

Chart I

Survey, State Spyware Legislation*		
State	Status	Summary
Alabama	Pending	<p>S.B. 122 “Consumer Protection Against Computer Spyware Act” Prohibits a person, who is not an authorized user, from knowingly causing a computer program, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information; (3) take control of the consumer’s computer; (4) prevent an authorized user’s reasonable efforts to block or disable spyware; or (5) induce installation of spyware. Enforcement: Public. Remedies: Criminal penalties (Class B misdemeanor).</p>
Alaska	Sent to Governor (as of 5/10/05)	<p>S.B. 140 “An Act Relating to Spyware and Unsolicited Advertising” Prohibits certain popup ads displayed by spyware, including popups displayed in response to a specific web address or trademark without the consent of the site or mark owner; consumer consent is not a defense, and proof of trademark infringement is not a requirement. Exempts from liability distributors of software or services that remove spyware. Enforcement: Private right of action under existing unfair business practices statute.</p>
Arizona	Enacted (4/18/05)	<p>H.B. 2414; Chapter 136 Prohibits transmission, through intentionally deceptive means, of computer software that modifies certain settings, collects personally identifiable information, or takes control of the computer. Enforcement: Attorney General; a computer software provider or a website or trademark owner who is adversely affected. Remedies: Injunctive relief; greater of actual damages or \$100,000 for each separate violation; treble damages for repeat violators; costs and attorney fees.</p>
<p>* Sources: National Conference of State Legislatures, <i>2005 State Legislation Relating to Internet Spyware or Adware</i>, http://www.ncsl.org/programs/lis/spyware05.htm (last visited Aug. 9, 2005); Ben Edelman, <i>State Spyware Legislation</i>, http://www.benedelman.org/spyware/legislation (last visited Jul. 20, 2005).</p>		

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Arkansas	Enacted (4/13/05)	H.B. 2904; Act 2255 “Consumer Protection Against Computer Spyware Act” Prohibits a person, who is not an authorized user, from knowingly causing a computer program, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information; (3) take control of the consumer’s computer; (4) prevent an authorized user’s reasonable efforts to block or disable spyware; or (5) induce installation of spyware. Enforcement: Attorney General, under Deceptive Trade Practices Act. Remedies: Fines to be paid to “Spyware Monitoring Fund,” which shall be used for enforcement and related expenses.
Arkansas	Enacted (4/14/05)	H.B. 2261; Act 2312 “An act to make an appropriation for expenses associated with spyware monitoring for the office of Attorney General” H.B. 2344; Act 2313 “An act to make an appropriation for expenses associated with spyware monitoring for the Department of Information Systems”
California	Enacted (9/28/04)	“Consumer Protection Against Computer Spyware Act” (Chapter 32 (§ 22947 et seq.); Division 8 of the Business and Professions Code) Prohibits a person, who is not an authorized user, from knowingly causing a computer program, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information; (3) take control of the consumer’s computer; (4) prevent an authorized user’s reasonable efforts to block or disable spyware; or (5) induce installation of spyware. Enforcement: Leaves open who may enforce prohibitions. Remedies: Unstated.

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
California	Pending	<p>S.B. 92 Provides for enforcement and remedies for the “Consumer Protection Against Computer Spyware Act”</p> <p>Enforcement: Establishes a private right of action for recipients of spyware; public. Remedies: Allows parties to recover liquidated damages of \$1,000 per violation, attorney’s fees, and costs; makes violation of the prohibitions a crime, punishable as either a misdemeanor or felony.</p>
California	Pending	<p>S.B. 355 States that a purpose of the “Consumer Protection Against Computer Spyware Act” is to improve security on the Internet.</p>
Delaware	Pending	<p>S.B. 124 Prohibits a person, who is not an authorized user, from knowingly causing a computer program, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information; (3) take control of the consumer’s computer; or (4) prevent an authorized user’s reasonable efforts to block or disable spyware.</p> <p>Enforcement: Public enforcement. Remedies: Actual damages, attorney fees, and costs of at least \$1,000 and up to \$1,000,000; treble damages for willful violations.</p>

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Florida	Pending	<p>S.B. 2162 “Internet Computer Fraud”</p> <p>Prohibits a person or a business entity from using the Internet to solicit, request, or take any action to induce a computer user to provide personal identification information by fraudulently representing that the person or business is an online business; prohibits a business entity or person who is not the authorized user of a computer from committing certain specified deceptive acts or practices that involve the computer; prohibits a person or business entity from collecting certain information without notice to and the consent of the authorized user of the computer.</p> <p>Enforcement: Public enforcement; private right of action under deceptive and unfair trade statute; authorizes a computer user to file a civil action for violations of the act.</p> <p>Remedies: Actual damages and attorney fees; damages up to \$5,000 per incident, or three times the amount of actual damages, whichever amount is greater.</p>
Georgia	Enacted (5/10/05)	<p>S.B. 127; Act 389 “Georgia Computer Security Act of 2005”</p> <p>Prohibits a person, who is not an authorized user, from knowingly causing a computer program, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information; (3) take control of the consumer’s computer; (4) prevent an authorized user’s reasonable efforts to block or disable spyware; or (5) induce installation of spyware.</p> <p>Enforcement: Public enforcement; private right of action for aggrieved consumers.</p> <p>Remedies: Criminal (felony: 1- 10 years; up to \$3 million); civil—injunctive relief, damages (including statutory: \$100 per violation, up to \$1 million), and attorney fees and costs.</p>

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Illinois	Passed House (2/8/05)	<p>H.B. 380 “Spyware Prevention Initiative Act”</p> <p>Prohibits a person, who is not an authorized user, from knowingly causing a computer program, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information; (3) take control of the consumer’s computer; (4) prevent an authorized user’s reasonable efforts to block or disable spyware; or (5) induce installation of spyware.</p> <p>Enforcement: Public enforcement.</p> <p>Remedies: Criminal (Class B misdemeanor).</p>
Indiana	Pending	<p>H.B. 1714</p> <p>Prohibits the unauthorized installation of a computer spyware program that monitors a computer’s usage and: (1) transmits usage information to another computer; or (2) displays certain advertisements in response to the computer’s usage. Permits the installation of spyware only if the computer owner consents after full disclosure of the spyware’s purpose and there is a method of uninstalling the spyware. Authorizes a website owner, a trademark or copyright holder, or an authorized Internet advertiser harmed by spyware to bring a civil action against the person who unlawfully installed the spyware.</p> <p>Enforcement: Private right of action for adversely affected parties (including targeted websites); Attorney General to establish a complaint procedure.</p> <p>Remedies: Greater of actual damages or \$10,000 per violation; judicial discretion to award treble damages if the violation is knowing or intentional; attorney’s fees and costs.</p>

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Iowa	Enacted (5/3/05)	<p>H.F. 614 “Deceptive or Unauthorized Computer Software”</p> <p>Prohibits a person, who is not an authorized user, from knowingly causing a computer program, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information; (3) take control of the consumer’s computer; (4) prevent an authorized user’s reasonable efforts to block or disable spyware; or (5) induce installation of spyware.</p> <p>Enforcement: Authorizes private right of action by a provider of computer software, a website owner, or a trademark or copyright holder harmed by a prohibited use of spyware to bring a civil action.</p> <p>Remedies: Injunctive relief; greater of actual damages or \$100,000 per violation.</p>
Kansas	Pending	<p>H.B. 2343</p> <p>Prohibits a person, who is not an authorized user, from knowingly causing a computer program, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information; (3) take control of the consumer’s computer; (4) prevent an authorized user’s reasonable efforts to block or disable spyware; or (5) induce installation of spyware.</p> <p>Enforcement: Public.</p> <p>Remedies: Criminal (Class A misdemeanor).</p>

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Maryland	Legislature adjourned (4/11/05)	<p>S.B. 492, S.B. 801, H.B. 945, H.B. 780 “Unauthorized Computer Software Act”</p> <p>Prohibits specified persons under specified circumstances from causing computer software to be copied onto a consumer’s computer that modifies specified Internet settings, collects specified personally identifying information, prevents an authorized user from blocking the installation of specified software, or prevents an authorized user from disabling specified software; prohibits specified persons from misleading authorized users as to the effect specified actions will have with respect to computer software.</p> <p>Enforcement: Private right of action for injured parties.</p> <p>Remedies: Greater of actual damages or \$500 per violation; attorney’s fees.</p>
Massachusetts	Pending	<p>S.B. 273 “An Act Prohibiting Spyware”</p> <p>Prohibits installation of software that monitors usage, sends information about usage to a remote computer or displays ads based on usage (with certain exemptions) when the software provider does not obtain clear consent to a license.</p> <p>Enforcement: Private right of action for website owners, trademark and copyright owners, and authorized advertisers on a website affected by spyware.</p> <p>Remedies: Injunctive relief; greater of actual damages or \$10,000 per violation; treble damages for willful violation; attorney’s fees and costs.</p>
Massachusetts	Pending	<p>S.B. 286 “Regulation of Unconsented Internet Advertising”</p> <p>Prohibits installing spyware or context-based triggering mechanisms to display advertisements that obscure a webpage absent express consent and uninstall directions.</p> <p>Enforcement: Unspecified.</p> <p>Remedies: Escalating fine (\$500 for the first violation, \$1,000 for a second violation, and \$5,000 for a third and any subsequent violations).</p>

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Massachusetts	Pending	<p>H.B. 1444 “Consumer Protection Against Spyware Act”</p> <p>Prohibits transmitting and using, through intentionally deceptive means, computer software that changes certain settings, collects personally identifiable information, prevents a user’s efforts to block installation, falsely claims that software will be disabled by the user’s actions, removes or disables security software, or takes control of the computer.</p> <p>Enforcement: Public.</p> <p>Remedies: Fines.</p>
Michigan	Passed Senate (3/9/05)	<p>S.B. 151 “Spyware Control Act”</p> <p>Prohibits installation of software that sends protected information or displays advertisements unless the software meets specified notice (clear license terms, full-size exemplars of advertisements, and advertisement frequency) and consent requirements.</p> <p>Enforcement: Public (Attorney General); private right of action by an adversely affected authorized user, website owner or registrant, trademark or copyright owner, or authorized website advertiser; does not authorize class actions.</p> <p>Remedies: Injunctive relief; greater of actual damages or \$10,000 per violation; treble damages for pattern of violation.</p>
Michigan	Passed Senate (3/9/05)	<p>S.B. 53, S.B. 54</p> <p>Prohibits access to computers, computer systems, and computer networks for certain fraudulent purposes; prohibits intentional and unauthorized access, alteration, damage, and destruction of computers, computer systems, computer networks, computer software programs, and data; prohibits the sending of certain electronic messages.</p> <p>Enforcement: Public.</p> <p>Remedies: Criminal penalties (misdemeanor and felony); sentencing guidelines for the crime of installing spyware on another person’s computer without consent (S.B. 53).</p>

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Missouri	Pending	<p>H.B. 902 “Consumer Protection Against Computer Spyware Act”</p> <p>Prohibits a person lacking authorization from intentionally modifying the settings of a computer belonging to a consumer, collecting personally identifiable information from the computer, preventing an authorized user’s reasonable efforts to block the installation of or disable installed software, removing or disabling security software installed on the computer, or taking control of the consumer’s computer by transmitted commercial electronic mail or a computer virus from the consumer’s computer.</p> <p>Enforcement: Public (Attorney General).</p> <p>Remedies: Unspecified.</p>
Nebraska	Pending	<p>L.B. 316 “Consumer Protection Against Computer Spyware Act”</p> <p>Prohibits a person lacking authorization from intentionally modifying the settings of a computer belonging to a consumer, collecting personally identifiable information from the computer, preventing an authorized user’s reasonable efforts to block the installation of or disable installed software, removing or disabling security software installed on the computer, or taking control of the consumer’s computer by transmitted commercial electronic mail or a computer virus from the consumer’s computer. Establishes a Task Force of Computer Technology and Privacy.</p> <p>Enforcement: Public.</p> <p>Remedies: Criminal (misdemeanor).</p>

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
New Hampshire	Passed House (2/23/05)	<p>H.B. 47 “Regulating Use of Spyware”</p> <p>Prohibits a person or entity, who is not an authorized user, from knowingly causing a computer program or spyware to be copied onto the computer of a consumer and using the program or spyware, through intentionally deceptive means, to: (1) take control of the consumer’s computer; (2) modify specified settings; (3) collect personal information through keystroke logging; (4) prevent an authorized user’s reasonable efforts to block or disable spyware; or (5) induce violation of the Act.</p> <p>Enforcement: Public; private right of action for aggrieved persons.</p> <p>Remedies: Criminal and civil (injunction, greater of actual damages or \$1,000); up to treble damages for willful violation; attorney’s fees and costs.</p>
New York	Pending	<p>A.B. 549 “Unlawful Use of Spyware and Malware”; see also A.B. 2682</p> <p>Prohibits a person or entity, who is not an authorized user, from knowingly causing a computer program or spyware to be copied onto the computer of a consumer and using the program or spyware, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information through keystroke logging; (3) prevent an authorized user’s reasonable efforts to block or disable spyware; (4) take control of the consumer’s computer; or (5) induce violation of the Act.</p> <p>Enforcement: Public.</p> <p>Remedies: Criminal (Class A misdemeanor; Class E felony for repeat offenders within 5 years of prior conviction).</p>
Oregon	Pending	<p>H.B. 2302</p> <p>Prohibits a person from installing or causing installation of spyware on a computer absent clear notice as specified in the statute and informed consent.</p> <p>Enforcement: Public (Attorney General).</p> <p>Remedies: As set forth in the state’s unlawful trade practice statute.</p>

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Pennsylvania	Pending	H.B. 574 Prohibits installation of adware or spyware without specified notice and consent. Enforcement: Public. Remedies: Criminal.
Rhode Island	Pending	H.B. 6211 "Software Fraud" Prohibits a person, who is not an authorized user, from knowingly causing a computer program or spyware to be copied onto the computer of a consumer and using the program or spyware, through intentionally deceptive means, to: (1) modify specified settings; (2) collect personal information through keystroke-logging; (3) prevent an authorized user's reasonable efforts to block or disable spyware; (4) take control of the consumer's computer; or (5) induce installation of spyware. Enforcement: Public (Attorney General); private right of action by aggrieved person. Remedies: Greater of actual damages or \$1,000 per violation; treble damages for pattern of violations; attorney's fees and costs.
Tennessee	Pending	H.B. 1742, S.B. 2069 "Internet Spyware Control Act of 2005" Prohibits installation of spyware or adware (triggered by use of a trademark of another) without computer users' informed consent. Enforcement: Private right of action by website owner or registrant, trademark or copyright owner, or authorized website advertiser. Remedies: Injunction; greater of actual damages or \$10,000 per violation; treble damages for willful violation; attorney's fees and costs.

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Texas	Passed House (4/26/05)	H.B. 1430, S.B. 958 “Consumer Protection Against Spyware Act” Prohibits a person, who is not an authorized user, from knowingly causing a computer program, through intentionally deceptive means, to: (1) collect personal information; (2) modify specified settings; (3) take control of the consumer’s computer; (4) prevent an authorized user’s reasonable efforts to block or disable spyware; or (5) induce installation of spyware. Enforcement: Public (Attorney General); private right of action by a provider of computer software, owner of a webpage, or trademark owner who is adversely affected. Remedies: Injunction; greater of actual damages or \$100,000 per violation; treble damages for pattern of violations; attorney’s fees and costs.
Texas	Pending	S.B. 327 “Collection and Transmission of Certain Information by Computer” Prohibits installation of spyware without specified notice and informed consent. Enforcement: Public (Attorney General). Remedies: Injunction; \$1,000 per violation; attorney’s fees and costs.
Utah	Enacted (3/17/05)	H.B. 104 amends “Spyware Control Act” Prohibits display of popup advertisements in response to a mark without authorization and imposes liability upon an advertiser who receives actual notice from mark owners of the use of its mark to trigger advertisements and fails to take reasonable steps to stop violations. Exempts from liability those who request information about a user’s state of residence prior to sending spyware or popup advertisements and the user indicates a residence outside Utah. Enforcement: Public (Attorney General); and private right of action by a mark owner who does business in Utah and is directly and adversely affected; no class actions. Remedies: Injunction, greater of actual damages or \$500 per violation; treble damages for willful and knowing violation; attorney’s fees and costs.

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Utah	Enacted (3/23/04) Enjoined by 3rd Judicial District Court (6/22/04)	H.B. 323 “Spyware Control Act” Prohibits installation of spyware or adware (triggered by use of a trademark of another) without computer user’s informed consent. Enforcement: Private right of action by website owner or registrant, trademark or copyright owner, or authorized website advertiser. Remedies: Injunction; greater of actual damages or \$10,000 per violation; treble damages for willful violation; attorney’s fees and costs.
Virginia	Passed House (2/4/05)	H.B. 1729 amends “Computer Crimes Act” Prohibits any person who is not an owner or operator of a computer from transmitting computer software to such computer, with actual knowledge or with conscious avoidance of actual knowledge, and, through intentionally deceptive means, to use such software to: (1) modify specified settings; (2) collect personal information; (3) prevent an authorized user’s reasonable efforts to block or disable spyware; (4) take control of the consumer’s computer; or (5) induce installation of spyware. Enforcement: Public. Remedies: Criminal (Class 1 misdemeanor).
Virginia	Enacted (4/4/05)	H.B. 2215 amends Chapter 812 Expands definition of “computer trespass” to include unauthorized installation of software on the computer of another, disruption of another computer’s ability to share or transfer information, and maliciously obtaining computer information without authority. Enforcement: Public. Remedies: Criminal (Class 1 misdemeanor).

Survey, State Spyware Legislation (cont.)		
State	Status	Summary
Washington	Enacted (5/17/05)	<p>H.B. 1012 Prohibits any person who is not an owner or operator of a computer to transmit computer software to such computer, with actual knowledge or with conscious avoidance of actual knowledge, and, through intentionally deceptive means, to use such software to: (1) modify specified settings; (2) collect personal information; (3) prevent an authorized user's reasonable efforts to block or disable spyware; (4) take control of the consumer's computer; or (5) induce installation of spyware.</p> <p>Enforcement: Public (Attorney General); private right of action by a provider of computer software or owner of a website or trademark who is adversely affected.</p> <p>Remedies: Injunction; greater of actual damages or \$100,000 per violation; attorney's fees and costs; liability cap of \$2,000,000.</p>
West Virginia	Pending	<p>H.B. 3246 Augments West Virginia Computer Crime and Abuse Act to prohibit installation of spyware for fraudulent purposes and requires that persons or entities providing computer software which contains spyware to disclose certain information about the spyware.</p> <p>Enforcement: Public</p> <p>Remedies: Criminal (misdemeanor) - fine of not more than \$500,000 or incarceration for not more than six months, or both.</p>