S-0012.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5108**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Ericksen and Holy

AN ACT Relating to organizations and agencies that produce secret surveillance scores based on individuals' internet activity; amending RCW 42.56.594; adding a new section to chapter 42.56 RCW; adding a new chapter to Title 19 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Individual" means a natural person who is physically present in the state of Washington.

(2) "Organization" means a legally recognizable commercial or noncommercial entity.

(3) "Secret surveillance score" means a number, grade, rank, or similar description, associated with an individual and which is: (a) Unknown or inaccessible to the individual; (b) developed by compiling data created by the individual's internet activity; and (c) intended to be used to predict the individual's behavior, choices, or preferences.

(4) "Year" means a period of twelve consecutive months.

NEW SECTION. **Sec.**  Any organization that uses an individual's internet activity to collect or receive information about the individual for the purpose of creating a secret surveillance score shall, at least annually, invite the individual to affirmatively consent to the collection of information for the purpose of creating a secret surveillance score. An organization may not collect or receive information under this section relating to any individual who does not affirmatively consent to the collection of information for the year in which the information is collected.

NEW SECTION. **Sec.**  The attorney general may impose a civil penalty not exceeding one thousand dollars against an organization if the attorney general determines that the organization collected or received information in violation of section 2 of this act. An organization that is penalized under this section may challenge the imposition of the penalty by filing a petition in superior court within sixty days of receiving the notice of imposition of the penalty. For the purposes of this section, venue is determined by the county of residence of any individual whose information was allegedly collected or received in violation of section 2 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

(1) Any agency that uses an individual's internet activity to collect or receive information about the individual for the purpose of creating a secret surveillance score shall, at least annually, invite the individual to affirmatively consent to the collection of information for the purpose of creating a secret surveillance score. An agency may not collect or receive information under this section relating to any individual who does not affirmatively consent to the collection of information for the year in which the information is collected.

(2) For the purposes of this section:

(a) "Individual" means a natural person who is physically present in the state of Washington.

(b) "Secret surveillance score" means a number, grade, rank, or similar description, associated with an individual and which is: (i) Unknown or inaccessible to the individual; (ii) developed by compiling data created by the individual's internet activity; and (iii) intended to be used to predict the individual's behavior, choices, or preferences.

(c) "Year" means a period of twelve consecutive months.

**Sec.**  RCW 42.56.594 and 2019 c 241 s 7 are each amended to read as follows:

(1) Any waiver of the provisions of RCW 42.56.590 ((~~or~~)), 42.56.592, or section 4 of this act is contrary to public policy, and is void and unenforceable.

(2)(a) Any consumer or individual injured by a violation of RCW 42.56.590 or section 4 of this act may institute a civil action to recover damages.

(b) Any agency that violates, proposes to violate, or has violated RCW 42.56.590 or section 4 of this act may be enjoined.

(c) The rights and remedies available under RCW 42.56.590 and section 4 of this act are cumulative to each other and to any other rights and remedies available under law.

NEW SECTION. **Sec.**  Sections 1 through 3 of this act constitute a new chapter in Title 19 RCW.

**--- END ---**