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**SUBSTITUTE HOUSE BILL 1888**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Technology, Energy & Communications (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 02/21/05.

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.

16       (2) "Commercial electronic mail message" means an electronic mail  
17 message sent for the purpose of promoting real property, goods, or  
18 services for sale or lease. It does not mean an electronic mail

1 message to which an interactive computer service provider has attached  
2 an advertisement in exchange for free use of an electronic mail  
3 account, when the sender has agreed to such an arrangement.

4 (3) "Commercial electronic text message" means an electronic text  
5 message sent to promote real property, goods, or services for sale or  
6 lease.

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

10 (5) "Electronic mail message" means an electronic message sent to  
11 an electronic mail address and a reference to an internet domain,  
12 whether or not displayed, to which an electronic mail message can be  
13 sent or delivered.

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

18 ((+6)) (7) "Initiate the transmission" refers to the action by the  
19 original sender of an electronic mail message or an electronic text  
20 message, not to the action by any intervening interactive computer  
21 service or wireless network that may handle or retransmit the message,  
22 unless such intervening interactive computer service assists in the  
23 transmission of an electronic mail message when it knows, or  
24 consciously avoids knowing, that the person initiating the transmission  
25 is engaged, or intends to engage, in any act or practice that violates  
26 the consumer protection act.

27 ((+7)) (8) "Interactive computer service" means any information  
28 service, system, or access software provider that provides or enables  
29 computer access by multiple users to a computer server, including  
30 specifically a service or system that provides access to the internet  
31 and such systems operated or services offered by libraries or  
32 educational institutions.

33 ((+8)) (9) "Internet" means collectively the myriad of computer  
34 and telecommunications facilities, including equipment and operating  
35 software, that comprise the interconnected world wide network of  
36 networks that employ the transmission control protocol/internet  
37 protocol, or any predecessor or successor protocols to such protocol,  
38 to communicate information of all kinds by wire or radio.

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

6       ~~((9))~~ (11) "Person" means a person, corporation, partnership, or  
7 association.

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

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

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

20       No person may solicit, request, or take any action to induce  
21 another person to provide personally identifying information by means  
22 of a web page, electronic mail message, or otherwise using the internet  
23 by representing oneself, either directly or by implication, to be a  
24 business or individual, without the authority or approval of such  
25 business or individual.

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

28       (1) Damages to a consumer resulting from the practices prohibited  
29 by this chapter are up to five hundred dollars per violation, or actual  
30 damages, whichever is greater.

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

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

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

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

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

10 It is a violation of the consumer protection act, chapter 19.86  
11 RCW, to conspire with another person to engage in any act that violates  
12 the provisions of this chapter.

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

15 The legislature finds that the practices covered by this chapter  
16 are matters vitally affecting the public interest for the purpose of  
17 applying the consumer protection act, chapter 19.86 RCW. A violation  
18 of this chapter is not reasonable in relation to the development and  
19 preservation of business and is an unfair or deceptive act in trade or  
20 commerce and an unfair method of competition for the purpose of  
21 applying the consumer protection act, chapter 19.86 RCW.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.190 RCW  
23 to read as follows:

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

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

1 persons or circumstances is not affected.

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