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**SUBSTITUTE HOUSE BILL 1031**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morris, Hudgins, Moeller, Linville, B. Sullivan and Chase)

READ FIRST TIME 02/26/07.

1       AN ACT Relating to electronic communication devices; adding a new  
2 chapter to Title 19 RCW; creating a new section; and prescribing  
3 penalties.

4       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION.   **Sec. 1.** The legislature finds that Washington state,  
6 from its inception, has recognized the importance of maintaining  
7 individual privacy. The legislature further finds that protecting the  
8 confidentiality and privacy of an individual's personal information,  
9 especially when collected from the individual without his or her  
10 knowledge or consent, is critical to maintaining the safety and well-  
11 being of its citizens.

12       The legislature recognizes that inclusion of technologies like  
13 radio frequency identification or other electronic communication  
14 devices that broadcast data or enable data or information to be  
15 collected or scanned secretly and/or remotely will greatly magnify the  
16 potential risk to individual privacy, safety, and economic well-being  
17 that can occur from unauthorized interception and use of personal  
18 information. The legislature further recognizes that inclusion of  
19 electronic communication devices will also make it possible for a

1 person or entity with access to a reader or other scanning device to  
2 engage in the tracking of the citizens of Washington state without  
3 their knowledge or consent.

4 Therefore, it is the intent of the legislature to establish  
5 individual privacy rights in an era of innovation of new technologies.  
6 It is further the intent of the legislature to establish such rights so  
7 that manufacturers and sellers of new, innovative technologies have a  
8 predictable set of known, individual rights to be aware of before  
9 offering their technology for sale or use in the state of Washington.

10 It is the further intent of the legislature that all consumers have  
11 the following fundamental rights with respect to the sale or issuance  
12 of electronic communications devices:

13 (1) The right to receive notice prior to a person selling or  
14 issuing an electronic communication device;

15 (2) The right to expect that a person selling or issuing an  
16 electronic communication device will label the device in a clear and  
17 conspicuous manner;

18 (3) The right to expect that a person selling or issuing an  
19 electronic communication device will implement security measures to  
20 ensure that any personal information stored about their consumers is  
21 secure; and

22 (4) The right to seek private remedies if a person fails to comply  
23 with any of the principles outlined in subsections (1) through (3) of  
24 this section.

25 NEW SECTION. **Sec. 2.** The definitions in this section apply  
26 throughout this chapter unless the context clearly requires otherwise.

27 (1) "Clear and conspicuous" means that the notice is reasonably  
28 understandable and designed to call attention to the nature and  
29 significance of the information contained in the notice.

30 (2) "Consent acknowledgment" is an electronic or written record,  
31 form, statement, or writing used to obtain consent from a consumer in  
32 order for a person to collect, maintain, and disclose information  
33 gathered by an electronic communication device. This acknowledgment  
34 must, at a minimum, specify in a clear and conspicuous manner the  
35 person's privacy policy and the manner in which information pertaining  
36 to the consumer will be collected and disseminated.

1 (3) "Consumer" means an individual who purchases or is issued an  
2 electronic communication device for use in Washington.

3 (4) "Electronic communication device" means a device that passively  
4 or actively uses radio frequency identification technology in the 902-  
5 928 MHz frequency range or the 2.4 GHz frequency authorized by the  
6 federal communications commission, or any subsequent frequency range  
7 authorized by the federal communications commission for radio frequency  
8 identification technology as may be provided by the federal  
9 communications commission by rule, consistent with the purposes of this  
10 act.

11 (5) "Identify" means to establish the name, identification number,  
12 or other identifying characteristic of an individual, including  
13 information linking an individual to previous transactions or  
14 activities.

15 (6) "Manifest assent" is a deliberate act whereby a consumer  
16 volunteers to be identified with the use of information gathered by, or  
17 contained within, an electronic communication device. The permission  
18 granted by an act of manifest assent for purposes of this chapter shall  
19 not apply to more than one specific instance unless permission is  
20 secured in the form of a written contract. Manifest assent may refer  
21 to the act of a consumer who voluntarily submits his or her electronic  
22 communication device in order that it might be scanned or read for the  
23 purpose of completing a wholesale or retail transaction.

24 (7) "Person" means a government, government subdivision, agency or  
25 instrumentality, person, or a legal or commercial entity licensed to do  
26 business in the state.

27 (8) "Personal information" includes any of the following data  
28 elements to the extent they are used alone or in conjunction with any  
29 other information to identify a consumer: (a) First or last name; (b)  
30 social security number; (c) driver's license number or Washington state  
31 identification card number; (d) bank, credit card, or other financial  
32 institution account number; (e) credit or debit card number; (f)  
33 automated or electronic signature; (g) unique biometric data; (h) an  
34 unlisted telephone number; (i) medical information; (j) address; (k)  
35 date of birth; (l) ethnicity or nationality; (m) religion; (n)  
36 political affiliation; (o) sexual orientation; or (p) a private group  
37 affiliation not available in the public domain.

1 (9) "Radio frequency identification" means technologies that use  
2 radio waves to identify individual items.

3 (10) "Universally accepted symbol" means a graphical system  
4 designed to provide a standard way to show the presence of an RFID  
5 transponder, its frequency, and its data structure.

6 NEW SECTION. **Sec. 3.** Any person that sells or issues an  
7 electronic communication device to a consumer that is not disabled,  
8 deactivated, or removed at the point of sale or issuance must clearly  
9 and conspicuously label the electronic communication device. The label  
10 must contain a universally accepted symbol for radio frequency  
11 identification technology. The label shall be affixed to the  
12 electronic communication device or its packaging and must be clear and  
13 conspicuous.

14 NEW SECTION. **Sec. 4.** (1) Any person that sells or issues an  
15 electronic communication device to a consumer that is not disabled,  
16 deactivated, or removed at the point of sale or issuance shall:

17 (a) Post signs providing information to the consumer about the  
18 existence of a universally accepted symbol for identifying an  
19 electronic communication device; or

20 (b) Distribute information to the consumer that explains the  
21 meaning of the universally accepted symbol.

22 (2) The signs shall be posted in prominent areas near the point of  
23 sale or issuance. The signs and lettering shall be clearly visible to  
24 consumers. The sign shall display the following information:

25 (a) An explanation of the universally accepted symbol or emblem,  
26 which indicates that the person is selling or issuing an electronic  
27 communication device;

28 (b) An explanation of how an electronic communication device may  
29 send, gather, or transmit information about the consumer, which could  
30 be read by an unauthorized third party; and

31 (c) Instructions on whether it is technically feasible to  
32 deactivate or remove the electronic communication device, and if  
33 technically feasible, instructions on (i) the specific location of the  
34 electronic communication device and (ii) how the consumer may seek  
35 deactivation or removal of the electronic communication device.

1        NEW SECTION.    **Sec. 5.**    If an electronic communication device does  
2 transmit personal information about a consumer, a person must, prior to  
3 sale or issuance of the device, notify the consumer as specified in  
4 section 4 of this act and secure a consent acknowledgment or manifest  
5 assent from the consumer.

6        NEW SECTION.    **Sec. 6.**    (1) If the consumer consents to the use of  
7 the electronic communication device, either through a consent  
8 acknowledgment or manifest assent, but later requests removal or  
9 deactivation of the electronic communication device, the consumer may  
10 be held responsible for any costs associated with deactivation or  
11 removal.

12        (2) A consumer shall not be coerced into keeping an electronic  
13 communication device active in order for the consumer to be able to  
14 exchange, return, repair, or service an item.

15        (3) Once an electronic communication device has been deactivated,  
16 it shall not be reactivated without the manifest assent of the consumer  
17 identified with the electronic communication device.

18        NEW SECTION.    **Sec. 7.**    (1) Any person who sells or issues an  
19 electronic communication device that has not been disabled,  
20 deactivated, or removed at the point of sale or issuance must use  
21 industry accepted best standards to secure the electronic communication  
22 device.

23        (2) Any person who retains personal information gathered through an  
24 electronic communication device must implement adequate security  
25 measures. The security measures should be consistent with industry  
26 standards that are commensurate with the amount and sensitivity of the  
27 information being stored on the system.

28        NEW SECTION.    **Sec. 8.**    (1) It is a violation of this act for a  
29 person to remotely scan or read or attempt to scan or read an  
30 electronic communication device to identify a consumer without  
31 obtaining a consent acknowledgment or manifest assent from the  
32 consumer.

33        (2) This section shall not apply to the following:

34        (a) Scanning or reading an electronic communication device, or

1 using information gathered through an electronic communication device,  
2 in order to comply with federal law or regulations, or state law;

3 (b) Scanning or reading an electronic communication device, or  
4 using information gathered through an electronic communication device,  
5 in order to comply with properly authorized civil, criminal,  
6 administrative, or regulatory investigation or subpoena or summons by  
7 federal, state, or local authorities; or

8 (c) Scanning or reading an electronic communication device, or  
9 using information gathered through an electronic communication device,  
10 in order to respond to judicial process or government regulatory  
11 authorities having jurisdiction over the person for examination,  
12 compliance, or other purposes as authorized by law.

13 NEW SECTION. **Sec. 9.** (1) The attorney general may bring an action  
14 against a person who violates sections 3 through 8 of this act to  
15 enjoin further violations and to recover the greater of:

16 (a) Actual damages; or

17 (b) Ten thousand dollars for each separate violation of sections 3  
18 through 8 of this act.

19 (2) For purposes of subsection (1) of this section, multiple  
20 violations of sections 3 through 8 of this act resulting from any  
21 single action or conduct shall constitute one violation.

22 (3) In an action under subsection (1) of this section, a court may:

23 (a) Increase the damages up to three times the damages allowed by  
24 subsection (1) of this section where the defendant has engaged in a  
25 pattern and practice of violating sections 3 through 8 of this act; and

26 (b) Award costs and reasonable attorneys' fees to a prevailing  
27 party.

28 NEW SECTION. **Sec. 10.** Sections 3 through 8 of this act do not  
29 apply to the resale of an electronic communication device by a  
30 consumer.

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

1        NEW SECTION.   **Sec. 12.**   Sections 2   through 11   of   this   act  
2   constitute a new chapter in Title 19 RCW.

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