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**Technology, Energy &  
Communications Committee**

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**HB 2879**

**Brief Description:** Modifying provisions regulating spyware.

**Sponsors:** Representatives Morris, Ericksen, Hasegawa, Morrell and Kelley; by request of Attorney General.

**Brief Summary of Bill**

- Adds computer-related spyware provisions to the existing state spyware law.
- Changes the burden of proof for certain spyware provisions.

**Hearing Date:** 1/22/08

**Staff:** Kara Durbin (786-7133).

**Background:**

Spyware: The term "spyware" generally describes any software that is placed on a user's computer to monitor, collect, and transmit personally identifiable information without the user's knowledge or consent. Spyware programs can be difficult to identify and remove, and can cause problems ranging from advertisements to computer viruses to identity theft. Frequently, spyware is hidden within a larger software package that the consumer purposely installs, but spyware can also be installed by visiting a web site.

Computer Spyware Law: In 2005, the Legislature enacted a state spyware law, Chapter 19.270 of the RCW. The law generally prohibits the unauthorized installation of computer spyware if installed through intentionally deceptive means. Several types of computer spyware activities are prohibited, including collecting web browsing histories, taking control of a user's computer to send e-mails or viruses, creating bogus financial charges, opening multiple pop-up advertisements, and modifying security settings.

The Attorney General, a provider of computer software, or an owner of a web site or

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trademark may bring a civil action to enjoin further violations and recover either actual damages, or \$100,000 per violation, whichever is greater. The maximum allowable damage award is \$2 million. In addition, a court may increase the damage award up to three times if the defendant has engaged in a pattern and practice of engaging in the prohibited activities. The court may also award costs and reasonable attorneys' fees to the prevailing party.

### **Summary of Bill:**

Additions to the Computer Spyware Law: Several computer-related actions, collectively known as "spyware," are added to the computer spyware law. The following spyware activities are prohibited:

- Disabling the ability of anti-spyware or anti-virus software to update automatically, if the disabling is done through intentionally deceptive means;
- Using the owner or operator's computer as part of an activity performed by a group of computers for the purpose of causing damage to another computer or person, including, but not limited to, launching a denial of service attack;
- Transmitting or relaying commercial e-mail or a computer virus from the owner or operator's computer if initiated by a person other than the owner or operator;
- Modifying toolbars or buttons of the owner or operator's internet browser used to access and navigate the internet, if the disabling is done through deceptive means; and
- Inducing an owner to install software by displaying a pop-up, web page, or other message whose source is misrepresented.

These prohibitions also apply to those persons who know or consciously avoid knowing that their services are being used to procure or transmit spyware.

Exceptions: These prohibitions do not apply to any monitoring of a subscriber's internet service by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service for network or computer security purposes.

Changes to the Computer Spyware Law: The following computer spyware provisions are modified to prohibit "deceptive" actions rather than "intentionally deceptive" actions:

- Modifying settings for opening web pages, search engines, bookmarks, and toolbars;
- Misrepresenting that software will be uninstalled or disabled by an owner or operator's actions; and
- Misrepresenting that software is necessary for security, maintenance, repair, or privacy reasons.

"Deceptive" is defined as: (1) a materially false or fraudulent statement; or (2) a statement or description that omits or misrepresents material information in order to deceive an owner or operator.

Some provisions of the existing computer spyware law relating to: (1) keystroke logging; and (2) preventing an owner from disabling or blocking the installation of software, are removed.

Standing to Sue: A provider of computer software or owner of a web site or trademark only may bring a civil action if the action arises directly out of the person's status as a provider or owner.

The computer spyware statute is reorganized.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.