

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1888

Chapter 378, Laws of 2005

59th Legislature
2005 Regular Session

PHISHING

EFFECTIVE DATE: 7/24/05

Passed by the House April 18, 2005
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 7, 2005
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved May 10, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1888** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 10, 2005 - 9:58 a.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1888

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

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; and prescribing penalties.

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

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

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

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

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

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

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

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

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

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

25 ~~((6))~~ (7) "Initiate the transmission" refers to the action by the
26 original sender of an electronic mail message or an electronic text
27 message, not to the action by any intervening interactive computer
28 service or wireless network that may handle or retransmit the message,
29 unless such intervening interactive computer service assists in the
30 transmission of an electronic mail message when it knows, or
31 consciously avoids knowing, that the person initiating the transmission
32 is engaged, or intends to engage, in any act or practice that violates
33 the consumer protection act.

34 ~~((7))~~ (8) "Interactive computer service" means any information
35 service, system, or access software provider that provides or enables
36 computer access by multiple users to a computer server, including
37 specifically a service or system that provides access to the internet

1 and such systems operated or services offered by libraries or
2 educational institutions.

3 ~~((+8))~~ (9) "Internet" means collectively the myriad of computer
4 and telecommunications facilities, including equipment and operating
5 software, that comprise the interconnected world wide network of
6 networks that employ the transmission control protocol/internet
7 protocol, or any predecessor or successor protocols to such protocol,
8 to communicate information of all kinds by wire or radio.

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

14 ~~((+9))~~ (11) "Person" means ((a person, corporation, partnership,
15 or association)) an individual, corporation, business trust, estate,
16 trust, partnership, limited liability company, association, joint
17 venture, government, governmental subdivision, agency or
18 instrumentality, public corporation, or any other legal or commercial
19 entity.

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

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

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

32 It is a violation of this chapter to solicit, request, or take any
33 action to induce a person to provide personally identifying information
34 by means of a web page, electronic mail message, or otherwise using the
35 internet by representing oneself, either directly or by implication, to
36 be another person, without the authority or approval of such other
37 person.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.190 RCW
2 to read as follows:

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

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

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

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

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

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.190 RCW
23 to read as follows:

24 The legislature finds that the practices covered by this chapter
25 are matters vitally affecting the public interest for the purpose of
26 applying the consumer protection act, chapter 19.86 RCW. A violation
27 of this chapter is not reasonable in relation to the development and
28 preservation of business, and is an unfair or deceptive act in trade or
29 commerce and an unfair method of competition for the purpose of
30 applying the consumer protection act, chapter 19.86 RCW.

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

33 It is the intent of the legislature that this chapter is a matter
34 of statewide concern. This chapter supersedes and preempts all rules,
35 regulations, codes, ordinances, and other laws adopted by a city,

1 county, city and county, municipality, or local agency regarding the
2 practices covered by this chapter and notices to consumers from
3 computer software providers regarding information collection.

4 NEW SECTION. **Sec. 6.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

Passed by the House April 18, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor May 10, 2005.

Filed in Office of Secretary of State May 10, 2005.