

HOUSE BILL REPORT

SB 5106

As Passed House - Amended:

April 13, 2015

Title: An act relating to creating a civil action for webcam unauthorized remote access.

Brief Description: Creating a civil action for webcam unauthorized remote access.

Sponsors: Senators O'Ban, Padden, Fain and Roach.

Brief History:

Committee Activity:

Judiciary: 3/17/15, 3/26/15 [DP].

Floor Activity:

Passed House - Amended: 4/13/15, 96-1.

**Brief Summary of Bill
(As Amended by House)**

- Creates civil liability against any person who gains unauthorized access to another person's webcam.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

Staff: Brent Campbell (786-7152).

Background:

Accessing a Computer System.

Some malicious computer programs may allow a person to gain access to another person's computer or files. One such program is a Trojan horse, or Trojan. A Trojan is a type of malware program that, when executed, may cause loss or theft of data, and possible system harm. The term is derived from the story of the wooden horse used to trick defenders of Troy

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into taking concealed warriors into their city because this type of program is often hidden inside routine or useful looking programs in order to persuade a victim to install it on their computer.

Civil and Criminal Protections for the Unauthorized Access of Computer Systems.

The Computer Fraud and Abuse Act (CFAA) makes it a federal crime for a person to intentionally access a computer without authorization or to exceed authorized access and thereby obtain information from any protected computer. The CFAA also provides civil remedies against individuals who violate the Act.

It is also a crime to intentionally gain access to a computer system or electronic database of another in Washington. It is Computer Trespass in the first degree, a class C felony, if the access is made with the intent to commit another crime or involves access to a governmental agency computer or database. Otherwise it is Computer Trespass in the second degree, a gross misdemeanor. An offender may be prosecuted separately for any other crime committed during the trespass. Using a webcam to record private communications without a person's knowledge may also lead to liability under Washington's Privacy Act. Furthermore, accessing and then publishing private information from a computer may give rise to civil liability under the tort of invasion of privacy. Invasion of privacy is codified in statute and is based on the common law tort of public disclosure of private facts. Under this statute, someone invades another's privacy when he or she gives publicity to a matter concerning the private life of another. A person who invades another's privacy is subject to liability to the other person if the matter publicized is of a kind that would be highly offensive to a reasonable person and is not of legitimate concern to the public.

Summary of Bill:

Any person who owns, rents, or leases a computer or computer network has a cause of action against another person who gains unauthorized access to a webcam connected to that computer. A person who gains unauthorized access to a webcam in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer in each jurisdiction.

"Without authority" and "unauthorized" are defined as meaning that a person does not have express prior permission, approval, or consent to access the webcam. "Without authority" and "unauthorized" access includes access to a webcam for purposes of a criminal investigation unless the access is pursuant to a search warrant, a valid waiver of the warrant requirement, exigent circumstance, or other authority of law.

This cause of action is in addition to any other possible causes of action that may exist. Relief may result in general damages, special damages, punitive damages, injunctive relief, or other equitable relief. A prevailing plaintiff may also be awarded attorneys' fees.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.