

SHB 1012 - H AMD 117

By Representative Morris

ADOPTED 03/09/2005

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

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

19 (a) An intentionally and materially false or fraudulent statement;

20 (b) A statement or description that intentionally omits or
21 misrepresents material information in order to deceive an owner or
22 operator; and

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

26 (6) "Internet" means the global information system that is
27 logically linked together by a globally unique address space based on
28 the internet protocol (IP), or its subsequent extensions, and that is
29 able to support communications using the transmission control
30 protocol/internet protocol (TCP/IP) suite, or its subsequent

1 extensions, or other IP-compatible protocols, and that provides, uses,
2 or makes accessible, either publicly or privately, high level services
3 layered on the communications and related infrastructure described in
4 this subsection.

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

9 (8) "Person" means any individual, partnership, corporation,
10 limited liability company, or other organization, or any combination
11 thereof.

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

- 14 (a) First name or first initial in combination with last name;
- 15 (b) A home or other physical address including street name;
- 16 (c) An electronic mail address;
- 17 (d) A credit or debit card number, bank account number, or a
18 password or access code associated with a credit or debit card or bank
19 account;

20 (e) Social security number, tax identification number, driver's
21 license number, passport number, or any other government-issued
22 identification number; and

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

- 25 (i) Account balances;
- 26 (ii) Overdraft history; and
- 27 (iii) Payment history.

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

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

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

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

5 NEW SECTION. **Sec. 2.** It is unlawful for a person who is not an
6 owner or operator to transmit computer software to the owner or
7 operator's computer with actual knowledge or with conscious avoidance
8 of actual knowledge and to use such software to do any of the
9 following:

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

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

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

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

19 (2) Collect, through intentionally deceptive means, personally
20 identifiable information:

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

24 (b) In a manner that correlates such information with data
25 respecting all or substantially all of the web sites visited by an
26 owner or operator, other than web sites operated by the person
27 collecting such information; and

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

31 (3) Prevent, through intentionally deceptive means, an owner or
32 operator's reasonable efforts to block the installation or execution
33 of, or to disable, computer software by causing the software that the
34 owner or operator has properly removed or disabled automatically to
35 reinstall or reactivate on the computer;

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

1 (5) Through intentionally deceptive means, remove, disable, or
2 render inoperative security, antispyware, or antivirus computer
3 software installed on the computer.

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

8 (1) Take control of the computer by:

9 (a) Accessing or using the modem or internet service for such
10 computer to cause damage to the computer or cause an owner or operator
11 to incur financial charges for a service that is not authorized by the
12 owner or operator;

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

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

19 (a) Settings that protect information about the owner or operator
20 in order to steal the owner or operator's personally identifiable
21 information; and

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

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

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

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

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

33 (1) Induce an owner or operator to install a computer software
34 component onto the computer by intentionally misrepresenting the extent
35 to which installing the software is necessary for security or privacy

1 reasons or in order to open, view, or play a particular type of
2 content; and

3 (2) Deceptively cause the execution on the computer of a computer
4 software component with the intent of causing the owner or operator to
5 use the component in a manner that violates any other provision of this
6 section.

7 NEW SECTION. **Sec. 5.** Section 3 or 4 of this act does not apply to
8 any monitoring of, or interaction with, a subscriber's internet or
9 other network connection or service, or a computer, by a
10 telecommunications carrier, cable operator, computer hardware or
11 software provider, or provider of information service or interactive
12 computer service for network or computer security purposes,
13 diagnostics, technical support, maintenance, repair, authorized updates
14 of software or system firmware, authorized remote system management, or
15 detection or prevention of the unauthorized use of or fraudulent or
16 other illegal activities in connection with a network, service, or
17 computer software, including scanning for and removing software under
18 this chapter.

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

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

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

33 NEW SECTION. **Sec. 7.** It is the intent of the legislature that
34 this chapter is a matter of statewide concern. This chapter supersedes
35 and preempts all rules, regulations, codes, ordinances, and other laws

1 adopted by a city, county, city and county, municipality, or local
2 agency regarding spyware and notices to consumers from computer
3 software providers regarding information collection.

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

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

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

14 Correct the title.

EFFECT: Makes technical changes to the definition of
advertisement. Deletes the definition of "computer virus," which is
not referenced in the bill. Changes the enforcement provision to allow
the Attorney General or owner of a web site or trademark to bring a
civil action and seek damages of \$100,000 per violation, up to a
maximum of \$2,000,000.

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