S T A T E O F N E W Y O R K

5089

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. ALESI -- 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 390-d to read as follows:

S 390-D. ILLEGAL USE OF STOLEN OR MISAPPROPRIATED COMPUTER SOFTWARE; PENALTIES. 1. FOR THE PURPOSES OF THIS SECTION, THE TERM "COMPUTER SOFTWARE" SHALL MEAN AN ORDERED SET OF DATA REPRESENTING CODED INSTRUCTIONS OR STATEMENTS THAT, WHEN EXECUTED BY COMPUTER, CAUSE THE COMPUTER TO PROCESS DATA OR DIRECT THE COMPUTER TO PERFORM ONE OR MORE COMPUTER OPERATIONS, OR BOTH.

2. IT IS UNLAWFUL FOR A PERSON TO DEVELOP OR MANUFACTURE A PRODUCT OR PRODUCTS, OR TO PROVIDE A SERVICE, WHILE USING COMPUTER SOFTWARE THAT SUCH PERSON KNEW, OR SHOULD HAVE KNOWN, WAS STOLEN OR MISAPPROPRIATED, INCLUDING, BUT NOT LIMITED TO COMPUTER SOFTWARE FOR WHICH LEGALLY VALID LICENSE AGREEMENTS DO NOT EXIST, WHERE ANY SUCH PRODUCTS OR SERVICES ARE SOLD OR OFFERED FOR SALE IN THIS STATE.

3. (A) THE ATTORNEY GENERAL, OR ANY PERSON WHO HAS SUFFERED DAMAGE BY REASON OF ANY VIOLATION OF SUBDIVISION TWO OF THIS SECTION, MAY BRING AN ACTION AGAINST A PERSON WHO VIOLATES THE PROVISIONS OF SUCH SUBDIVISION:

(1) TO ENJOIN FURTHER VIOLATION OF THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION; AND

(2) TO RECOVER THE GREATER OF:

(A) ACTUAL DAMAGES; OR

(B) ONE THOUSAND DOLLARS FOR EACH VIOLATION OF SUBDIVISION TWO OF THIS SECTION.

(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.

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

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

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

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

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

S 3. This act shall take effect on the ninetieth day after it shall have become a law.