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**ENGROSSED SUBSTITUTE HOUSE BILL 1012**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Technology, Energy & Communications  
(originally sponsored by Representatives Morris, Hudgins, Simpson,  
Nixon, Anderson, Morrell, Linville, B. Sullivan and Ormsby)

READ FIRST TIME 02/21/05.

1 AN ACT Relating to computer spyware; adding a new chapter to Title  
2 19 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Advertisement" means a communication, the primary purpose of  
7 which is the commercial promotion of a commercial product or service,  
8 including a communication on an internet web site that is operated for  
9 a commercial purpose.

10 (2) "Computer software" means a sequence of instructions written in  
11 any programming language that is executed on a computer. "Computer  
12 software" does not include computer software that is a web page, or are  
13 data components of web pages that are not executable independently of  
14 the web page.

15 (3) "Damage" means any significant impairment to the integrity or  
16 availability of data, computer software, a system, or information.

17 (4) "Execute" means the performance of the functions or the  
18 carrying out of the instructions of the computer software.

19 (5) "Intentionally deceptive" means any of the following:

1 (a) An intentionally and materially false or fraudulent statement;  
2 (b) A statement or description that intentionally omits or  
3 misrepresents material information in order to deceive an owner or  
4 operator; and

5 (c) An intentional and material failure to provide any notice to an  
6 owner or operator regarding the installation or execution of computer  
7 software in order to deceive the owner or operator.

8 (6) "Internet" means the global information system that is  
9 logically linked together by a globally unique address space based on  
10 the internet protocol (IP), or its subsequent extensions, and that is  
11 able to support communications using the transmission control  
12 protocol/internet protocol (TCP/IP) suite, or its subsequent  
13 extensions, or other IP-compatible protocols, and that provides, uses,  
14 or makes accessible, either publicly or privately, high level services  
15 layered on the communications and related infrastructure described in  
16 this subsection.

17 (7) "Owner or operator" means the owner or lessee of a computer, or  
18 someone using such computer with the owner's or lessee's authorization.  
19 "Owner or operator" does not include any person who owns a computer  
20 before the first retail sale of such computer.

21 (8) "Person" means any individual, partnership, corporation,  
22 limited liability company, or other organization, or any combination  
23 thereof.

24 (9) "Personally identifiable information" means any of the  
25 following with respect to an individual who is an owner or operator:

- 26 (a) First name or first initial in combination with last name;
- 27 (b) A home or other physical address including street name;
- 28 (c) An electronic mail address;
- 29 (d) A credit or debit card number, bank account number, or a  
30 password or access code associated with a credit or debit card or bank  
31 account;
- 32 (e) Social security number, tax identification number, driver's  
33 license number, passport number, or any other government-issued  
34 identification number; and

35 (f) Any of the following information in a form that personally  
36 identifies an owner or operator:

- 37 (i) Account balances;
- 38 (ii) Overdraft history; and

1 (iii) Payment history.

2 (10) "Transmit" means to transfer, send, or make available computer  
3 software, or any component thereof, via the internet or any other  
4 medium, including local area networks of computers, other nonwire  
5 transmission, and disc or other data storage device. "Transmit" does  
6 not include any action by a person providing:

7 (a) The internet connection, telephone connection, or other means  
8 of transmission capability such as a compact disk or digital video disk  
9 through which the software was made available;

10 (b) The storage or hosting of the software program or a web page  
11 through which the software was made available; or

12 (c) An information location tool, such as a directory, index  
13 reference, pointer, or hypertext link, through which the user of the  
14 computer located the software, unless such person receives a direct  
15 economic benefit from the execution of such software on the computer.

16 NEW SECTION. **Sec. 2.** It is unlawful for a person who is not an  
17 owner or operator to transmit computer software to the owner or  
18 operator's computer with actual knowledge or with conscious avoidance  
19 of actual knowledge and to use such software to do any of the  
20 following:

21 (1) Modify, through intentionally deceptive means, settings that  
22 control any of the following:

23 (a) The page that appears when an owner or operator launches an  
24 internet browser or similar computer software used to access and  
25 navigate the internet;

26 (b) The default provider or web proxy the owner or operator uses to  
27 access or search the internet; and

28 (c) The owner or operator's list of bookmarks used to access web  
29 pages;

30 (2) Collect, through intentionally deceptive means, personally  
31 identifiable information:

32 (a) Through the use of a keystroke-logging function that records  
33 all keystrokes made by an owner or operator and transfers that  
34 information from the computer to another person;

35 (b) In a manner that correlates such information with data  
36 respecting all or substantially all of the web sites visited by an

1 owner or operator, other than web sites operated by the person  
2 collecting such information; and

3 (c) Described in section 1(9) (d), (e), or (f)(i) or (ii) of this  
4 act by extracting the information from the owner or operator's hard  
5 drive;

6 (3) Prevent, through intentionally deceptive means, an owner or  
7 operator's reasonable efforts to block the installation or execution  
8 of, or to disable, computer software by causing the software that the  
9 owner or operator has properly removed or disabled automatically to  
10 reinstall or reactivate on the computer;

11 (4) Intentionally misrepresent that computer software will be  
12 uninstalled or disabled by an owner or operator's action; and

13 (5) Through intentionally deceptive means, remove, disable, or  
14 render inoperative security, antispyware, or antivirus computer  
15 software installed on the computer.

16 NEW SECTION. **Sec. 3.** It is unlawful for a person who is not an  
17 owner or operator to transmit computer software to the owner or  
18 operator's computer with actual knowledge or with conscious avoidance  
19 of actual knowledge and to use the software to do any of the following:

20 (1) Take control of the computer by:

21 (a) Accessing or using the modem or internet service for such  
22 computer to cause damage to the computer or cause an owner or operator  
23 to incur financial charges for a service that is not authorized by the  
24 owner or operator;

25 (b) Opening multiple, sequential, stand-alone advertisements in the  
26 owner or operator's internet browser without the authorization of an  
27 owner or operator and that a reasonable computer user cannot close  
28 without turning off the computer or closing the internet browser;

29 (2) Modify any of the following settings related to the computer's  
30 access to, or use of, the internet:

31 (a) Settings that protect information about the owner or operator  
32 in order to steal the owner or operator's personally identifiable  
33 information; and

34 (b) Security settings in order to cause damage to a computer; and

35 (3) Prevent an owner or operator's reasonable efforts to block the  
36 installation of, or to disable, computer software by doing any of the  
37 following:

1 (a) Presenting the owner or operator with an option to decline  
2 installation of computer software with knowledge that, when the option  
3 is selected, the installation nevertheless proceeds; and

4 (b) Falsely representing that computer software has been disabled.

5 NEW SECTION. **Sec. 4.** It is unlawful for a person who is not an  
6 owner or operator to do any of the following with regard to the owner  
7 or operator's computer:

8 (1) Induce an owner or operator to install a computer software  
9 component onto the computer by intentionally misrepresenting the extent  
10 to which installing the software is necessary for security or privacy  
11 reasons or in order to open, view, or play a particular type of  
12 content; and

13 (2) Deceptively cause the execution on the computer of a computer  
14 software component with the intent of causing the owner or operator to  
15 use the component in a manner that violates any other provision of this  
16 section.

17 NEW SECTION. **Sec. 5.** Section 3 or 4 of this act does not apply to  
18 any monitoring of, or interaction with, a subscriber's internet or  
19 other network connection or service, or a computer, by a  
20 telecommunications carrier, cable operator, computer hardware or  
21 software provider, or provider of information service or interactive  
22 computer service for network or computer security purposes,  
23 diagnostics, technical support, maintenance, repair, authorized updates  
24 of software or system firmware, authorized remote system management, or  
25 detection or prevention of the unauthorized use of or fraudulent or  
26 other illegal activities in connection with a network, service, or  
27 computer software, including scanning for and removing software under  
28 this chapter.

29 NEW SECTION. **Sec. 6.** (1) In addition to any other remedies  
30 provided by this chapter or any other provision of law, the attorney  
31 general, or a provider of computer software or owner of a web site or  
32 trademark who is adversely affected by reason of a violation of this  
33 chapter, may bring an action against a person who violates this chapter  
34 to enjoin further violations and to recover either actual damages or  
35 one hundred thousand dollars per violation, whichever is greater.

1 (2) In an action under subsection (1) of this section, a court may  
2 increase the damages up to three times the damages allowed under  
3 subsection (1) of this section if the defendant has engaged in a  
4 pattern and practice of violating this chapter. The court may also  
5 award costs and reasonable attorneys' fees to the prevailing party.

6 (3) The amount of damages determined under subsection (1) or (2) of  
7 this section may not exceed two million dollars.

8 NEW SECTION. **Sec. 7.** It is the intent of the legislature that  
9 this chapter is a matter of statewide concern. This chapter supersedes  
10 and preempts all rules, regulations, codes, ordinances, and other laws  
11 adopted by a city, county, city and county, municipality, or local  
12 agency regarding spyware and notices to consumers from computer  
13 software providers regarding information collection.

14 NEW SECTION. **Sec. 8.** This act does not add to, contract, alter,  
15 or amend any cause of action allowed under chapter 19.86 RCW and does  
16 not affect in any way the application of chapter 19.86 RCW to any  
17 future case or fact pattern.

18 NEW SECTION. **Sec. 9.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act constitute  
23 a new chapter in Title 19 RCW.

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