

3718--A

2011-2012 Regular Sessions

I N   S E N A T E

March 2, 2011

---

Introduced by Sen. ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to stolen or misappropriated computer software

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1     Section 1. The general business law is amended by adding a new section  
2     390-d to read as follows:  
3     S 390-D. ILLEGAL USE OF STOLEN OR MISAPPROPRIATED COMPUTER SOFTWARE;  
4     PENALTIES.     1. FOR THE PURPOSES OF THIS SECTION, THE TERM "COMPUTER  
5     SOFTWARE" SHALL MEAN AN ORDERED SET OF DATA REPRESENTING CODED  
6     INSTRUCTIONS OR STATEMENTS THAT, WHEN EXECUTED BY COMPUTER, CAUSE THE  
7     COMPUTER TO PROCESS DATA OR DIRECT THE COMPUTER TO PERFORM ONE OR MORE  
8     COMPUTER OPERATIONS, OR BOTH.  
9     2. IT IS UNLAWFUL FOR A PERSON TO DEVELOP OR MANUFACTURE A PRODUCT OR  
10    PRODUCTS WHILE USING STOLEN OR MISAPPROPRIATED COMPUTER SOFTWARE,  
11    INCLUDING, BUT NOT LIMITED TO COMPUTER SOFTWARE THAT DOES NOT HAVE THE  
12    NECESSARY LICENSE AGREEMENTS, WHERE ANY SUCH PRODUCTS OR SERVICES ARE  
13    SOLD OR OFFERED FOR SALE IN THIS STATE.  
14    3. (A) THE ATTORNEY GENERAL MAY BRING AN ACTION AGAINST A PERSON WHO  
15    VIOLATES THE PROVISIONS OF SUCH SUBDIVISION:  
16    (1) TO ENJOIN FURTHER VIOLATION OF THE PROVISIONS OF SUBDIVISION TWO  
17    OF THIS SECTION; AND  
18    (2) TO RECOVER THE GREATER OF:  
19    (A) ACTUAL DAMAGES; OR  
20    (B) ONE THOUSAND DOLLARS FOR EACH VIOLATION OF SUBDIVISION TWO OF THIS  
21    SECTION.  
22    (B) IN AN ACTION UNDER PARAGRAPH (A) OF THIS SUBDIVISION, A COURT MAY:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD07593-02-1

1 (1) INCREASE THE DAMAGES UP TO THREE TIMES THE DAMAGES ALLOWED BY  
2 PARAGRAPH (A) OF THIS SUBDIVISION WHERE THE DEFENDANT HAS BEEN FOUND TO  
3 HAVE ENGAGED IN A PATTERN AND PRACTICE OF VIOLATING THE PROVISIONS OF  
4 SUBDIVISION TWO OF THIS SECTION; AND

5 (2) AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO A PREVAILING PARTY.

6 (C) FOR THE PURPOSES OF THIS SECTION, A VIOLATION SHALL BE DEEMED TO  
7 HAVE OCCURRED EACH TIME A PRODUCT OR SERVICE IS SOLD OR OFFERED FOR SALE  
8 IN THIS STATE.

9 4. NOTHING CONTAINED IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS  
10 OR REMEDIES WHICH ARE OTHERWISE AVAILABLE UNDER LAW TO THE ATTORNEY  
11 GENERAL OR ANY OTHER PERSON AUTHORIZED TO BRING AN ACTION UNDER SUBDIVI-  
12 SION THREE OF THIS SECTION, NOR SHALL IT LIMIT THE ENFORCEMENT OF ANY  
13 APPLICABLE PROVISION OF THE PENAL LAW.

14 S 2. Severability. If any clause, sentence, paragraph, section or part  
15 of this act shall be adjudged by any court of competent jurisdiction to  
16 be invalid, the judgment shall not affect, impair, or invalidate the  
17 remainder thereof, but shall be confined in its operation to the clause,  
18 sentence, paragraph, section or part thereof directly involved in the  
19 controversy in which the judgment shall have been rendered.

20 S 3. This act shall take effect on the one hundred eightieth day after  
21 it shall have become a law.