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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1888

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State of Washington

59th Legislature

2005 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Nixon, Morris, Hunter, B. Sullivan, Simpson, Ormsby, Morrell, Haler, Clibborn, Ericks, Williams, Darneille, Dunn, Dickerson, P. Sullivan, Green and Hudgins)

READ FIRST TIME 03/04/05.

1 AN ACT Relating to electronic mail fraud; amending RCW 19.190.010;  
2 adding new sections to chapter 19.190 RCW; creating a new section; and  
3 prescribing penalties.

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

5 **Sec. 1.** RCW 19.190.010 and 2003 c 137 s 2 are each amended to read  
6 as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

9 (1) "Assist the transmission" means actions taken by a person to  
10 provide substantial assistance or support which enables any person to  
11 formulate, compose, send, originate, initiate, or transmit a commercial  
12 electronic mail message or a commercial electronic text message when  
13 the person providing the assistance knows or consciously avoids knowing  
14 that the initiator of the commercial electronic mail message or the  
15 commercial electronic text message is engaged, or intends to engage, in  
16 any practice that violates the consumer protection act. "Assist the  
17 transmission" does not include any of the following: (a) Activities of  
18 an electronic mail service provider or other entity who provides  
19 intermediary transmission service in sending or receiving electronic

1 mail, or provides to users of electronic mail services the ability to  
2 send, receive, or compose electronic mail; or (b) activities of any  
3 entity related to the design, manufacture, or distribution of any  
4 technology, product, or component that has a commercially significant  
5 use other than to violate or circumvent this section.

6 (2) "Commercial electronic mail message" means an electronic mail  
7 message sent for the purpose of promoting real property, goods, or  
8 services for sale or lease. It does not mean an electronic mail  
9 message to which an interactive computer service provider has attached  
10 an advertisement in exchange for free use of an electronic mail  
11 account, when the sender has agreed to such an arrangement.

12 (3) "Commercial electronic text message" means an electronic text  
13 message sent to promote real property, goods, or services for sale or  
14 lease.

15 (4) "Electronic mail address" means a destination, commonly  
16 expressed as a string of characters, to which electronic mail may be  
17 sent or delivered.

18 (5) "Electronic mail message" means an electronic message sent to  
19 an electronic mail address and a reference to an internet domain,  
20 whether or not displayed, to which an electronic mail message can be  
21 sent or delivered.

22 (6) "Electronic text message" means a text message sent to a  
23 cellular telephone or pager equipped with short message service or any  
24 similar capability, whether the message is initiated as a short message  
25 service message or as an electronic mail message.

26 ((+6+)) (7) "Initiate the transmission" refers to the action by the  
27 original sender of an electronic mail message or an electronic text  
28 message, not to the action by any intervening interactive computer  
29 service or wireless network that may handle or retransmit the message,  
30 unless such intervening interactive computer service assists in the  
31 transmission of an electronic mail message when it knows, or  
32 consciously avoids knowing, that the person initiating the transmission  
33 is engaged, or intends to engage, in any act or practice that violates  
34 the consumer protection act.

35 ((+7+)) (8) "Interactive computer service" means any information  
36 service, system, or access software provider that provides or enables  
37 computer access by multiple users to a computer server, including

1 specifically a service or system that provides access to the internet  
2 and such systems operated or services offered by libraries or  
3 educational institutions.

4 ~~((+8))~~ (9) "Internet" means collectively the myriad of computer  
5 and telecommunications facilities, including equipment and operating  
6 software, that comprise the interconnected world wide network of  
7 networks that employ the transmission control protocol/internet  
8 protocol, or any predecessor or successor protocols to such protocol,  
9 to communicate information of all kinds by wire or radio.

10 (10) "Internet domain name" refers to a globally unique,  
11 hierarchical reference to an internet host or service, assigned through  
12 centralized internet naming authorities, comprising a series of  
13 character strings separated by periods, with the right-most string  
14 specifying the top of the hierarchy.

15 ~~((+9))~~ (11) "Person" means a person, corporation, partnership, or  
16 association.

17 (12) "Personally identifying information" means an individual's:  
18 (a) Social security number; (b) driver's license number; (c) bank  
19 account number; (d) credit or debit card number; (e) personal  
20 identification number; (f) automated or electronic signature; (g)  
21 unique biometric data; (h) account passwords; or (i) any other piece of  
22 information that can be used to access an individual's financial  
23 accounts or to obtain goods or services.

24 (13) "Web page" means a location, with respect to the world wide  
25 web, that has a single uniform resource locator or other single  
26 location with respect to the internet.

27 NEW SECTION. Sec. 2. A new section is added to chapter 19.190 RCW  
28 to read as follows:

29 No person may solicit, request, or take any action to induce  
30 another person to provide personally identifying information by means  
31 of a web page, electronic mail message, or otherwise using the internet  
32 by representing oneself, either directly or by implication, to be a  
33 business or individual, without the authority or approval of such  
34 business or individual.

35 NEW SECTION. Sec. 3. A new section is added to chapter 19.190 RCW  
36 to read as follows:

1 (1) A person who is injured under this chapter may bring a civil  
2 action in the superior court to enjoin further violations, and to seek  
3 up to five hundred dollars per violation, or actual damages, whichever  
4 is greater. A person who seeks damages under this subsection may only  
5 bring an action against a person or entity that directly violates  
6 section 2 of this act.

7 (2) A person engaged in the business of providing internet access  
8 service to the public, an owner of a web page, or trademark owner who  
9 is adversely affected by reason of a violation of section 2 of this  
10 act, may bring an action against a person who violates section 2 of  
11 this act to:

12 (a) Enjoin further violations of section 2 of this act; and

13 (b) Recover the greater of actual damages or five thousand dollars  
14 per violation of section 2 of this act.

15 (3) In an action under subsection (2) of this section, a court may  
16 increase the damages up to three times the damages allowed by  
17 subsection (2) of this section if the defendant has engaged in a  
18 pattern and practice of violating this section. The court may award  
19 costs and reasonable attorneys' fees to a prevailing party.

20 NEW SECTION. **Sec. 4.** This act does not expand, contract, alter,  
21 or amend any cause of action allowed under chapter 19.86 RCW and does  
22 not affect in any way the application of chapter 19.86 RCW to any  
23 future case or fact pattern.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.190 RCW  
25 to read as follows:

26 It is the intent of the legislature that this chapter is a matter  
27 of statewide concern. This chapter supersedes and preempts all rules,  
28 regulations, codes, ordinances, and other laws adopted by a city,  
29 county, city and county, municipality, or local agency regarding the  
30 practices covered by this chapter and notices to consumers from  
31 computer software providers regarding information collection.

32 NEW SECTION. **Sec. 6.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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