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**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; and adding a new chapter to  
2 Title 19 RCW.

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 purpose of which is  
7 the promotion of a commercial product or service, including a  
8 communication on an internet web site that is operated for a commercial  
9 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) "Computer virus" means a computer program or other set of  
16 instructions that is designed to degrade the performance of or disable  
17 a computer or computer network and is designed to have the ability to  
18 replicate itself on other computers or computer networks without the  
19 authorization of the owners of those computers or computer networks.

1 (4) "Damage" means any significant impairment to the integrity or  
2 availability of data, computer software, a system, or information.

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

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

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

7 (b) A statement or description that intentionally omits or  
8 misrepresents material information in order to deceive an owner or  
9 operator; and

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

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

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

26 (9) "Person" means any individual, partnership, corporation,  
27 limited liability company, or other organization, or any combination  
28 thereof.

29 (10) "Personally identifiable information" means any of the  
30 following with respect to an individual who is an owner or operator:

31 (a) First name or first initial in combination with last name;

32 (b) A home or other physical address including street name;

33 (c) An electronic mail address;

34 (d) A credit or debit card number, bank account number, or a  
35 password or access code associated with a credit or debit card or bank  
36 account;

37 (e) Social security number, tax identification number, driver's

1 license number, passport number, or any other government-issued  
2 identification number; and

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

- 5 (i) Account balances;
- 6 (ii) Overdraft history; and
- 7 (iii) Payment history.

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

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

16 (b) The storage or hosting of the software program or a web page  
17 through which the software was made available.

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

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

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

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

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

32 (2) Collect, through intentionally deceptive means, personally  
33 identifiable information:

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

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

5 (c) Described in section 1(10) (d), (e), or (f)(i) or (ii) of this  
6 act by extracting the information from the owner or operator's hard  
7 drive;

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

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

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

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

22 (1) Take control of the computer by:

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

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

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

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

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 6.** (1) A person who is injured under this  
33 chapter may bring a civil action in the superior court to enjoin  
34 further violations, or to seek up to one thousand dollars per  
35 violation, or actual damages, whichever is greater. The injured

1 individuals may not bring their cause of action as a class action.  
2 Nothing in this section prohibits the attorney general from bringing a  
3 class action suit under chapter 19.86 RCW.

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

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

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

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

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

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