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3718

2011-2012 Regular Sessions

I N   S E N A T E

March 2, 2011
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Introduced by Sen. ADAMS -- read twice and ordered printed, and when
  printed to be committed to the Committee on Consumer Protection

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 ASSEM-
BLY, 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, OR TO DEVELOP OR SUPPLY SERVICES, WHILE USING STOLEN OR MISAP-
11 PROPRIATED COMPUTER SOFTWARE, INCLUDING, BUT NOT LIMITED TO COMPUTER
12 SOFTWARE THAT DOES NOT HAVE THE NECESSARY LICENSE AGREEMENTS, WHERE ANY
13 SUCH PRODUCTS OR SERVICES ARE SOLD OR OFFERED FOR SALE IN THIS STATE.
14   3. (A) THE ATTORNEY GENERAL, OR ANY PERSON WHO IS ADVERSELY AFFECTED
15 BY REASON OF ANY VIOLATION OF SUCH SUBDIVISION, MAY BRING AN ACTION
16 AGAINST A PERSON WHO VIOLATES THE PROVISIONS OF SUCH SUBDIVISION:
17   (1) TO ENJOIN FURTHER VIOLATION OF THE PROVISIONS OF SUBDIVISION TWO
18 OF THIS SECTION; AND
19   (2) TO RECOVER THE GREATER OF:
20   (A) ACTUAL DAMAGES; OR
21   (B) ONE THOUSAND DOLLARS FOR EACH VIOLATION OF SUBDIVISION TWO OF THIS
22 SECTION.
23   (B) IN AN ACTION UNDER PARAGRAPH (A) OF THIS SUBDIVISION, A COURT MAY:
24   (1) INCREASE THE DAMAGES UP TO THREE TIMES THE DAMAGES ALLOWED BY
25 PARAGRAPH (A) OF THIS SUBDIVISION WHERE THE DEFENDANT HAS BEEN FOUND TO

 1 HAVE ENGAGED IN A PATTERN AND PRACTICE OF VIOLATING THE PROVISIONS OF
 2 SUBDIVISION TWO OF THIS SECTION; AND
 3   (2) AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO A PREVAILING PARTY.
 4   (C) FOR THE PURPOSES OF THIS SECTION, A VIOLATION SHALL BE DEEMED TO
 5 HAVE OCCURRED EACH TIME A PRODUCT OR SERVICE IS SOLD OR OFFERED FOR SALE
 6 IN THIS STATE.
 7   4. NOTHING CONTAINED IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS
 8 OR REMEDIES WHICH ARE OTHERWISE AVAILABLE UNDER LAW TO THE ATTORNEY
 9 GENERAL OR ANY OTHER PERSON AUTHORIZED TO BRING AN ACTION UNDER SUBDIVI-
10 SION THREE OF THIS SECTION, NOR SHALL IT LIMIT THE ENFORCEMENT OF ANY
11 APPLICABLE PROVISION OF THE PENAL LAW.
12   S 2. Severability. If any clause, sentence, paragraph, section or part
13 of this act shall be adjudged by any court of competent jurisdiction to
14 be invalid, the judgment shall not affect, impair, or invalidate the
15 remainder thereof, but shall be confined in its operation to the clause,
16 sentence, paragraph, section or part thereof directly involved in the
17 controversy in which the judgment shall have been rendered.
18   S 3. This act shall take effect on the ninetieth day after it shall
19 have become a law.