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Committee on Technology, Energy & Communications.

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 primary purpose of
7 which is the commercial promotion of a commercial product or service,
8 including content on an internet web site operated for a commercial
9 purpose.

10 (2) "Authorized user," with respect to a computer, means a person
11 who owns or is authorized by the owner or lessee to use the computer.
12 An "authorized user" does not include a person or entity that has
13 obtained authorization to use the computer solely through the use of an
14 end user license agreement.

15 (3) "Computer software" means a sequence of instructions written in
16 any programming language that is executed on a computer.

17 (4) "Computer virus" means a computer program or other set of
18 instructions that is designed to degrade the performance of or disable

1 a computer or computer network and is designed to have the ability to
2 replicate itself on other computers or computer networks without the
3 authorization of the owners of those computers or computer networks.

4 (5) "Consumer" means an individual who resides in this state and
5 who uses the computer in question primarily for personal, family, or
6 household purposes.

7 (6) "Damage" means any significant impairment to the integrity or
8 availability of data, software, a system, or information.

9 (7) "Execute," when used with respect to computer software, means
10 the performance of the functions or the carrying out of the
11 instructions of the computer software.

12 (8) "Intentionally deceptive" means any of the following:

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

14 (b) A statement or description that intentionally omits or
15 misrepresents material information in order to deceive the consumer;
16 and

17 (c) An intentional and material failure to provide any notice to an
18 authorized user regarding the download or installation of software in
19 order to deceive the consumer.

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

29 (10) "Person" means any individual, partnership, corporation,
30 limited liability company, or other organization, or any combination
31 thereof.

32 (11) "Personally identifiable information" means any of the
33 following:

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

35 (b) Credit or debit card numbers or other financial account
36 numbers;

37 (c) A password or personal identification number required to access
38 an identified financial account;

- 1 (d) Social security number; and
2 (e) Any of the following information in a form that personally
3 identifies an authorized user:
4 (i) Account balances;
5 (ii) Overdraft history;
6 (iii) Payment history;
7 (iv) A history of web sites visited;
8 (v) Home address;
9 (vi) Work address; and
10 (vii) A record of a purchase or purchases.

11 NEW SECTION. **Sec. 2.** A person or entity that is not an authorized
12 user shall not, with actual knowledge, with conscious avoidance of
13 actual knowledge, or willfully, cause computer software to be copied
14 onto the computer of a consumer in this state and use the software to
15 do any of the following:

16 (1) Modify, through intentionally deceptive means, any of the
17 following settings related to the computer's access to, or use of, the
18 internet:

19 (a) The page that appears when an authorized user launches an
20 internet browser or similar software program used to access and
21 navigate the internet;

22 (b) The default provider or web proxy the authorized user uses to
23 access or search the internet; and

24 (c) The authorized user's list of bookmarks used to access web
25 pages;

26 (2) Collect, through intentionally deceptive means, personally
27 identifiable information that meets any of the following criteria:

28 (a) It is collected through the use of a keystroke-logging function
29 that records all keystrokes made by an authorized user who uses the
30 computer and transfers that information from the computer to another
31 person;

32 (b) It includes all or substantially all of the web sites visited
33 by an authorized user, other than web sites of the provider of the
34 software, if the computer software was installed in a manner designed
35 to conceal from all authorized users of the computer the fact that the
36 software is being installed; and

1 (c) It is a data element described in section 1(11) (b), (c), (d),
2 or (e)(i) or (ii) of this act that is extracted from the consumer's
3 computer hard drive for a purpose wholly unrelated to any of the
4 purposes of the software or service described to an authorized user;

5 (3) Prevent, without the authorization of an authorized user,
6 through intentionally deceptive means, an authorized user's reasonable
7 efforts to block the installation of, or to disable, software by
8 causing software that the authorized user has properly removed or
9 disabled to automatically reinstall or reactivate on the computer
10 without the authorization of an authorized user;

11 (4) Intentionally misrepresent that software will be uninstalled or
12 disabled by an authorized user's action, with knowledge that the
13 software will not be uninstalled or disabled; and

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

17 NEW SECTION. **Sec. 3.** (1) A person or entity that is not an
18 authorized user shall not, with actual knowledge, with conscious
19 avoidance of actual knowledge, or willfully, cause computer software to
20 be copied onto the computer of a consumer in this state and use the
21 software to do any of the following:

22 (a) Take control of the consumer's computer by doing any of the
23 following:

24 (i) Transmitting or relaying commercial electronic mail or a
25 computer virus from the consumer's computer, where the transmission or
26 relaying is initiated by a person other than the authorized user and
27 without the authorization of an authorized user;

28 (ii) Accessing or using the consumer's modem or internet service to
29 cause damage to the consumer's computer or to cause an authorized user
30 to incur financial charges for a service that is not authorized by an
31 authorized user;

32 (iii) Using the consumer's computer as part of an activity
33 performed by a group of computers to cause damage to another computer,
34 including, but not limited to, launching a denial of service attack;
35 and

36 (iv) Opening multiple, sequential, stand-alone advertisements in
37 the consumer's internet browser without the authorization of an

1 authorized user and with knowledge that a reasonable computer user
2 cannot close the advertisements without turning off the computer or
3 closing the consumer's internet browser;

4 (b) Modify any of the following settings related to the computer's
5 access to, or use of, the internet:

6 (i) An authorized user's security or other settings that protect
7 information about the authorized user to steal personal information of
8 an authorized user; and

9 (ii) The security settings of the computer to cause damage to one
10 or more computers; and

11 (c) Prevent, without the authorization of an authorized user, an
12 authorized user's reasonable efforts to block the installation of, or
13 to disable, software by doing any of the following:

14 (i) Presenting the authorized user with an option to decline
15 installation of software with knowledge that, when the option is
16 selected by the authorized user, the installation nevertheless
17 proceeds; and

18 (ii) Falsely representing that software has been disabled.

19 (2) Nothing in this section applies to any monitoring of, or
20 interaction with, a subscriber's internet or other network connection
21 or service, or a protected computer, by a telecommunications carrier,
22 cable operator, computer hardware or software provider, or provider of
23 information service or interactive computer service for network or
24 computer security purposes, diagnostics, technical support, repair,
25 authorized updates of software or system firmware, authorized remote
26 system management, or detection or prevention of the unauthorized use
27 of or fraudulent or other illegal activities in connection with a
28 network, service, or computer software, including scanning for and
29 removing software under this chapter.

30 NEW SECTION. **Sec. 4.** (1) A person or entity, who is not an
31 authorized user, shall not do any of the following with regard to the
32 computer of a consumer in this state:

33 (a) Induce an authorized user to install a software component onto
34 the computer by intentionally misrepresenting that installing software
35 is necessary for security or privacy reasons or in order to open, view,
36 or play a particular type of content; and

1 (b) Deceptively cause the copying and execution on the computer of
2 a computer software component with the intent of causing an authorized
3 user to use the component in a way that violates any other provision of
4 this section.

5 (2) Nothing in this section shall apply to any monitoring of, or
6 interaction with, a subscriber's internet or other network connection
7 or service, or a protected computer, by a telecommunications carrier,
8 cable operator, computer hardware or software provider, or provider of
9 information service or interactive computer service for network or
10 computer security purposes, diagnostics, technical support, repair,
11 authorized updates of software or system firmware, authorized remote
12 system management, or detection or prevention of the unauthorized use
13 of or fraudulent or other illegal activities in connection with a
14 network, service, or computer software, including scanning for and
15 removing software under this chapter.

16 NEW SECTION. **Sec. 5.** It is the intent of the legislature that
17 this chapter is a matter of statewide concern. This chapter supersedes
18 and preempts all rules, regulations, codes, ordinances, and other laws
19 adopted by a city, county, city and county, municipality, or local
20 agency regarding spyware and notices to consumers from computer
21 software providers regarding information collection.

22 NEW SECTION. **Sec. 6.** The legislature finds that the practices
23 covered by this chapter are matters vitally affecting the public
24 interest for the purpose of applying the consumer protection act,
25 chapter 19.86 RCW. A violation of this chapter is not reasonable in
26 relation to the development and preservation of business and is an
27 unfair or deceptive act in trade or commerce and an unfair method of
28 competition for the purpose of applying the consumer protection act,
29 chapter 19.86 RCW.

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

1 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
2 a new chapter in Title 19 RCW.

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