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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



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COMMITTEE SUBSTITUTES

SENATE BILL NO. 153

(By Senator SPROUSE)



PASSED MARCH 8, 2000

In Effect NINETY DAYS FROM Passage

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COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 153

(BY SENATOR SPROUSE, *original sponsor*)

[Passed March 8, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and seven, article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing criminal penalties for the introduction of computer contaminants; defining terms; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

That sections three and seven, article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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

§61-3C-3. Definitions.

1 As used in this article, unless the context clearly indi-
2 cates otherwise:

3 (a) "Access" means to instruct, communicate with, store
4 data in, retrieve data from, intercept data from or other-
5 wise make use of any computer, computer network,
6 computer program, computer software, computer data or
7 other computer resources.

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

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

26 (d) "Computer contaminant" means any set of computer
27 instructions that are designed to damage or destroy
28 information within a computer, computer system or
29 computer network without the consent or permission of
30 the owner of the information. They include, but are not
31 limited to, a group of computer instructions commonly
32 called viruses or worms that are self-replicating or self-
33 propagating and are designed to contaminate other
34 computer programs or computer data, consume computer
35 resources or damage or destroy the normal operation of the
36 computer.

37 (e) "Computer data" means any representation of
38 knowledge, facts, concepts, instruction or other informa-
39 tion computed, classified, processed, transmitted, received,
40 retrieved, originated, stored, manifested, measured,
41 detected, recorded, reproduced, handled or utilized by a
42 computer, computer network, computer program or

43 computer software and may be in any medium, including,
44 but not limited to, computer print-outs, microfilm, micro-
45 fiche, magnetic storage media, optical storage media,
46 punch paper tape or punch cards, or it may be stored
47 internally in read-only memory or random access memory
48 of a computer or any other peripheral device.

49 (f) "Computer network" means a set of connected
50 devices and communication facilities, including more than
51 one computer, with the capability to transmit computer
52 data among them through such communication facilities.

53 (g) "Computer operations" means arithmetic, logical,
54 storage, display, monitoring or retrieval functions or any
55 combination thereof and includes, but is not limited to,
56 communication with, storage of data in or to, or retrieval
57 of data from any device and the human manual manipula-
58 tion of electronic magnetic impulses. A "computer opera-
59 tion" for a particular computer shall also mean any
60 function for which that computer was designed.

61 (h) "Computer program" means an ordered set of
62 computer data representing instructions or statements, in
63 a form readable by a computer, which controls, directs or
64 otherwise influences the functioning of a computer or
65 computer network.

66 (i) "Computer software" means a set of computer
67 programs, procedures and associated documentation
68 concerned with computer data or with the operation of a
69 computer, computer program or computer network.

70 (j) "Computer services" means computer access time,
71 computer data processing or computer data storage and
72 the computer data processed or stored in connection
73 therewith.

74 (k) "Computer supplies" means punch cards, paper tape,
75 magnetic tape, magnetic disks or diskettes, optical disks or
76 diskettes, disk or diskette packs, paper, microfilm and any
77 other tangible input, output or storage medium used in
78 connection with a computer, computer network, computer
79 data, computer software or computer program.

80 (l) "Computer resources" includes, but is not limited to,
81 information retrieval; computer data processing, transmis-
82 sion and storage; and any other functions performed, in
83 whole or in part, by the use of a computer, computer
84 network, computer software or computer program.

85 (m) "Owner" means any person who owns or leases or is
86 a licensee of a computer, computer network, computer
87 data, computer program, computer software, computer
88 resources or computer supplies.

89 (n) "Person" means any natural person, general partner-
90 ship, limited partnership, trust, association, corporation,
91 joint venture or any state, county or municipal government
92 and any subdivision, branch, department or agency
93 thereof.

94 (o) "Property" includes:

95 (1) Real property;

96 (2) Computers and computer networks;

97 (3) Financial instruments, computer data, computer
98 programs, computer software and all other personal
99 property regardless of whether they are:

100 (i) Tangible or intangible;

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

102 (iii) In transit between computers or within a computer
103 network or between any devices which comprise a com-
104 puter; or

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

107 (4) Computer services.

108 (p) "Value" means having any potential to provide any
109 direct or indirect gain or advantage to any person.

110 (q) "Financial instrument" includes, but is not limited to,
111 any check, draft, warrant, money order, note, certificate of
112 deposit, letter of credit, bill of exchange, credit or debit
113 card, transaction authorization mechanism, marketable
114 security or any computerized representation thereof.

115 (r) "Value of property or computer services" shall be: (1)
116 The market value of the property or computer services at
117 the time of a violation of this article; or (2) if the property
118 or computer services are unrecoverable, damaged or
119 destroyed as a result of a violation of section six or seven
120 of this article, the cost of reproducing or replacing the
121 property or computer services at the time of the violation.

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

1 (a) *Misdemeanor offenses.* – Any person who knowingly,
2 willfully and without authorization, directly or indirectly,
3 tampers with, deletes, alters, damages or destroys or
4 attempts to tamper with, delete, alter, damage or destroy
5 any computer, computer network, computer software,
6 computer resources, computer program or computer data
7 or who knowingly introduces, directly or indirectly, a
8 computer contaminant into any computer, computer
9 program or computer network which results in a loss of
10 value of property or computer services up to one thousand
11 dollars, is guilty of a misdemeanor and, upon conviction
12 thereof, shall be fined not more than one thousand dollars
13 or confined in the county or regional jail not more than six
14 months, or both.

15 (b) *Felony offenses.* – Any person who knowingly,
16 willfully and without authorization, directly or indirectly,
17 damages or destroys or attempts to damage or destroy any
18 computer, computer network, computer software, com-
19 puter resources, computer program or computer data by
20 knowingly introducing, directly or indirectly, a computer
21 contaminant into any computer, computer program or
22 computer network which results in a loss of value of
23 property or computer services more than one thousand
24 dollars is guilty of a felony and, upon conviction thereof,
25 shall be fined not less than two hundred dollars and not
26 more than ten thousand dollars or confined in a state
27 correctional facility not more than ten years, or both, or,
28 in the discretion of the court, be fined not less than two
29 hundred nor more than one thousand dollars and confined
30 in the county or regional jail not more than one year.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within..... *approved* this the *16th*
Day of..... *March*, 2000.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/14/00

Time

12:17pm