

# House File 614 - Enrolled

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1 1 HOUSE FILE 614  
1 2  
1 3 AN ACT  
1 4 RELATING TO THE TRANSMISSION, INSTALLATION, AND USE OF  
1 5 COMPUTER SOFTWARE THROUGH DECEPTIVE OR UNAUTHORIZED  
1 6 MEANS AND PROVIDING FOR PENALTIES.  
1 7  
1 8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
1 9  
1 10 Section 1. NEW SECTION. 714F.1 LEGISLATIVE INTENT.  
1 11 It is the intent of the general assembly to protect owners  
1 12 and operators of computers in this state from the use of  
1 13 spyware and malware that is deceptively or surreptitiously  
1 14 installed on the owner's or the operator's computer.  
1 15 Sec. 2. NEW SECTION. 714F.2 TITLE.  
1 16 This chapter shall be known and may be cited as the  
1 17 "Computer Spyware Protection Act".  
1 18 Sec. 3. NEW SECTION. 714F.3 DEFINITIONS.  
1 19 For purposes of this chapter, unless the context otherwise  
1 20 requires:  
1 21 1. "Advertisement" means a communication, the primary  
1 22 purpose of which is the commercial promotion of a commercial  
1 23 product or service, including content on an internet website  
1 24 operated for a commercial purpose.  
1 25 2. "Computer software" means a sequence of instructions  
1 26 written in any programming language that is executed on a  
1 27 computer. "Computer software" does not include computer  
1 28 software that is a web page or data components of a web page  
1 29 that are not executable independently of the web page.  
1 30 3. "Damage" means any significant impairment to the  
1 31 integrity or availability of data, software, a system, or  
1 32 information.  
1 33 4. "Execute", when used with respect to computer software,  
1 34 means the performance of the functions or the carrying out of  
1 35 the instructions of the computer software.  
2 1 5. "Intentionally deceptive" means any of the following:  
2 2 a. An intentionally and materially false or fraudulent  
2 3 statement.  
2 4 b. A statement or description that intentionally omits or  
2 5 misrepresents material information in order to deceive an  
2 6 owner or operator of a computer.  
2 7 c. An intentional and material failure to provide a notice  
2 8 to an owner or operator regarding the installation or  
2 9 execution of computer software for the purpose of deceiving  
2 10 the owner or operator.  
2 11 6. "Internet" means the same as defined in section 4.1.  
2 12 7. "Owner or operator" means the owner or lessee of a  
2 13 computer, or a person using such computer with the owner or  
2 14 lessee's authorization, but does not include a person who  
2 15 owned a computer prior to the first retail sale of the  
2 16 computer.  
2 17 8. "Person" means the same as defined in section 4.1.  
2 18 9. "Personally identifiable information" means any of the  
2 19 following information with respect to the owner or operator of  
2 20 a computer:  
2 21 a. The first name or first initial in combination with the  
2 22 last name.  
2 23 b. A home or other physical address including street name.  
2 24 c. An electronic mail address.  
2 25 d. Credit or debit card number, bank account number, or  
2 26 any password or access code associated with a credit or debit  
2 27 card or bank account.  
2 28 e. Social security number, tax identification number,  
2 29 driver's license number, passport number, or any other  
2 30 government-issued identification number.  
2 31 f. Account balance, overdraft history, or payment history  
2 32 that personally identifies an owner or operator of a computer.  
2 33 10. "Transmit" means to transfer, send, or make available  
2 34 computer software using the internet or any other medium,  
2 35 including local area networks of computers other than a  
3 1 wireless transmission, and a disc or other data storage  
3 2 device. "Transmit" does not include an action by a person  
3 3 providing any of the following:  
3 4 a. An internet connection, telephone connection, or other  
3 5 means of transmission capability such as a compact disc or

3 6 digital video disc through which the computer software was  
3 7 made available.

3 8 b. The storage or hosting of the computer software program  
3 9 or an internet web page through which the software was made  
3 10 available.

3 11 c. An information location tool, such as a directory,  
3 12 index, reference, pointer, or hypertext link, through which  
3 13 the user of the computer located the computer software, unless  
3 14 the person transmitting receives a direct economic benefit  
3 15 from the execution of such software on the computer.

3 16 Sec. 4. NEW SECTION. 714F.4 PROHIBITIONS == TRANSMISSION  
3 17 AND USE OF SOFTWARE.

3 18 It is unlawful for a person who is not an owner or operator  
3 19 of a computer to transmit computer software to such computer  
3 20 knowingly or with conscious avoidance of actual knowledge, and  
3 21 to use such software to do any of the following:

3 22 1. Modify, through intentionally deceptive means, settings  
3 23 of a computer that control any of the following:

3 24 a. The web page that appears when an owner or operator  
3 25 launches an internet browser or similar computer software used  
3 26 to access and navigate the internet.

3 27 b. The default provider or web proxy that an owner or  
3 28 operator uses to access or search the internet.

3 29 c. An owner's or an operator's list of bookmarks used to  
3 30 access web pages.

3 31 2. Collect, through intentionally deceptive means,  
3 32 personally identifiable information through any of the  
3 33 following means:

3 34 a. The use of a keystroke=logging function that records  
3 35 keystrokes made by an owner or operator of a computer and  
4 1 transfers that information from the computer to another  
4 2 person.

4 3 b. In a manner that correlates personally identifiable  
4 4 information with data respecting all or substantially all of  
4 5 the websites visited by an owner or operator, other than  
4 6 websites operated by the person collecting such information.

4 7 c. By extracting from the hard drive of an owner's or an  
4 8 operator's computer, an owner's or an operator's social  
4 9 security number, tax identification number, driver's license  
4 10 number, passport number, any other government=issued  
4 11 identification number, account balances, or overdraft history.

4 12 3. Prevent, through intentionally deceptive means, an  
4 13 owner's or an operator's reasonable efforts to block the  
4 14 installation of, or to disable, computer software by causing  
4 15 computer software that the owner or operator has properly  
4 16 removed or disabled to automatically reinstall or reactivate  
4 17 on the computer.

4 18 4. Intentionally misrepresent that computer software will  
4 19 be uninstalled or disabled by an owner's or an operator's  
4 20 action.

4 21 5. Through intentionally deceptive means, remove, disable,  
4 22 or render inoperative security, antispyware, or antivirus  
4 23 computer software installed on an owner's or an operator's  
4 24 computer.

4 25 6. Take control of an owner's or an operator's computer by  
4 26 doing any of the following:

4 27 a. Accessing or using a modem or internet service for the  
4 28 purpose of causing damage to an owner's or an operator's  
4 29 computer or causing an owner or operator to incur financial  
4 30 charges for a service that the owner or operator did not  
4 31 authorize.

4 32 b. Opening multiple, sequential, stand=alone  
4 33 advertisements in an owner's or an operator's internet browser  
4 34 without the authorization of an owner or operator and which a  
4 35 reasonable computer user could not close without turning off  
5 1 the computer or closing the internet browser.

5 2 7. Modify any of the following settings related to an  
5 3 owner's or an operator's computer access to, or use of, the  
5 4 internet:

5 5 a. Settings that protect information about an owner or  
5 6 operator for the purpose of taking personally identifiable  
5 7 information of the owner or operator.

5 8 b. Security settings for the purpose of causing damage to  
5 9 a computer.

5 10 8. Prevent an owner's or an operator's reasonable efforts  
5 11 to block the installation of, or to disable, computer software  
5 12 by doing any of the following:

5 13 a. Presenting the owner or operator with an option to  
5 14 decline installation of computer software with knowledge that,  
5 15 when the option is selected by the authorized user, the  
5 16 installation nevertheless proceeds.

5 17 b. Falsely representing that computer software has been  
5 18 disabled.

5 19 Sec. 5. NEW SECTION. 714F.5 OTHER PROHIBITIONS.

5 20 It is unlawful for a person who is not an owner or operator  
5 21 of a computer to do any of the following with regard to the  
5 22 computer:

5 23 1. Induce an owner or operator to install a computer  
5 24 software component onto the owner's or the operator's computer  
5 25 by intentionally misrepresenting that installing computer  
5 26 software is necessary for security or privacy reasons or in  
5 27 order to open, view, or play a particular type of content.

5 28 2. Using intentionally deceptive means to cause the  
5 29 execution of a computer software component with the intent of  
5 30 causing an owner or operator to use such component in a manner  
5 31 that violates any other provision of this chapter.

5 32 Sec. 6. NEW SECTION. 714F.6 EXCEPTIONS.

5 33 Sections 714F.4 and 714F.5 shall not apply to the  
5 34 monitoring of, or interaction with, an owner's or an  
5 35 operator's internet or other network connection, service, or  
6 1 computer, by a telecommunications carrier, cable operator,  
6 2 computer hardware or software provider, or provider of  
6 3 information service or interactive computer service for  
6 4 network or computer security purposes, diagnostics, technical  
6 5 support, maintenance, repair, authorized updates of computer  
6 6 software or system firmware, authorized remote system  
6 7 management, or detection or prevention of the unauthorized use  
6 8 of or fraudulent or other illegal activities in connection  
6 9 with a network, service, or computer software, including  
6 10 scanning for and removing computer software prescribed under  
6 11 this chapter. Nothing in this chapter shall limit the rights  
6 12 of providers of wire and electronic communications under 18  
6 13 U.S.C. } 2511.

6 14 Sec. 7. NEW SECTION. 714F.7 CRIMINAL PENALTIES.

6 15 1. A person who commits an unlawful act under this chapter  
6 16 is guilty of an aggravated misdemeanor.

6 17 2. A person who commits an unlawful act under this chapter  
6 18 and who causes pecuniary losses exceeding one thousand dollars  
6 19 to a victim of the unlawful act is guilty of a class "D"  
6 20 felony.

6 21 Sec. 8. NEW SECTION. 714F.8 VENUE FOR CRIMINAL  
6 22 VIOLATIONS.

6 23 For the purpose of determining proper venue, a violation of  
6 24 this chapter shall be considered to have been committed in any  
6 25 county in which any of the following apply:

6 26 1. An act was performed in furtherance of the violation.

6 27 2. The owner or operator who is the victim of the  
6 28 violation has a place of business in this state.

6 29 3. The defendant has control or possession of any proceeds  
6 30 of the violation, or of any books, records, documents,  
6 31 property, financial instrument, computer software, computer  
6 32 program, computer data, or other material or objects used in  
6 33 furtherance of the violation.

6 34 4. The defendant unlawfully accessed a computer or  
6 35 computer network by wires, electromagnetic waves, microwaves,  
7 1 or any other means of communication.

7 2 5. The defendant resides.

7 3 6. A computer used as an object or an instrument in the  
7 4 commission of the violation was located at the time of the  
7 5 violation.

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CHRISTOPHER C. RANTS  
Speaker of the House

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JOHN P. KIBBIE  
President of the Senate

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MARGARET THOMSON  
Chief Clerk of the House

7 22 I hereby certify that this bill originated in the House and  
7 23 is known as House File 614, Eighty-first General Assembly.  
7 24 Approved \_\_\_\_\_, 2005  
7 25  
7 26  
7 27 \_\_\_\_\_

7 28 THOMAS J. VILSACK  
7 29 Governor