



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4642

Introduced 2/1/2012, by Rep. Darlene J. Senger

SYNOPSIS AS INTRODUCED:

720 ILCS 5/17-51
720 ILCS 5/17-55
720 ILCS 135/1-2

was 720 ILCS 5/16D-3

Amends the Criminal Code of 1961 relating to computer tampering. In addition to other elements of the offense, provides that a person commits the offense when he or she knowingly and without the authorization of an account holder or in excess of the authority granted to him or to her accesses or causes to be accessed by any means an e-mail, instant messaging, or social networking website account. Defines "account holder". Establishes penalties. Amends the Harassing and Obscene Communications Act. Includes in the offense of harassment through electronic communications, knowingly and by any means making repeated, unwanted, and harassing communication to another person.

LRB097 13960 RLC 58571 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Sections 17-51 and 17-55 as follows:

6 (720 ILCS 5/17-51) (was 720 ILCS 5/16D-3)

7 Sec. 17-51. Computer tampering.

8 (a) A person commits computer tampering when he or she
9 knowingly and without the authorization of a computer's owner
10 or in excess of the authority granted to him or her:

11 (1) Accesses or causes to be accessed a computer or any
12 part thereof, a computer network, or a program or data;

13 (2) Accesses or causes to be accessed a computer or any
14 part thereof, a computer network, or a program or data, and
15 obtains data or services;

16 (3) Accesses or causes to be accessed a computer or any
17 part thereof, a computer network, or a program or data, and
18 damages or destroys the computer or alters, deletes, or
19 removes a computer program or data;

20 (4) Inserts or attempts to insert a program into a
21 computer or computer program knowing or having reason to
22 know that such program contains information or commands
23 that will or may:

1 (A) damage or destroy that computer, or any other
2 computer subsequently accessing or being accessed by
3 that computer;

4 (B) alter, delete, or remove a computer program or
5 data from that computer, or any other computer program
6 or data in a computer subsequently accessing or being
7 accessed by that computer; or

8 (C) cause loss to the users of that computer or the
9 users of a computer which accesses or which is accessed
10 by such program; or

11 (5) Falsifies or forges electronic mail transmission
12 information or other routing information in any manner in
13 connection with the transmission of unsolicited bulk
14 electronic mail through or into the computer network of an
15 electronic mail service provider or its subscribers.

16 (a-1) A person commits computer tampering when he or she
17 knowingly and without the authorization of an account holder or
18 in excess of the authority granted to him or to her:

19 (1) accesses or causes to be accessed by any means an
20 electronic mail (e-mail), instant messaging, or social
21 networking website account;

22 (2) accesses or causes to be accessed by any means an
23 electronic mail (e-mail), instant messaging, or social
24 networking website account, and views the content of an
25 electronic communication; or

26 (3) accesses or causes to be accessed by any means a

1 computer or any part thereof, a computer network,
2 electronic mail (e-mail), instant messaging, or social
3 networking website account, and:

4 (A) deletes an electronic communication;

5 (B) transmits an electronic communication
6 purporting to be the account holder; or

7 (C) changes the password for the account;

8 (4) accesses or causes to be accessed by any means a
9 social networking website account, and:

10 (A) alters the privacy settings for the account
11 holder's account; or

12 (B) gives himself, herself, or another access to
13 view private content on the account holder's social
14 networking website account; or

15 (5) accesses or causes to be accessed by any means a
16 computer or any part thereof, a computer network,
17 electronic mail (e-mail) account, instant messaging
18 account, social networking website account and adds,
19 deletes, or alters content.

20 (a-5) Distributing software to falsify routing
21 information. It is unlawful for any person knowingly to sell,
22 give, or otherwise distribute or possess with the intent to
23 sell, give, or distribute software which:

24 (1) is primarily designed or produced for the purpose
25 of facilitating or enabling the falsification of
26 electronic mail transmission information or other routing

1 information;

2 (2) has only a limited commercially significant
3 purpose or use other than to facilitate or enable the
4 falsification of electronic mail transmission information
5 or other routing information; or

6 (3) is marketed by that person or another acting in
7 concert with that person with that person's knowledge for
8 use in facilitating or enabling the falsification of
9 electronic mail transmission information or other routing
10 information.

11 (a-10) For purposes of subsection (a), accessing a computer
12 network is deemed to be with the authorization of a computer's
13 owner if:

14 (1) the owner authorizes patrons, customers, or guests
15 to access the computer network and the person accessing the
16 computer network is an authorized patron, customer, or
17 guest and complies with all terms or conditions for use of
18 the computer network that are imposed by the owner; or

19 (2) the owner authorizes the public to access the
20 computer network and the person accessing the computer
21 network complies with all terms or conditions for use of
22 the computer network that are imposed by the owner.

23 (b) Sentence.

24 (1) A person who commits computer tampering as set
25 forth in subdivision (a)(1) or (a)(5) or subsection (a-5)
26 of this Section is guilty of a Class B misdemeanor.

1 (2) A person who commits computer tampering as set
2 forth in subdivision (a)(2) of this Section is guilty of a
3 Class A misdemeanor and a Class 4 felony for the second or
4 subsequent offense.

5 (3) A person who commits computer tampering as set
6 forth in subdivision (a)(3) or (a)(4) of this Section is
7 guilty of a Class 4 felony and a Class 3 felony for the
8 second or subsequent offense.

9 (3.1) A person who commits computer tampering as set
10 forth in subdivision (a-1)(1) of this Section is guilty of
11 a Class B misdemeanor for which the court shall impose a
12 minimum fine of \$500 or, if public or community service is
13 established in the county in which the offender was
14 convicted, 30 hours of public or community service.

15 (3.2) A person who commits computer tampering as set
16 forth in subdivision (a-1)(2) or (a-1)(4) of this Section
17 is guilty of a Class A misdemeanor for a first violation
18 for which the court shall impose a minimum fine of \$1,000
19 or, if public or community service is established in the
20 county in which the offender was convicted, 80 hours of
21 public or community service and a Class 4 felony for a
22 second or subsequent violation.

23 (3.3) A person who commits computer tampering as set
24 forth in subdivision (a-1)(3) or (a-1)(5) of this Section
25 is guilty of a Class 4 felony.

26 (4) If an injury arises from the transmission of

1 unsolicited bulk electronic mail, the injured person,
2 other than an electronic mail service provider, may also
3 recover attorney's fees and costs, and may elect, in lieu
4 of actual damages, to recover the lesser of \$10 for each
5 unsolicited bulk electronic mail message transmitted in
6 violation of this Section, or \$25,000 per day. The injured
7 person shall not have a cause of action against the
8 electronic mail service provider that merely transmits the
9 unsolicited bulk electronic mail over its computer
10 network.

11 (5) If an injury arises from the transmission of
12 unsolicited bulk electronic mail, an injured electronic
13 mail service provider may also recover attorney's fees and
14 costs, and may elect, in lieu of actual damages, to recover
15 the greater of \$10 for each unsolicited electronic mail
16 advertisement transmitted in violation of this Section, or
17 \$25,000 per day.

18 (6) The provisions of this Section shall not be
19 construed to limit any person's right to pursue any
20 additional civil remedy otherwise allowed by law.

21 (c) Whoever suffers loss by reason of a violation of
22 subdivision (a)(4) of this Section may, in a civil action
23 against the violator, obtain appropriate relief. In a civil
24 action under this Section, the court may award to the
25 prevailing party reasonable attorney's fees and other
26 litigation expenses.

1 (Source: P.A. 95-326, eff. 1-1-08; 96-1000, eff. 7-2-10;
2 96-1551, eff. 7-1-11.)

3 (720 ILCS 5/17-55)

4 Sec. 17-55. Definitions. For the purposes of Sections 17-50
5 through 17-53:

6 In addition to its meaning as defined in Section 15-1 of
7 this Code, "property" means: (1) electronic impulses; (2)
8 electronically produced data; (3) confidential, copyrighted,
9 or proprietary information; (4) private identification codes
10 or numbers which permit access to a computer by authorized
11 computer users or generate billings to consumers for purchase
12 of goods and services, including but not limited to credit card
13 transactions and telecommunications services or permit
14 electronic fund transfers; (5) software or programs in either
15 machine or human readable form; or (6) any other tangible or
16 intangible item relating to a computer or any part thereof.

17 "Access" means to use, instruct, communicate with, store
18 data in, retrieve or intercept data from, or otherwise utilize
19 any services of, a computer, a network, or data.

20 "Account holder" means the person or entity to whom or to
21 which an electronic mail or instant message service account,
22 social networking website profile, or other virtual identity is
23 registered.

24 "Services" includes but is not limited to computer time,
25 data manipulation, or storage functions.

1 "Vital services or operations" means those services or
2 operations required to provide, operate, maintain, and repair
3 network cabling, transmission, distribution, or computer
4 facilities necessary to ensure or protect the public health,
5 safety, or welfare. Those services or operations include, but
6 are not limited to, services provided by medical personnel or
7 institutions, fire departments, emergency services agencies,
8 national defense contractors, armed forces or militia
9 personnel, private and public utility companies, or law
10 enforcement agencies.

11 (Source: P.A. 96-1551, eff. 7-1-11.)

12 Section 10. The Harassing and Obscene Communications Act is
13 amended by changing Section 1-2 as follows:

14 (720 ILCS 135/1-2)

15 Sec. 1-2. Harassment through electronic communications.

16 (a) Harassment through electronic communications is the
17 use of electronic communication for any of the following
18 purposes:

19 (1) Transmitting ~~Making~~ any comment, request,
20 suggestion or proposal which is obscene with an intent to
21 offend;

22 (2) Interrupting, with the intent to harass, the
23 telephone service or the electronic communication service
24 of any person;

1 (3) Transmitting to any person, with the intent to
2 harass and regardless of whether the communication is read
3 in its entirety or at all, any file, document, or other
4 communication which prevents that person from using his or
5 her telephone service or electronic communications device;

6 (3.1) Transmitting an electronic communication or
7 knowingly inducing a person to transmit an electronic
8 communication for the purpose of harassing another person
9 who is under 13 years of age, regardless of whether the
10 person under 13 years of age consents to the harassment, if
11 the defendant is at least 16 years of age at the time of
12 the commission of the offense;

13 (4) Threatening injury to the person or to the property
14 of the person to whom an electronic communication is
15 directed or to any of his or her family or household
16 members; ~~or~~

17 (4.1) Knowingly and by any means making repeated,
18 unwanted, and harassing communication to another person;
19 or

20 (5) Knowingly permitting any electronic communications
21 device to be used for any of the purposes mentioned in this
22 subsection (a).

23 (b) As used in this Act:

24 (1) "Electronic communication" means any transfer of
25 signs, signals, writings, images, sounds, data or
26 intelligence of any nature transmitted in whole or in part

1 by a wire, radio, electromagnetic, photoelectric or
2 photo-optical system. "Electronic communication" includes
3 transmissions through an electronic device including, but
4 not limited to, a telephone, cellular phone, computer, or
5 pager, which communication includes, but is not limited to,
6 e-mail, instant message, text message, or voice mail.

7 (2) "Family or household member" includes spouses,
8 former spouses, parents, children, stepchildren and other
9 persons related by blood or by present or prior marriage,
10 persons who share or formerly shared a common dwelling,
11 persons who have or allegedly share a blood relationship
12 through a child, persons who have or have had a dating or
13 engagement relationship, and persons with disabilities and
14 their personal assistants. For purposes of this Act,
15 neither a casual acquaintanceship nor ordinary
16 fraternization between 2 individuals in business or social
17 contexts shall be deemed to constitute a dating
18 relationship.

19 (c) Telecommunications carriers, commercial mobile service
20 providers, and providers of information services, including,
21 but not limited to, Internet service providers and hosting
22 service providers, are not liable under this Section, except
23 for willful and wanton misconduct, by virtue of the
24 transmission, storage, or caching of electronic communications
25 or messages of others or by virtue of the provision of other
26 related telecommunications, commercial mobile services, or

1 information services used by others in violation of this
2 Section.

3 (Source: P.A. 96-328, eff. 8-11-09; 97-303, eff. 8-11-11.)