Senate Bill No. 385

(By Senators Unger, Beach, Kessler (Mr. President), Klempa and Jenkins)

[Passed March 2, 2012; in effect ninety days from passage.]
AN ACT to amend and reenact §61-3C-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8A-1 of said code, all relating to updating the definition of “computer” in the commission of certain crimes.

Be it enacted by the Legislature of West Virginia:

That §61-3C-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8A-1 of said code 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:

3 (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.

8 (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, file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any other electronic data storage device or equipment, 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 printouts, 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 com-
puter 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 pro-
grams, 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, transmis-
sion 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:
   1. Tangible or intangible;
   2. In a format readable by humans or by a computer;
   3. In transit between computers or within a computer network or between any devices which comprise a computer;
   4. 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.

ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.


1 When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:

(a) "Adult" means a person eighteen years of age or older.

(b) "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. As used in this article, computer includes file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any electronic data storage device or equipment. 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.

(c) "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.
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(d) "Display" means to show, exhibit or expose matter, in a manner visible to general or invited public, including minors. As used in this article, display shall include the placing or exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place.

(e) "Distribute" means to transfer possession, transport, transmit, sell or rent, whether with or without consideration.

(f) "Employee" means any individual who renders personal services in the course of a business, who receives compensation and who has no financial interest in the ownership or operation of the business other than his or her salary or wages.

(g) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(h) "Knowledge of the character of the matter" means having awareness of or notice of the overall sexual content and character of matter as depicting, representing or describing obscene matter.

(i) "Matter" means any visual, audio, or physical item, article, production transmission, publication, exhibition, or live performance, or reproduction thereof, including any two- or three-dimensional visual or written material, film, picture, drawing, video, graphic, or computer generated or reproduced image; or any book, magazine, newspaper or other visual or written material; or any motion picture or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, video laser disc, computer hardware and software, or computer generated images or message recording, transcription, or object, or any public or commercial live exhibition performed for consideration or before an audience of one or more.

(j) "Minor" means an unemancipated person under eighteen years of age.
(k) "Obscene matter" means matter that:

(1) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and

(3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value.

(l) "Parent" includes a biological or adoptive parent, legal guardian or legal custodian.

(m) "Person" means any adult, partnership, firm, association, corporation or other legal entity.

(n) "Sexually explicit conduct" means an ultimate sexual act, normal or perverted, actual or simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism and masochism, masturbation, excretory functions and lewd exhibition of the genitals.
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 of the House of Delegates

The within is approved this the 14th Day of March, 2012.

Governor
PRESENTED TO THE GOVERNOR

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