

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To amend title 18, United States Code, to discourage spyware, and for other purposes.

**IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.**

**S. 2145**

To regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. ALLEN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. \_\_\_\_ . INTERNET SPYWARE PREVENTION ACT OF 2004.**

3 (a) **SHORT TITLE.**—This section may be cited as the  
4 “Internet Spyware Prevention Act of 2004”.

5 (b) **PENALTIES FOR CERTAIN UNAUTHORIZED AC-**  
6 **TIVITIES RELATING TO COMPUTERS.**—

7 (1) **IN GENERAL.**—Chapter 47 of title 18,  
8 United States Code, is amended by inserting after  
9 section 1030 the following:

1 **“§ 1030A Illicit indirect use of protected computers**

2       “(a) Whoever intentionally accesses a protected com-  
3 puter without authorization, or exceeds authorized access  
4 to a protected computer, by causing a computer program  
5 or code to be copied onto the protected computer, and in-  
6 tentionally uses that program or code in furtherance of  
7 another Federal criminal offense shall be fined under this  
8 title or imprisoned 5 years, or both.

9       “(b) Whoever intentionally accesses a protected com-  
10 puter without authorization, or exceeds authorized access  
11 to a protected computer, by causing a computer program  
12 or code to be copied onto the protected computer, and by  
13 means of that program or code intentionally impairs the  
14 security protection of the protected computer shall be  
15 fined under this title or imprisoned not more than 2 years,  
16 or both.

17       “(c) A person shall not violate this section who solely  
18 provides—

19               “(1) an Internet connection, telephone connec-  
20 tion, or other transmission or routing function  
21 through which software is delivered to a protected  
22 computer for installation;

23               “(2) the storage or hosting of software, or of an  
24 Internet website, through which software is made  
25 available for installation to a protected computer; or

1           “(3) an information location tool, such as a di-  
2           rectory, index, reference, pointer, or hypertext link,  
3           through which a user of a protected computer lo-  
4           cates software available for installation.

5           “(d) A provider of a network or online service that  
6           an authorized user of a protected computer uses or sub-  
7           scribes to shall not violate this section by any monitoring  
8           or, interaction with, or installation of software for the pur-  
9           pose of—

10           “(1) protecting the security of the network,  
11           service, or computer;

12           “(2) facilitating diagnostics, technical support,  
13           maintenance, network management, or repair; or

14           “(3) preventing or detecting unauthorized,  
15           fraudulent, or otherwise unlawful uses of the net-  
16           work or service.

17           “(e) No person may bring a civil action under the  
18           law of any State if such action is premised in whole or  
19           in part upon the defendant’s violating this section. For  
20           the purposes of this subsection, the term ‘State’ includes  
21           the District of Columbia, Puerto Rico, and any other terri-  
22           tory or possession of the United States.”.

23           (2) CONFORMING AMENDMENT.—The table of  
24           sections at the beginning of chapter 47 of title 18,  
25           United States Code, is amended by inserting after

- 1 the item relating to section 1030 the following new
- 2 item:

“1030A. Illicit indirect use of protected computers.”.