose of deceiving

1 the owner or operator.

2 6. "Internet" means the same as defined in section 4.1.

3 7. "Owner or operator" means the owner or lessee of a  
4 computer, or a person using such computer with the owner or  
5 lessee's authorization, but does not include a person who  
6 owned a computer prior to the first retail sale of the  
7 computer.

8 8. "Person" means the same as defined in section 4.1.

9 9. "Personally identifiable information" means any of the  
10 following information with respect to the owner or operator of  
11 a computer:

12 a. The first name or first initial in combination with the  
13 last name.

14 b. A home or other physical address including street name.

15 c. An electronic mail address.

16 d. Credit or debit card number, bank account number, or  
17 any password or access code associated with a credit or debit  
18 card or bank account.

19 e. Social security number, tax identification number,  
20 driver's license number, passport number, or any other  
21 government-issued identification number.

22 f. Account balance, overdraft history, or payment history  
23 that personally identifies an owner or operator of a computer.

24 10. "Transmit" means to transfer, send, or make available  
25 computer software using the internet or any other medium,  
26 including local area networks of computers other than a  
27 wireless transmission, and a disc or other data storage  
28 device. "Transmit" does not include an action by a person  
29 providing any of the following:

30 a. An internet connection, telephone connection, or other  
31 means of transmission capability such as a compact disc or  
32 digital video disc through which the computer software was  
33 made available.

34 b. The storage or hosting of the computer software program  
35 or an internet web page through which the software was made

1 available.

2 c. An information location tool, such as a directory,  
3 index, reference, pointer, or hypertext link, through which  
4 the user of the computer located the computer software, unless  
5 the person transmitting receives a direct economic benefit  
6 from the execution of such software on the computer.

7 Sec. 4. NEW SECTION. 714F.4 PROHIBITIONS -- TRANSMISSION  
8 AND USE OF SOFTWARE.

9 It is unlawful for a person who is not an owner or operator  
10 of a computer to transmit computer software to such computer  
11 knowingly or with conscious avoidance of actual knowledge, and  
12 to use such software to do any of the following:

13 1. Modify, through intentionally deceptive means, settings  
14 of a computer that control any of the following:

15 a. The web page that appears when an owner or operator  
16 launches an internet browser or similar computer software used  
17 to access and navigate the internet.

18 b. The default provider or web proxy that an owner or  
19 operator uses to access or search the internet.

20 c. An owner's or an operator's list of bookmarks used to  
21 access web pages.

22 2. Collect, through intentionally deceptive means,  
23 personally identifiable information through any of the  
24 following means:

25 a. The use of a keystroke-logging function that records  
26 keystrokes made by an owner or operator of a computer and  
27 transfers that information from the computer to another  
28 person.

29 b. In a manner that correlates personally identifiable  
30 information with data respecting all or substantially all of  
31 the websites visited by an owner or operator, other than  
32 websites operated by the person collecting such information.

33 c. By extracting from the hard drive of an owner's or an  
34 operator's computer, an owner's or an operator's social  
35 security number, tax identification number, driver's license

1 number, passport number, any other government-issued  
2 identification number, account balances, or overdraft history.

3 3. Prevent, through intentionally deceptive means, an  
4 owner's or an operator's reasonable efforts to block the  
5 installation of, or to disable, computer software by causing  
6 computer software that the owner or operator has properly  
7 removed or disabled to automatically reinstall or reactivate  
8 on the computer.

9 4. Intentionally misrepresent that computer software will  
10 be uninstalled or disabled by an owner's or an operator's  
11 action.

12 5. Through intentionally deceptive means, remove, disable,  
13 or render inoperative security, antispyware, or antivirus  
14 computer software installed on an owner's or an operator's  
15 computer.

16 6. Take control of an owner's or an operator's computer by  
17 doing any of the following:

18 a. Accessing or using a modem or internet service for the  
19 purpose of causing damage to an owner's or an operator's  
20 computer or causing an owner or operator to incur financial  
21 charges for a service that the owner or operator did not  
22 authorize.

23 b. Opening multiple, sequential, stand-alone  
24 advertisements in an owner's or an operator's internet browser  
25 without the authorization of an owner or operator and which a  
26 reasonable computer user could not close without turning off  
27 the computer or closing the internet browser.

28 7. Modify any of the following settings related to an  
29 owner's or an operator's computer access to, or use of, the  
30 internet:

31 a. Settings that protect information about an owner or  
32 operator for the purpose of taking personally identifiable  
33 information of the owner or operator.

34 b. Security settings for the purpose of causing damage to  
35 a computer.

1 8. Prevent an owner's or an operator's reasonable efforts  
2 to block the installation of, or to disable, computer software  
3 by doing any of the following:

4 a. Presenting the owner or operator with an option to  
5 decline installation of computer software with knowledge that,  
6 when the option is selected by the authorized user, the  
7 installation nevertheless proceeds.

8 b. Falsely representing that computer software has been  
9 disabled.

10 Sec. 5. NEW SECTION. 714F.5 OTHER PROHIBITIONS.

11 It is unlawful for a person who is not an owner or operator  
12 of a computer to do any of the following with regard to the  
13 computer:

14 1. Induce an owner or operator to install a computer  
15 software component onto the owner's or the operator's computer  
16 by intentionally misrepresenting that installing computer  
17 software is necessary for security or privacy reasons or in  
18 order to open, view, or play a particular type of content.

19 2. Using intentionally deceptive means to cause the  
20 execution of a computer software component with the intent of  
21 causing an owner or operator to use such component in a manner  
22 that violates any other provision of this chapter.

23 Sec. 6. NEW SECTION. 714F.6 EXCEPTIONS.

24 Sections 714F.4 and 714F.5 shall not apply to the  
25 monitoring of, or interaction with, an owner's or an  
26 operator's internet or other network connection, service, or  
27 computer, by a telecommunications carrier, cable operator,  
28 computer hardware or software provider, or provider of  
29 information service or interactive computer service for  
30 network or computer security purposes, diagnostics, technical  
31 support, maintenance, repair, authorized updates of computer  
32 software or system firmware, authorized remote system  
33 management, or detection or prevention of the unauthorized use  
34 of or fraudulent or other illegal activities in connection  
35 with a network, service, or computer software, including

1 scanning for and removing computer software prescribed under  
2 this chapter.

3 Sec. 7. NEW SECTION. 714F.7 REMEDIES.

4 1. The attorney general may bring a civil action against a  
5 person who violates any provision of this chapter to recover  
6 actual damages, liquidated damages of at least one thousand  
7 dollars, not to exceed one million dollars, for each  
8 violation, attorney fees, and costs.

9 2. The court may increase a damage award to an amount  
10 equal to not more than three times the amount otherwise  
11 recoverable under subsection 1 if the court determines that  
12 the defendant committed the violation willfully and knowingly.

13 3. The court may reduce liquidated damages recoverable  
14 under subsection 1, to a minimum of one hundred dollars, not  
15 to exceed one hundred thousand dollars for each violation if  
16 the court finds that the defendant established and implemented  
17 practices and procedures reasonably designed to prevent a  
18 violation of this chapter.

19 EXPLANATION

20 This bill, in new Code chapter 714F, prohibits actions  
21 related to the transmission, installation, and use of computer  
22 software. The bill prohibits a person, other than the owner  
23 or operator of a computer acting with actual knowledge or  
24 conscious avoidance of actual knowledge, from transmitting  
25 computer software onto the computer and using the software to  
26 modify certain settings relating to the computer's access to  
27 or use of the internet, collect personally identifiable  
28 information through certain intentionally deceptive means,  
29 prevent an owner's or an operator's reasonable efforts to  
30 block the installation of or disable software through  
31 intentionally deceptive means, intentionally misrepresent that  
32 computer software will be uninstalled or disabled by an  
33 owner's or an operator's action, or through intentionally  
34 deceptive means remove, disable, or render inoperative  
35 security, antispymware, or antivirus software installed on a

1 computer.

2 The bill prohibits a person who is not an owner or operator  
3 from taking control of an owner's or an operator's computer  
4 for the purpose of causing damage to the computer or causing  
5 the owner or operator to incur financial charges for  
6 unauthorized services, opening certain advertisements in an  
7 owner's or an operator's internet browser, modifying a  
8 computer's settings related to an owner's or an operator's  
9 computer access to the internet, and preventing an owner or  
10 operator from blocking or disabling software by installing  
11 software despite the owner or operator declining the  
12 installation, and falsely representing that computer software  
13 has been disabled.

14 The bill prohibits a person who is not an owner or operator  
15 from inducing an owner or operator to install a software  
16 component by intentionally misrepresenting that the  
17 installation is necessary for security or privacy or in order  
18 to open, view, or play a particular type of content. The bill  
19 prohibits a person who is not an owner or operator from using  
20 intentionally deceptive means to cause the execution of  
21 computer software components with the intent of causing an  
22 owner or operator to use the components in a way that violates  
23 any provision of new Code chapter 714F.

24 The monitoring or interaction with an internet or network  
25 connection by a telecommunications carrier or provider of  
26 certain computer services, or a provider of interactive  
27 computer service for security and other technical support are  
28 not subject to the prohibitions of Code chapter 714F.

29 The bill provides that the attorney general may bring a  
30 civil action against any person who violates any provision of  
31 new Code chapter 714F and may seek actual damages, liquidated  
32 damages in an amount not less than \$1,000 but not more than \$1  
33 million, attorney fees, and costs. A court may increase an  
34 award of damages to three times the amount if the defendant  
35 acted willfully and knowingly. A court may reduce the amount

1 of liquidated damages recoverable if the defendant established  
2 and implemented practices and procedures reasonably designed  
3 to prevent a violation of Code chapter 714F.

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

HOUSE FILE 614

H-1212

1 Amend House File 614 as follows:

2 1. Page 6, by striking lines 3 through 18 and  
3 inserting the following:

4 "Sec. \_\_\_\_ . NEW SECTION. 714F.7 CRIMINAL  
5 PENALTIES.

6 1. A person who commits an unlawful act under this  
7 chapter is guilty of an aggravated misdemeanor.

8 2. A person who commits an unlawful act under this  
9 chapter and who causes pecuniary losses exceeding one  
10 thousand dollars to a victim of the unlawful act is  
11 guilty of a class "D" felony.

12 Sec. \_\_\_\_ . NEW SECTION. 714F.8 VENUE FOR CRIMINAL  
13 VIOLATIONS.

14 For the purpose of determining proper venue, a  
15 violation of this chapter shall be considered to have  
16 been committed in any county in which any of the  
17 following apply:

18 1. An act was performed in furtherance of the  
19 violation.

20 2. The owner or operator who is the victim of the  
21 violation has a place of business in this state.

22 3. The defendant has control or possession of any  
23 proceeds of the violation, or of any books, records,  
24 documents, property, financial instrument, computer  
25 software, computer program, computer data, or other  
26 material or objects used in furtherance of the  
27 violation.

28 4. The defendant unlawfully accessed a computer or  
29 computer network by wires, electromagnetic waves,  
30 microwaves, or any other means of communication.

31 5. The defendant resides.

32 6. A computer used as an object or an instrument  
33 in the commission of the violation was located at the  
34 time of the violation."

35 2. Title page, line 2, by inserting after the  
36 word "means" the following: "and providing for  
37 penalties".

38 3. By renumbering as necessary.

By DIX of Butler

QUIRK of Chickasaw

PETERSEN of Polk

WISE of Lee

JENKINS of Black Hawk

JACOBS of Polk

H-1212 FILED MARCH 29, 2005

HOUSE FILE 614  
BY COMMITTEE ON COMMERCE,  
REGULATION AND LABOR

(SUCCESSOR TO HF 465)

(As Amended and Passed by the House March 30, 2005)

Re- Passed House, Date 4-27-05 Passed Senate, Date 4-13-05  
Vote: Ayes 100 Nays 0 Vote: Ayes 50 Nays 0  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the transmission, installation, and use of  
2 computer software through deceptive or unauthorized means and  
3 providing for penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

5  
6  
7  
8  
9

House Amendments \_\_\_\_\_

**HOUSE FILE 614**

**S-3097**

1 Amend House File 614, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 6, line 2, by inserting after the word  
4 "chapter." the following: "Nothing in this chapter  
5 shall limit the rights of providers of wire and  
6 electronic communications under 18 U.S.C. § 2511."

COMMITTEE ON COMMERCE

JERRY BEHN, CO-CHAIRPERSON

STEVEN H. WARNSTADT, CO-CHAIRPERSON

**S-3097 FILED APRIL 7, 2005**

HF 614

kk/es/25

1 Section 1. NEW SECTION. 714F.1 LEGISLATIVE INTENT.

2 It is the intent of the general assembly to protect owners  
3 and operators of computers in this state from the use of  
4 spyware and malware that is deceptively or surreptitiously  
5 installed on the owner's or the operator's computer.

6 Sec. 2. NEW SECTION. 714F.2 TITLE.

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

9 Sec. 3. NEW SECTION. 714F.3 DEFINITIONS.

10 For purposes of this chapter, unless the context otherwise  
11 requires:

12 1. "Advertisement" means a communication, the primary  
13 purpose of which is the commercial promotion of a commercial  
14 product or service, including content on an internet website  
15 operated for a commercial purpose.

16 2. "Computer software" means a sequence of instructions  
17 written in any programming language that is executed on a  
18 computer. "Computer software" does not include computer  
19 software that is a web page or data components of a web page  
20 that are not executable independently of the web page.

21 3. "Damage" means any significant impairment to the  
22 integrity or availability of data, software, a system, or  
23 information.

24 4. "Execute", when used with respect to computer software,  
25 means the performance of the functions or the carrying out of  
26 the instructions of the computer software.

27 5. "Intentionally deceptive" means any of the following:

28 a. An intentionally and materially false or fraudulent  
29 statement.

30 b. A statement or description that intentionally omits or  
31 misrepresents material information in order to deceive an  
32 owner or operator of a computer.

33 c. An intentional and material failure to provide a notice  
34 to an owner or operator regarding the installation or  
35 execution of computer software for the purpose of deceiving

1 the owner or operator.

2 6. "Internet" means the same as defined in section 4.1.

3 7. "Owner or operator" means the owner or lessee of a  
4 computer, or a person using such computer with the owner or  
5 lessee's authorization, but does not include a person who  
6 owned a computer prior to the first retail sale of the  
7 computer.

8 8. "Person" means the same as defined in section 4.1.

9 9. "Personally identifiable information" means any of the  
10 following information with respect to the owner or operator of  
11 a computer:

12 a. The first name or first initial in combination with the  
13 last name.

14 b. A home or other physical address including street name.

15 c. An electronic mail address.

16 d. Credit or debit card number, bank account number, or  
17 any password or access code associated with a credit or debit  
18 card or bank account.

19 e. Social security number, tax identification number,  
20 driver's license number, passport number, or any other  
21 government-issued identification number.

22 f. Account balance, overdraft history, or payment history  
23 that personally identifies an owner or operator of a computer.

24 10. "Transmit" means to transfer, send, or make available  
25 computer software using the internet or any other medium,  
26 including local area networks of computers other than a  
27 wireless transmission, and a disc or other data storage  
28 device. "Transmit" does not include an action by a person  
29 providing any of the following:

30 a. An internet connection, telephone connection, or other  
31 means of transmission capability such as a compact disc or  
32 digital video disc through which the computer software was  
33 made available.

34 b. The storage or hosting of the computer software program  
35 or an internet web page through which the software was made

1 available.

2 c. An information location tool, such as a directory,  
3 index, reference, pointer, or hypertext link, through which  
4 the user of the computer located the computer software, unless  
5 the person transmitting receives a direct economic benefit  
6 from the execution of such software on the computer.

7 Sec. 4. NEW SECTION. 714F.4 PROHIBITIONS -- TRANSMISSION  
8 AND USE OF SOFTWARE.

9 It is unlawful for a person who is not an owner or operator  
10 of a computer to transmit computer software to such computer  
11 knowingly or with conscious avoidance of actual knowledge, and  
12 to use such software to do any of the following:

13 1. Modify, through intentionally deceptive means, settings  
14 of a computer that control any of the following:

15 a. The web page that appears when an owner or operator  
16 launches an internet browser or similar computer software used  
17 to access and navigate the internet.

18 b. The default provider or web proxy that an owner or  
19 operator uses to access or search the internet.

20 c. An owner's or an operator's list of bookmarks used to  
21 access web pages.

22 2. Collect, through intentionally deceptive means,  
23 personally identifiable information through any of the  
24 following means:

25 a. The use of a keystroke-logging function that records  
26 keystrokes made by an owner or operator of a computer and  
27 transfers that information from the computer to another  
28 person.

29 b. In a manner that correlates personally identifiable  
30 information with data respecting all or substantially all of  
31 the websites visited by an owner or operator, other than  
32 websites operated by the person collecting such information.

33 c. By extracting from the hard drive of an owner's or an  
34 operator's computer, an owner's or an operator's social  
35 security number, tax identification number, driver's license

1 number, passport number, any other government-issued  
2 identification number, account balances, or overdraft history.

3 3. Prevent, through intentionally deceptive means, an  
4 owner's or an operator's reasonable efforts to block the  
5 installation of, or to disable, computer software by causing  
6 computer software that the owner or operator has properly  
7 removed or disabled to automatically reinstall or reactivate  
8 on the computer.

9 4. Intentionally misrepresent that computer software will  
10 be uninstalled or disabled by an owner's or an operator's  
11 action.

12 5. Through intentionally deceptive means, remove, disable,  
13 or render inoperative security, antispymware, or antivirus  
14 computer software installed on an owner's or an operator's  
15 computer.

16 6. Take control of an owner's or an operator's computer by  
17 doing any of the following:

18 a. Accessing or using a modem or internet service for the  
19 purpose of causing damage to an owner's or an operator's  
20 computer or causing an owner or operator to incur financial  
21 charges for a service that the owner or operator did not  
22 authorize.

23 b. Opening multiple, sequential, stand-alone  
24 advertisements in an owner's or an operator's internet browser  
25 without the authorization of an owner or operator and which a  
26 reasonable computer user could not close without turning off  
27 the computer or closing the internet browser.

28 7. Modify any of the following settings related to an  
29 owner's or an operator's computer access to, or use of, the  
30 internet:

31 a. Settings that protect information about an owner or  
32 operator for the purpose of taking personally identifiable  
33 information of the owner or operator.

34 b. Security settings for the purpose of causing damage to  
35 a computer.

1 8. Prevent an owner's or an operator's reasonable efforts  
2 to block the installation of, or to disable, computer software  
3 by doing any of the following:

4 a. Presenting the owner or operator with an option to  
5 decline installation of computer software with knowledge that,  
6 when the option is selected by the authorized user, the  
7 installation nevertheless proceeds.

8 b. Falsely representing that computer software has been  
9 disabled.

10 Sec. 5. NEW SECTION. 714F.5 OTHER PROHIBITIONS.

11 It is unlawful for a person who is not an owner or operator  
12 of a computer to do any of the following with regard to the  
13 computer:

14 1. Induce an owner or operator to install a computer  
15 software component onto the owner's or the operator's computer  
16 by intentionally misrepresenting that installing computer  
17 software is necessary for security or privacy reasons or in  
18 order to open, view, or play a particular type of content.

19 2. Using intentionally deceptive means to cause the  
20 execution of a computer software component with the intent of  
21 causing an owner or operator to use such component in a manner  
22 that violates any other provision of this chapter.

23 Sec. 6. NEW SECTION. 714F.6 EXCEPTIONS.

24 Sections 714F.4 and 714F.5 shall not apply to the  
25 monitoring of, or interaction with, an owner's or an  
26 operator's internet or other network connection, service, or  
27 computer, by a telecommunications carrier, cable operator,  
28 computer hardware or software provider, or provider of  
29 information service or interactive computer service for  
30 network or computer security purposes, diagnostics, technical  
31 support, maintenance, repair, authorized updates of computer  
32 software or system firmware, authorized remote system  
33 management, or detection or prevention of the unauthorized use  
34 of or fraudulent or other illegal activities in connection  
35 with a network, service, or computer software, including

1 scanning for and removing computer software prescribed under  
2 this chapter.

3 Sec. 7. NEW SECTION. 714F.7 CRIMINAL PENALTIES.

4 1. A person who commits an unlawful act under this chapter  
5 is guilty of an aggravated misdemeanor.

6 2. A person who commits an unlawful act under this chapter  
7 and who causes pecuniary losses exceeding one thousand dollars  
8 to a victim of the unlawful act is guilty of a class "D"  
9 felony.

10 Sec. 8. NEW SECTION. 714F.8 VENUE FOR CRIMINAL  
11 VIOLATIONS.

12 For the purpose of determining proper venue, a violation of  
13 this chapter shall be considered to have been committed in any  
14 county in which any of the following apply:

15 1. An act was performed in furtherance of the violation.

16 2. The owner or operator who is the victim of the  
17 violation has a place of business in this state.

18 3. The defendant has control or possession of any proceeds  
19 of the violation, or of any books, records, documents,  
20 property, financial instrument, computer software, computer  
21 program, computer data, or other material or objects used in  
22 furtherance of the violation.

23 4. The defendant unlawfully accessed a computer or  
24 computer network by wires, electromagnetic waves, microwaves,  
25 or any other means of communication.

26 5. The defendant resides.

27 6. A computer used as an object or an instrument in the  
28 commission of the violation was located at the time of the  
29 violation.

**SENATE AMENDMENT TO  
HOUSE FILE 614**

**H-1482**

1 Amend House File 614, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 6, line 2, by inserting after the word  
4 "chapter." the following: "Nothing in this chapter  
5 shall limit the rights of providers of wire and  
6 electronic communications under 18 U.S.C. § 2511."

RECEIVED FROM THE SENATE

**H-1482 FILED APRIL 25, 2005**

**Fiscal Services Division**  
**Legislative Services Agency**  
**Fiscal Note**

---

HF 614 - Model State Spyware Legislation (LSB 2193 HV)  
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)  
Fiscal Note Version – As Amended and Passed by the House

---

**Description**

House File 614, as amended and passed by the House, creates Chapter 714F, Code of Iowa, to prohibit certain actions related to computers. The Bill prohibits the transmission, installation, and use of computer software through deceptive or unauthorized means. Violators are subject to criminal penalties for certain actions, including an aggravated misdemeanor and a Class D felony.

**Background**

House File 614 creates new crimes. Therefore, there are no data available with which to predict the number of criminal cases that may be filed under the provisions of the Bill.

**Assumptions**

1. The average state costs for one aggravated misdemeanor conviction ranges from \$1,100 (court costs and probation) to \$5,700 (court costs, jury trial, indigent defense, prison, and parole). The maximum costs will be incurred across multiple years while the offender is supervised in the correctional system, either in prison or in the community.
2. The average state costs for one Class D felony conviction ranges from \$2,800 (court costs, probation, and indigent defense) to \$12,000 (court costs, jury trial, indigent defense, prison, and parole). The maximum costs will be incurred across multiple years while the offender is supervised in the correctional system, either in prison or in the community.

**Correctional Impact**

The creation of a new offense carries the potential for a correctional impact on court caseloads, prisons, county jails, and Community-Based Corrections (CBC) resources. Depending upon the location of offenders (within Iowa or not) and law enforcement and prosecution activities, there may be a significant increase in the number of aggravated misdemeanor and Class D felony convictions. However, due to a lack of information, that impact cannot be estimated.

**Fiscal Impact**

The fiscal impact of HF 614 cannot be determined due to insufficient information.

**Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Judicial Branch  
Department of Corrections  
State Public Defender's Office

/s/ Holly M. Lyons

---

April 4, 2005

---

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

---

HOUSE FILE 614

AN ACT

RELATING TO THE TRANSMISSION, INSTALLATION, AND USE OF  
COMPUTER SOFTWARE THROUGH DECEPTIVE OR UNAUTHORIZED  
MEANS AND PROVIDING FOR PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 714F.1 LEGISLATIVE INTENT.

It is the intent of the general assembly to protect owners and operators of computers in this state from the use of spyware and malware that is deceptively or surreptitiously installed on the owner's or the operator's computer.

Sec. 2. NEW SECTION. 714F.2 TITLE.

This chapter shall be known and may be cited as the "Computer Spyware Protection Act".

Sec. 3. NEW SECTION. 714F.3 DEFINITIONS.

For purposes of this chapter, unless the context otherwise requires:

1. "Advertisement" means a communication, the primary purpose of which is the commercial promotion of a commercial product or service, including content on an internet website operated for a commercial purpose.

2. "Computer software" means a sequence of instructions written in any programming language that is executed on a computer. "Computer software" does not include computer software that is a web page or data components of a web page that are not executable independently of the web page.

3. "Damage" means any significant impairment to the integrity or availability of data, software, a system, or information.

4. "Execute", when used with respect to computer software, means the performance of the functions or the carrying out of the instructions of the computer software.

5. "Intentionally deceptive" means any of the following:

a. An intentionally and materially false or fraudulent statement.

b. A statement or description that intentionally omits or misrepresents material information in order to deceive an owner or operator of a computer.

c. An intentional and material failure to provide a notice to an owner or operator regarding the installation or execution of computer software for the purpose of deceiving the owner or operator.

6. "Internet" means the same as defined in section 4.1.

7. "Owner or operator" means the owner or lessee of a computer, or a person using such computer with the owner or lessee's authorization, but does not include a person who owned a computer prior to the first retail sale of the computer.

8. "Person" means the same as defined in section 4.1.

9. "Personally identifiable information" means any of the following information with respect to the owner or operator of a computer:

a. The first name or first initial in combination with the last name.

b. A home or other physical address including street name.

c. An electronic mail address.

d. Credit or debit card number, bank account number, or any password or access code associated with a credit or debit card or bank account.

e. Social security number, tax identification number, driver's license number, passport number, or any other government-issued identification number.

f. Account balance, overdraft history, or payment history that personally identifies an owner or operator of a computer.

10. "Transmit" means to transfer, send, or make available computer software using the internet or any other medium, including local area networks of computers other than a wireless transmission, and a disc or other data storage device. "Transmit" does not include an action by a person providing any of the following:

- a. An internet connection, telephone connection, or other means of transmission capability such as a compact disc or digital video disc through which the computer software was made available.
- b. The storage or hosting of the computer software program or an internet web page through which the software was made available.
- c. An information location tool, such as a directory, index, reference, pointer, or hypertext link, through which the user of the computer located the computer software, unless the person transmitting receives a direct economic benefit from the execution of such software on the computer.

Sec. 4. NEW SECTION. 714F.4 PROHIBITIONS -- TRANSMISSION AND USE OF SOFTWARE.

It is unlawful for a person who is not an owner or operator of a computer to transmit computer software to such computer knowingly or with conscious avoidance of actual knowledge, and to use such software to do any of the following:

1. Modify, through intentionally deceptive means, settings of a computer that control any of the following:
  - a. The web page that appears when an owner or operator launches an internet browser or similar computer software used to access and navigate the internet.
  - b. The default provider or web proxy that an owner or operator uses to access or search the internet.
  - c. An owner's or an operator's list of bookmarks used to access web pages.
2. Collect, through intentionally deceptive means, personally identifiable information through any of the following means:

- a. The use of a keystroke-logging function that records keystrokes made by an owner or operator of a computer and transfers that information from the computer to another person.

- b. In a manner that correlates personally identifiable information with data respecting all or substantially all of the websites visited by an owner or operator, other than websites operated by the person collecting such information.

- c. By extracting from the hard drive of an owner's or an operator's computer, an owner's or an operator's social security number, tax identification number, driver's license number, passport number, any other government-issued identification number, account balances, or overdraft history.

3. Prevent, through intentionally deceptive means, an owner's or an operator's reasonable efforts to block the installation of, or to disable, computer software by causing computer software that the owner or operator has properly removed or disabled to automatically reinstall or reactivate on the computer.

4. Intentionally misrepresent that computer software will be uninstalled or disabled by an owner's or an operator's action.

5. Through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus computer software installed on an owner's or an operator's computer.

6. Take control of an owner's or an operator's computer by doing any of the following:

- a. Accessing or using a modem or internet service for the purpose of causing damage to an owner's or an operator's computer or causing an owner or operator to incur financial charges for a service that the owner or operator did not authorize.

- b. Opening multiple, sequential, stand-alone advertisements in an owner's or an operator's internet browser

without the authorization of an owner or operator and which a reasonable computer user could not close without turning off the computer or closing the internet browser.

7. Modify any of the following settings related to an owner's or an operator's computer access to, or use of, the internet:

a. Settings that protect information about an owner or operator for the purpose of taking personally identifiable information of the owner or operator.

b. Security settings for the purpose of causing damage to a computer.

8. Prevent an owner's or an operator's reasonable efforts to block the installation of, or to disable, computer software by doing any of the following:

a. Presenting the owner or operator with an option to decline installation of computer software with knowledge that, when the option is selected by the authorized user, the installation nevertheless proceeds.

b. Falsely representing that computer software has been disabled.

Sec. 5. NEW SECTION. 714F.5 OTHER PROHIBITIONS.

It is unlawful for a person who is not an owner or operator of a computer to do any of the following with regard to the computer:

1. Induce an owner or operator to install a computer software component onto the owner's or the operator's computer by intentionally misrepresenting that installing computer software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content.

2. Using intentionally deceptive means to cause the execution of a computer software component with the intent of causing an owner or operator to use such component in a manner that violates any other provision of this chapter.

Sec. 6. NEW SECTION. 714F.6 EXCEPTIONS.

Sections 714F.4 and 714F.5 shall not apply to the monitoring of, or interaction with, an owner's or an operator's internet or other network connection, service, or computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, authorized updates of computer software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing computer software prescribed under this chapter. Nothing in this chapter shall limit the rights of providers of wire and electronic communications under 18 U.S.C. § 2511.

Sec. 7. NEW SECTION. 714F.7 CRIMINAL PENALTIES.

1. A person who commits an unlawful act under this chapter is guilty of an aggravated misdemeanor.

2. A person who commits an unlawful act under this chapter and who causes pecuniary losses exceeding one thousand dollars to a victim of the unlawful act is guilty of a class "D" felony.

Sec. 8. NEW SECTION. 714F.8 VENUE FOR CRIMINAL VIOLATIONS.

For the purpose of determining proper venue, a violation of this chapter shall be considered to have been committed in any county in which any of the following apply:

1. An act was performed in furtherance of the violation.

2. The owner or operator who is the victim of the violation has a place of business in this state.

3. The defendant has control or possession of any proceeds of the violation, or of any books, records, documents, property, financial instrument, computer software, computer program, computer data, or other material or objects used in furtherance of the violation.

4. The defendant unlawfully accessed a computer or computer network by wires, electromagnetic waves, microwaves, or any other means of communication.

5. The defendant resides.

6. A computer used as an object or an instrument in the commission of the violation was located at the time of the violation.

---

CHRISTOPHER C. RANTS  
Speaker of the House

---

JOHN P. KIBBIE  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 614, Eighty-first General Assembly.

---

MARGARET THOMSON  
Chief Clerk of the House

Approved 5/3, 2005

---

THOMAS J. VILSACK  
Governor