WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2000

ENROLLED
Committee Substitutes
SENATE BILL NO. 153

(By Senator SPROUSE)

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 indicates otherwise:
(a) "Access" means to instruct, communicate with, store data in, retrieve data from, intercept data from or otherwise make use of any computer, computer network, computer program, computer software, computer data or other computer resources.

(b) "Authorization" means the express or implied consent given by a person to another to access or use said person's computer, computer network, computer program, computer software, computer system, password, identifying code or personal identification number.

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

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

(e) "Computer data" means any representation of knowledge, facts, concepts, instruction or other information computed, classified, processed, transmitted, received, retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer network, computer program or
computer software and may be in any medium, including, but not limited to, computer print-outs, microfilm, microfiche, magnetic storage media, optical storage media, punch paper tape or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.

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

(g) “Computer operations” means arithmetic, logical, storage, display, monitoring or retrieval functions or any combination thereof and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device and the human manual manipulation of electronic magnetic impulses. A “computer operation” for a particular computer shall also mean any function for which that computer was designed.

(h) “Computer program” means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs or otherwise influences the functioning of a computer or computer network.

(i) “Computer software” means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

(j) “Computer services” means computer access time, computer data processing or computer data storage and the computer data processed or stored in connection therewith.

(k) “Computer supplies” means punch cards, paper tape, magnetic tape, magnetic disks or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other tangible input, output or storage medium used in connection with a computer, computer network, computer data, computer software or computer program.
(l) “Computer resources” includes, but is not limited to, information retrieval; computer data processing, transmission and storage; and any other functions performed, in whole or in part, by the use of a computer, computer network, computer software or computer program.

(m) “Owner” means any person who owns or leases or is a licensee of a computer, computer network, computer data, computer program, computer software, computer resources or computer supplies.

(n) “Person” means any natural person, general partnership, limited partnership, trust, association, corporation, joint venture or any state, county or municipal government and any subdivision, branch, department or agency thereof.

(o) “Property” includes:

(1) Real property;

(2) Computers and computer networks;

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

(i) Tangible or intangible;

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

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

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

(4) Computer services.

(p) “Value” means having any potential to provide any direct or indirect gain or advantage to any person.

(q) “Financial instrument” includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.
(r) “Value of property or computer services” shall be: (1) The market value of the property or computer services at the time of a violation of this article; or (2) if the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of section six or seven of this article, the cost of reproducing or replacing the property or computer services at the time of the violation.

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

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

(b) Felony offenses. – Any person who knowingly, willfully and without authorization, directly or indirectly, damages or destroys or attempts to damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data by knowingly introducing, directly or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services more than one thousand dollars is guilty of a felony and, upon conviction thereof, shall be fined not less than two hundred dollars and not more than ten thousand dollars or confined in a state correctional facility not more than ten years, or both, or, in the discretion of the court, be fined not less than two hundred nor more than one thousand dollars and confined 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 16th Day of

Governor

2000.