

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 281**

4 (By Senators Barnes, Klempa, Hall, Boley, Fanning, Jenkins,
5 Palumbo, Nohe, Unger, McCabe, Stollings, Plymale and Minard)

6 _____
7 [Originating in the Committee on Judiciary;
8 reported February 2, 2011.]
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12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §61-3C-14c, relating
14 to making it a crime to put certain types of invasive software
15 on mobile devices; providing penalties; and providing
16 exceptions.

17 *Be it enacted by the Legislature of West Virginia:*

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new section, designated §61-3C-14c, to read as
20 follows:

21 **ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

22 **§61-3C-14c. Invasive computer software on mobile devices;**
23 **exceptions; penalties.**

24 (a) It is unlawful for any person to cause software, spyware,
25 a virus, a trojan or similar programs to be installed in the mobile
26 phone, personal digital assistant or other mobile device of another
27 person without that person's knowledge and consent which program

1 allows or causes transmission of voice or nonvoice content,
2 conversation, text message, electronic mail or the location of the
3 nonconsenting person's computer, mobile phone or digital assistant
4 or other mobile device at any particular time. The provisions of
5 this subsection do not apply to:

6 (1) Global positioning system software installed in mobile
7 devices by the device's manufacturer;

8 (2) Installation, modification or maintenance of software or
9 programs by a telecommunications service provider on a mobile,
10 personal digital assistant, or other mobile device owned or leased
11 by its customer; or

12 (3) The custodial parent or guardian of a minor child causing
13 software, spyware, a virus, a trojan or similar programs to be
14 installed in a mobile phone, personal digital assistant or other
15 mobile device solely for purposes of supervising their minor child
16 or children or minor child or children in their charge.

17 (4) An employer causing software, spyware, a virus, a
18 trojan or similar programs to be installed in a mobile phone,
19 personal digital assistant or other mobile device owned by or
20 provided by the employer solely for purposes of supervising the
21 work activity of an employee.

22 (b) Any person who violates this section is guilty of a
23 misdemeanor and, upon conviction thereof, shall be fined not more
24 than \$500, or confined in jail not more than six months, or both
25 fined and confined.

(NOTE: The purpose of this bill is to make it a crime to put certain types of invasive software on mobile devices not belonging to their owners. The bill provides for penalties and exceptions.

This section is new; therefore, strike-throughs and underscoring have been omitted.)