

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 281**

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

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[Originating in the Committee on Judiciary;  
reported February 2, 2011.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3C-14c, relating to making it a crime to put certain types of invasive software on mobile devices; providing penalties; and providing exceptions.

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

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

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

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

1 (a) It is unlawful for any person to cause software,  
2 spyware, a virus, a trojan or similar programs to be installed  
3 in the mobile phone, personal digital assistant or other  
4 mobile device of another person without that person's  
5 knowledge and consent which program allows or causes  
6 transmission of voice or nonvoice content, conversation, text  
7 message, electronic mail or the location of the nonconsenting  
8 person's computer, mobile phone or digital assistant or other  
9 mobile device at any particular time. The provisions of this  
10 subsection do not apply to:

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

13 (2) Installation, modification or maintenance of software or  
14 programs by a telecommunications service provider on a  
15 mobile, personal digital assistant, or other mobile device  
16 owned or leased by its customer; or

17 (3) The custodial parent or guardian of a minor child  
18 causing software, spyware, a virus, a trojan or similar  
19 programs to be installed in a mobile phone, personal digital

20 assistant or other mobile device solely for purposes of  
21 supervising their minor child or children or minor child or  
22 children in their charge.

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

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

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(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.)