

No. 92

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989



ENROLLED
Committee Substitute for
SENATE BILL NO. 92

(By Senator *Warner, et al*)



PASSED April 8, 1989
In Effect *90 days from* Passage

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 92

(SENATORS WARNER, BOETTNER AND J. MANCHIN,
original sponsors)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-c, relating to computer crimes; defining offenses generally; penalties; venue; civil cause of action established; and general provisions.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-c, to read as follows:

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

§61-3C-1. Short title.

1 This act shall be known and may be cited as the
2 "West Virginia Computer Crime and Abuse Act."

§61-3C-2. Legislative findings.

1 The Legislature finds that:

2 (a) The computer and related industries play an
4 essential role in the commerce and welfare of this
5 state.

6 (b) Computer-related crime is a growing problem in
7 business and government.

8 (c) Computer-related crime has a direct effect on
9 state commerce and can result in serious economic
10 and, in some cases, physical harm to the public.

11 (d) Because of the pervasiveness of computers in
12 today's society, opportunities are great for computer
13 related crimes through the introduction of false
14 records into a computer or computer system, the
15 unauthorized use of computers and computer facilities,
16 the alteration and destruction of computers, computer
17 programs and computer data, and the theft of com-
18 puter resources, computer software and computer
19 data.

20 (e) Because computers have now become an integral
21 part of society, the Legislature recognizes the need to
22 protect the rights of owners and legitimate users of
23 computers and computer systems, as well as the
24 privacy interest of the general public, from those who
25 abuse computers and computer systems.

26 (f) While various forms of computer crime or abuse
27 might possibly be the subject of criminal charges or
28 civil suit based on other provisions of law, it is
29 appropriate and desirable that a supplemental and
30 additional statute be provided which specifically
31 proscribes various forms of computer crime and abuse
32 and provides criminal penalties and civil remedies
33 therefor.

§61-3C-3. Definitions.

1 As used in this article, unless the context clearly
2 indicates otherwise:

3 (a) "Access" means to instruct, communicate with,

4 store data in, retrieve data from, intercept data from,
5 or otherwise make use of any computer, computer
6 network, computer program, computer software,
7 computer data or other computer resources.

8 (b) "Authorization" means the express or implied
9 consent given by a person to another to access or use
10 said person's computer, computer network, computer
11 program, computer software, computer system, pass-
12 word, identifying code or personal identification
13 number.

14 (c) "Computer" means an electronic, magnetic,
15 optical, electrochemical, or other high speed data
16 processing device performing logical, arithmetic, or
17 storage functions, and includes any data storage
18 facility or communication facility directly related to or
19 operating in conjunction with such device. The term
20 "computer" includes any connected or directly related
21 device, equipment or facility which enables the
22 computer to store, retrieve or communicate computer
23 programs, computer data or the results of computer
24 operations to or from a person, another computer or
25 another device, but such term does not include an
26 automated typewriter or typesetter, a portable hand-
27 held calculator or other similar device.

28 (d) "Computer data" means any representation of
29 knowledge, facts, concepts, instruction, or other infor-
30 mation computed, classified, processed, transmitted,
31 received, retrieved, originated, stored, manifested,
32 measured, detected, recorded, reproduced, handled or
33 utilized by a computer, computer network, computer
34 program or computer software, and may be in any
35 medium, including, but not limited to, computer print-
36 outs, microfilm, microfiche, magnetic storage media,
37 optical storage media, punch paper tape or punch
38 cards, or it may be stored internally in read-only
39 memory or random access memory of a computer or
40 any other peripheral device.

41 (e) "Computer network" means a set of connected
42 devices and communication facilities, including more
43 than one computer, with the capability to transmit

44 computer data among them through such
45 communication facilities.

46 (f) "Computer operations" means arithmetic, logical,
47 storage, display, monitoring or retrieval functions or
48 any combination thereof, and includes, but is not
49 limited to, communication with, storage of data in or
50 to, or retrieval of data from any device and the human
51 manual manipulation of electronic magnetic impulses.
52 A "computer operation" for a particular computer
53 shall also mean any function for which that computer
54 was designed.

55 (g) "Computer program" means an ordered set of
56 computer data representing instructions or statements,
57 in a form readable by a computer, which controls,
58 directs, or otherwise influences the functioning of a
59 computer or computer network.

60 (h) "Computer software" means a set of computer
61 programs, procedures and associated documentation
62 concerned with computer data or with the operation of
63 a computer, computer program, or computer network.

64 (i) "Computer services" means computer access
65 time, computer data processing, or computer data
66 storage, and the computer data processed or stored in
67 connection therewith.

68 (j) "Computer supplies" means punchcards, paper
69 tape, magnetic tape, magnetic disks or diskettes,
70 optical disks or diskettes, disk or diskette packs, paper,
71 microfilm, and any other tangible input, output or
72 storage medium used in connection with a computer,
73 computer network, computer data, computer software
74 or computer program.

75 (k) "Computer resources" includes, but is not
76 limited to, information retrieval; computer data
77 processing, transmission and storage; and any other
78 functions performed, in whole or in part, by the use of
79 a computer, computer network, computer software, or
80 computer program.

81 (l) "Owner" means any person who owns or leases
82 or is a licensee of a computer, computer network,

83 computer data, computer program, computer software,
84 computer resources or computer supplies.

85 (m) "Person" means any natural person, general
86 partnership, limited partnership, trust, association,
87 corporation, joint venture, or any state, county or
88 municipal government and any subdivision, branch,
89 department or agency thereof.

90 (n) "Property" includes:

91 (1) Real property;

92 (2) Computers and computer networks;

93 (3) Financial instruments, computer data, computer
94 programs, computer software and all other personal
95 property regardless of whether they are:

96 (i) Tangible or intangible;

97 (ii) In a format readable by humans or by a
98 computer;

99 (iii) In transit between computers or within a
100 computer network or between any devices which
101 comprise a computer; or

102 (iv) Located on any paper or in any device on which
103 it is stored by a computer or by a human; and

104 (4) Computer services.

105 (o) "Value" means having any potential to provide
106 any direct or indirect gain or advantage to any person.

107 (p) "Financial instrument" includes, but is not
108 limited to, any check, draft, warrant, money order,
109 note, certificate of deposit, letter of credit, bill of
110 exchange, credit or debit card, transaction authoriza-
111 tion mechanism, marketable security or any compu-
112 terized representation thereof.

113 (q) "Value of property or computer services" shall
114 be (1) the market value of the property or computer
115 services at the time of a violation of this article; or (2)
116 if the property or computer services are unrecovera-
117 ble, damaged, or destroyed as a result of a violation of
118 section three or four of this article, the cost of

119 reproducing or replacing the property or computer
120 services at the time of the violation.

§61-3C-4. Computer fraud; penalties.

1 Any person who, knowingly and willfully, directly
2 or indirectly accesses or causes to be accessed any
3 computer, computer services or computer network for
4 the purpose of (1) executing any scheme or artifice to
5 defraud or (2) obtaining money, property or services
6 by means of fraudulent pretenses, representations or
7 promises shall be guilty of a felony, and upon convic-
8 tion thereof, shall be fined not more than ten thousand
9 dollars or imprisoned in the penitentiary for not more
10 than ten years, or both.

§61-3C-5. Unauthorized access to computer services.

1 Any person who knowingly, willfully and without
2 authorization directly or indirectly accesses or causes
3 to be accessed a computer or computer network with
4 the intent to obtain computer services shall be guilty
5 of a misdemeanor, and, upon conviction thereof, shall
6 be fined not less than two hundred dollars nor more
7 than one thousand dollars or confined in the county
8 jail not more than one year, or both.

§61-3C-6. Unauthorized possession of computer data or programs.

1 (a) Any person who knowingly, willfully and with-
2 out authorization possesses any computer data or
3 computer program belonging to another and having a
4 value of five thousand dollars or more shall be guilty
5 of a felony, and upon conviction thereof, shall be fined
6 not more than ten thousand dollars or imprisoned in
7 the penitentiary for not more than ten years, or both.

8 (b) Any person who knowingly, willfully and with-
9 out authorization possesses any computer data or
10 computer program belonging to another and having a
11 value of less than five thousand dollars shall be guilty
12 of a misdemeanor, and upon conviction thereof, shall
13 be fined not more than one thousand dollars or
14 confined in the county jail for not more than one year,
15 or both.

§61-3C-7. Alteration, destruction, etc. of computer equipment.

1 Any person who knowingly, willfully and without
2 authorization, directly or indirectly tampers with,
3 deletes, alters, damages or destroys or attempts to
4 tamper with, delete, alter, damage or destroy any
5 computer, computer network, computer software,
6 computer resources, computer program or computer
7 data, shall be guilty of a felony, and upon conviction
8 thereof, shall be fined not more than ten thousand
9 dollars or confined in the penitentiary not more than
10 ten years, or both, or, in the discretion of the court, be
11 fined not less than two hundred nor more than one
12 thousand dollars and confined in the county jail not
13 more than one year.

§61-3C-8. Disruption of computer services.

1 Any person who knowingly, willfully and without
2 authorization directly or indirectly disrupts or
3 degrades or causes the disruption or degradation of
4 computer services or denies or causes the denial of
5 computer services to an authorized recipient or user of
6 such computer services, shall be guilty of a misde-
7 meanor, and, upon conviction thereof, shall be fined
8 not less than two hundred nor more than one thou-
9 sand dollars or confined in the county jail not more
10 than one year, or both.

§61-3C-9. Unauthorized possession of computer information, etc.

1 Any person who knowingly, willfully and without
2 authorization, possesses any computer data, computer
3 software, computer supplies or a computer program
4 which he knows or reasonably should know was
5 obtained in violation of any section of this article shall
6 be guilty of a misdemeanor, and, upon conviction
7 thereof, shall be fined not less than two hundred nor
8 more than one thousand dollars or confined in the
9 county jail for not more than one year, or both.

§61-3C-10. Disclosure of computer security information.

1 Any person who knowingly, willfully and without

2 authorization, discloses a password, identifying code,
3 personal identification number or other confidential
4 information about a computer security system to
5 another person shall be guilty of a misdemeanor, and,
6 upon conviction thereof, shall be fined not more than
7 five hundred dollars or confined in the county jail for
8 not more than six months, or both.

§61-3C-11. Obtaining confidential public information.

1 Any person who knowingly, willfully, and without
2 authorization, accesses or causes to be accessed any
3 computer or computer network and thereby obtains
4 information filed by any person with the state or any
5 county or municipality which is required by law to be
6 kept confidential shall be guilty of a misdemeanor and,
7 upon conviction thereof, shall be fined not more than
8 five hundred dollars or confined in the county jail not
9 more than six months, or both.

§61-3C-12. Computer invasion of privacy.

1 Any person who knowingly, willfully and without
2 authorization, accesses a computer or computer net-
3 work and examines any employment, salary, credit or
4 any other financial or personal information relating to
5 any other person, after the time at which the offender
6 knows or reasonably should know that he is without
7 authorization to view the information displayed, shall
8 be guilty of a misdemeanor, and upon conviction
9 thereof, shall be fined not more than five hundred
10 dollars, or confined in the county jail for not more
11 than six months, or both.

**§61-3C-13. Fraud and related activity in connection with
access devices.**

1 (a) As used in this section, the following terms shall
2 have the following meanings:

3 (1) "Access device" means any card, plate, code,
4 account number, or other means of account access that
5 can be used, alone or in conjunction with another
6 access device, to obtain money, goods, services, or any
7 other thing of value, or that can be used to initiate a
8 transfer of funds (other than a transfer originated

9 solely by paper instrument);

10 (2) "Counterfeit access device" means any access
11 device that is counterfeit, fictitious, altered, or forged,
12 or an identifiable component of an access device or a
13 counterfeit access device;

14 (3) "Unauthorized access device" means any access
15 device that is lost, stolen, expired, revoked, cancelled,
16 or obtained without authority;

17 (4) "Produce" includes design, alter, authenticate,
18 duplicate, or assemble;

19 (5) "Traffic" means transfer, or otherwise dispose of,
20 to another, or obtain control of with intent to transfer
21 or dispose of.

22 (b) Any person who knowingly and willfully pos-
23 sesses any counterfeit or unauthorized access device
24 shall be guilty of a misdemeanor, and upon conviction
25 thereof, shall be fined not more than one thousand
26 dollars or confined in the county jail for not more than
27 six months, or both.

28 (c) Any person who knowingly, willfully and with
29 intent to defraud possesses a counterfeit or unautho-
30 rized access device or who knowingly, willfully and
31 with intent to defraud, uses, produces or traffics in
32 any counterfeit or unauthorized access device shall be
33 guilty of a felony and upon conviction thereof, shall be
34 fined not more than ten thousand dollars or impri-
35 soned in the penitentiary not more than ten years, or
36 both.

37 (d) This section shall not prohibit any lawfully
38 authorized investigative or protective activity of any
39 state, county or municipal law-enforcement agency.

§61-3C-14. Endangering public safety.

1 Any person who accesses a computer or computer
2 network and knowingly, willfully and without autho-
3 rization (a) interrupts or impairs the providing of
4 services by any private or public utility; (b) interrupts
5 or impairs the providing of any medical services; (c)
6 interrupts or impairs the providing of services by any

7 state, county or local government agency, public
8 carrier or public communication service; or otherwise
9 endangers public safety shall be guilty of a felony and,
10 upon conviction thereof, shall be fined not more than
11 fifty thousand dollars or imprisoned not more than
12 twenty years, or both.

§61-3C-15. Computer as instrument of forgery.

1 The creation, alteration or deletion of any computer
2 data contained in any computer or computer network,
3 which if done on a tangible document or instrument
4 would constitute forgery under section five, article
5 four, chapter sixty-one of this code will also be deemed
6 to be forgery. The absence of a tangible writing
7 directly created or altered by the offender shall not be
8 a defense to any crime set forth in section five, article
9 four, chapter sixty-one if a creation, alteration or
10 deletion of computer data was involved in lieu of a
11 tangible document or instrument.

§61-3C-16. Civil relief; damages.

1 (a) Any person whose property or person is injured
2 by reason of a violation of any provision of this article
3 may sue therefor in circuit court and may be entitled
4 to recover for each violation:

- 5 (1) Compensatory damages;
- 6 (2) Punitive damages; and
- 7 (3) Such other relief, including injunctive relief, as
8 the court may deem appropriate.

9 Without limiting the generality of the term, “dam-
10 ages” shall include loss of profits.

11 (b) At the request of any party to an action brought
12 pursuant to this section, the court may, in its discre-
13 tion, conduct all legal proceedings in such a manner as
14 to protect the secrecy and security of the computer
15 network, computer data, computer program or com-
16 puter software involved in order to prevent any
17 possible recurrence of the same or a similar act by
18 another person or to protect any trade secret or
19 confidential information of any person. For the pur-

20 poses of this section “trade secret” means the whole or
21 any portion or phase of any scientific or technological
22 information, design, process, procedure or formula or
23 improvement which is secret and of value. A trade
24 secret shall be presumed to be secret when the owner
25 thereof takes measures to prevent it from becoming
26 available to persons other than those authorized by the
27 owner to have access thereto for a limited purpose.

28 (c) The provisions of this section shall not be
29 construed to limit any person’s right to pursue any
30 additional civil remedy otherwise allowed by law.

31 (d) A civil action under this section must be com-
32 menced before the earlier of: (1) Five years after the
33 last act in the course of conduct constituting a viola-
34 tion of this article; or (2) two years after the plaintiff
35 discovers or reasonably should have discovered the
36 last act in the course of conduct constituting a viola-
37 tion of this article.

§61-3C-17. Defenses to criminal prosecution.

1 (a) In any criminal prosecution under this article, it
2 shall be a defense that:

3 (1) The defendant had reasonable grounds to believe
4 that he had authority to access or could not have
5 reasonably known he did not have authority to access
6 the computer, computer network, computer data,
7 computer program or computer software in question;
8 or

9 (2) The defendant had reasonable grounds to believe
10 that he had the right to alter or destroy the computer
11 data, computer software or computer program in
12 question; or

13 (3) The defendant had reasonable grounds to believe
14 that he had the right to copy, reproduce, duplicate or
15 disclose the computer data, computer program, com-
16 puter security system information or computer soft-
17 ware in question.

18 (b) Nothing in this section shall be construed to limit
19 any defense available to a person charged with a
20 violation of this article.

§61-3C-18. Venue.

1 For the purpose of criminal and civil venue under
2 this article, any violation of this article shall be
3 considered to have been committed:

4 (1) In any county in which any act was performed
5 in furtherance of any course of conduct which violates
6 this article;

7 (2) In the county of the principal place of business in
8 this state of the aggrieved owner of the computer,
9 computer data, computer program, computer software
10 or computer network, or any part thereof;

11 (3) In any county in which any violator had control
12 or possession of any proceeds of the violation or any
13 books, records, documentation, property, financial
14 instrument, computer data, computer software, com-
15 puter program, or other material or objects which
16 were used in furtherance of or obtained as a result of
17 the violation;

18 (4) In any county from which, to which, or through
19 which any access to a computer or computer network
20 was made, whether by wires, electromagnetic waves,
21 microwaves or any other means of communication;
22 and

23 (5) In the county in which the aggrieved owner or
24 the defendant resides or either of them maintains a
25 place of business.

§61-3C-19. Prosecution under other criminal statutes not prohibited.

1 Criminal prosecution pursuant to this article shall
2 not prevent prosecution pursuant to any other provi-
3 sion of law.

§61-3C-20. Personal jurisdiction.

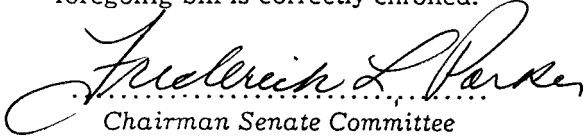
1 Any person who violates any provision of this article
2 and, in doing so, accesses, permits access to, causes
3 access to or attempts to access a computer, computer
4 network, computer data, computer resources, com-
5 puter software or computer program which is located,

6 in whole or in part, within this state, or passes through
7 this state in transit, shall be subject to criminal
8 prosecution and punishment in this state and to the
9 civil jurisdiction of the courts of this state.

§61-3C-21. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid,
3 such invalidity shall not affect any other provisions or
4 applications of this article which can be given effect
5 without the invalid provision or application, and to
6 that end the provisions of this article are declared to
7 be severable.

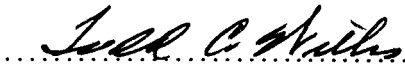
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

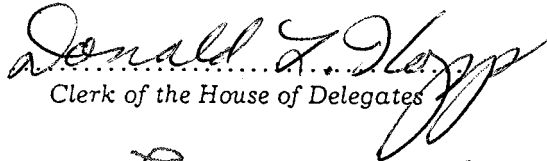

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Chairman Senate Committee

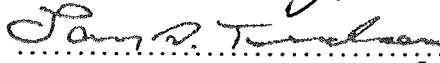

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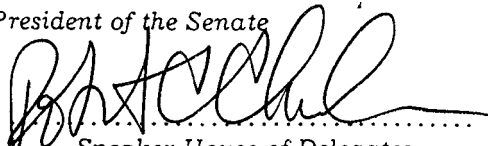
Originated in the Senate.

In effect ninety days from passage.

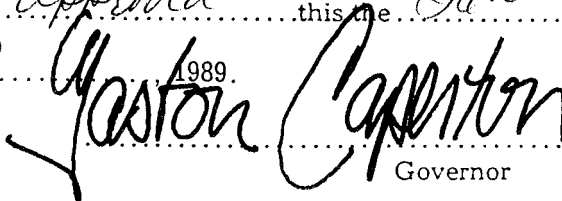

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *26th*
day of *April* 1989.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date

4/24/89

Time

2:27