1 **Senate Bill No. 281**

2 (By Senators Barnes, Klempa, Hall, Boley, Fanning, Jenkins,

3 Palumbo, Nohe, Unger, McCabe, Stollings, Plymale and Minard)

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5 [Introduced January 26, 2011; referred to the Committee on the

6 Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by

11 adding thereto a new section, designated §61-3C-14c,

12 relating to making it a crime to put certain types of

13 invasive software on mobile devices; providing penalties;

14 and providing exceptions.

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

16 That the Code of West Virginia, 1931, as amended, be amended

17 by adding thereto a new section, designated §61-3C-14c, to read

18 as follows:

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

20 **§61-3C-14c. Invasive computer software on mobile devices;**

21 **exceptions; penalties.**

22 (a) It is unlawful for any person to cause software,

23 spyware, a virus, a trojan or similar programs to be installed in

24 the mobile phone, personal digital assistant or other mobile

25 device of another person without that person's knowledge and

26 consent which program allows or causes transmission of voice or

1 nonvoice content, conversation, text message, electronic mail or

2 the location of the nonconsenting person's computer, mobile phone

3 or digital assistant or other mobile device at any particular

4 time. The provisions of this subsection do not apply to:

5   (1) Global positioning system software installed in mobile

6 devices by the device's manufacturer;

7   (2) Installation, modification or maintenance of software or

8 programs by a telecommunications service provider on a mobile,

9 personal digital assistant, or other mobile device owned or

10 leased by its customer; or

11   (3) A parent of a minor child.

12   (b) Any person who violates this section is guilty of a

13 misdemeanor and, upon conviction thereof, shall be fined not more

14 than $500, or confined in jail not more than six months, or both

15 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.