

**ASSEMBLY BILL**

**No. 1649**

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**Introduced by Assembly Member Waldron**

February 11, 2014

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An act to amend Section 502 of the Penal Code, relating to computer crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1649, as introduced, Waldron. Computer crimes.

(1) Existing law makes it a crime to knowingly and without permission disrupt or cause the disruption of computer services or deny or cause the denial of computer services to an authorized user of a computer, computer system, or computer network. Existing law makes a violation of this provision punishable by a fine not exceeding \$10,000, or by imprisonment in a county jail for 16 months, or 2 or 3 years, or by both that fine and imprisonment, or by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

This bill would increase the fine to \$20,000 for a felony violation, and to \$10,000 for a misdemeanor violation, for a person who knowingly and without permission disrupts or causes the disruption of government computer services or public safety infrastructure computer system computer services, as defined, or denies or causes the denial of government computer services or public safety infrastructure computer system computer services to an authorized user.

(2) Existing law makes it a crime to knowingly access and without permission add, alter, damage, delete, or destroy any data, computer software, or computer program which resides or exists internal or external to a computer, computer system, or computer network. Existing

law makes a violation of this provision punishable by a fine not exceeding \$10,000, or by imprisonment in a county jail for 16 months, or 2 or 3 years, or by both that fine and imprisonment, or by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

This bill would increase the fine to \$20,000 for a felony violation, and to \$10,000 for a misdemeanor violation, for a person who knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a public safety infrastructure computer system computer, computer system, or computer network.

(3) Existing law makes it a crime to knowingly and without permission provide or assist in providing a means of accessing a computer, computer system, or computer network in violation of law. Existing law makes a violation this provision punishable by a fine not exceeding \$1,000 for a first violation that does not result in injury, by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment for a violation that results in a victim expenditure in an amount not greater than \$5,000, or for a 2nd or subsequent violation, and by a fine not exceeding \$10,000, or by imprisonment in a county jail for 16 months, or 2 or 3 years, or by both that fine and imprisonment, or by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for a violation that results in a victim expenditure in an amount greater than \$5,000.

The bill would increase the fine to \$2,000 for a first violation that does not result in injury, to \$10,000 for a violation that results in a victim expenditure in an amount not greater than \$5,000, or for a 2nd or subsequent violation, and to \$20,000 for a felony violation and to \$10,000 for a misdemeanor violation, for a violation that results in victim expenditure in an amount greater than \$5,000 for any person who knowingly and without permission provides or assists in providing a means of accessing a public safety infrastructure computer system computer, computer system, or computer network.

(4) Existing law makes it a crime to knowingly introduce a computer contaminant into any computer, computer system, or computer network. Existing law makes a violation of this provision punishable by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for a first violation that does not result in injury, and by a fine not exceeding \$10,000, or

by imprisonment in a county jail not exceeding one year, or by imprisonment in a county jail for 16 months, 2 or 3 years, or by both that fine and imprisonment for a violation that results in injury, or for a 2nd or subsequent violation.

This bill would increase the fine to \$10,000 for a first violation that does not result in injury, and to \$20,000 for a violation that results in injury, or for a 2nd or subsequent violation.

(5) Existing law makes it a crime to knowingly and without permission use the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and to thereby damage a computer, computer system, or computer network. Existing law makes a violation of these provisions punishable by a fine of \$1,000 for a first violation that does not cause injury, and by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$5,000, or by both that fine and imprisonment, for a violation that results in injury or for a 2nd or subsequent offense.

This bill would revise this crime to apply to any person who knowingly and without permission uses the Internet domain name or profile, as defined, of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages or posts and thereby causes damage. The bill would define electronic mail for these purposes. By expanding the definition of a crime, this bill would impose a state-mandated local program.

The bill would also revise the definitions of “access,” “computer network,” and “computer services” for purposes of these provisions.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 502 of the Penal Code is amended to  
2 read:

3 502. (a) It is the intent of the Legislature in enacting this  
4 section to expand the degree of protection afforded to individuals,

1 businesses, and governmental agencies from tampering,  
2 interference, damage, and unauthorized access to lawfully created  
3 computer data and computer systems. The Legislature finds and  
4 declares that the proliferation of computer technology has resulted  
5 in a concomitant proliferation of computer crime and other forms  
6 of unauthorized access to computers, computer systems, and  
7 computer data.

8 The Legislature further finds and declares that protection of the  
9 integrity of all types and forms of lawfully created computers,  
10 computer systems, and computer data is vital to the protection of  
11 the privacy of individuals as well as to the well-being of financial  
12 institutions, business concerns, governmental agencies, and others  
13 within this state that lawfully utilize those computers, computer  
14 systems, and data.

15 (b) For the purposes of this section, the following terms have  
16 the following meanings:

17 (1) “Access” means to gain entry to, instruct, *cause input to*,  
18 *cause output from*, *cause data processing with*, or communicate  
19 with, the logical, arithmetical, or memory function resources of a  
20 computer, computer system, or computer network.

21 (2) “Computer network” means any system that provides  
22 communications between one or more computer systems and  
23 input/output devices including, but not limited to, display terminals,  
24 *remote systems*, *mobile devices*, and printers connected by  
25 telecommunication facilities.

26 (3) “Computer program or software” means a set of instructions  
27 or statements, and related data, that when executed in actual or  
28 modified form, cause a computer, computer system, or computer  
29 network to perform specified functions.

30 (4) “Computer services” includes, but is not limited to, computer  
31 time, data processing, or storage functions, *Internet services*,  
32 *electronic mail services*, *electronic message services*, or other uses  
33 of a computer, computer system, or computer network.

34 (5) “Computer system” means a device or collection of devices,  
35 including support devices and excluding calculators that are not  
36 programmable and capable of being used in conjunction with  
37 external files, one or more of which contain computer programs,  
38 electronic instructions, input data, and output data, that performs  
39 functions including, but not limited to, logic, arithmetic, data  
40 storage and retrieval, communication, and control.

1 (6) “Government computer system” means any computer system,  
2 or part thereof, that is owned, operated, or used by any federal,  
3 state, or local governmental entity.

4 (7) “Public safety infrastructure computer system” means any  
5 computer system, or part thereof, that is necessary for the health  
6 and safety of the public including computer systems owned,  
7 operated, or used by drinking water and wastewater treatment  
8 facilities, hospitals, emergency service providers,  
9 telecommunication companies, and gas and electric utility  
10 companies.

11 ~~(6)~~  
12 (8) “Data” means a representation of information, knowledge,  
13 facts, concepts, computer software, computer programs or  
14 instructions. Data may be in any form, in storage media, or as  
15 stored in the memory of the computer or in transit or presented on  
16 a display device.

17 ~~(7)~~  
18 (9) “Supporting documentation” includes, but is not limited to,  
19 all information, in any form, pertaining to the design, construction,  
20 classification, implementation, use, or modification of a computer,  
21 computer system, computer network, computer program, or  
22 computer software, which information is not generally available  
23 to the public and is necessary for the operation of a computer,  
24 computer system, computer network, computer program, or  
25 computer software.

26 ~~(8)~~  
27 (10) “Injury” means any alteration, deletion, damage, or  
28 destruction of a computer system, computer network, computer  
29 program, or data caused by the access, or the denial of access to  
30 legitimate users of a computer system, network, or program.

31 ~~(9)~~  
32 (11) “Victim expenditure” means any expenditure reasonably  
33 and necessarily incurred by the owner or lessee to verify that a  
34 computer system, computer network, computer program, or data  
35 was or was not altered, deleted, damaged, or destroyed by the  
36 access.

37 ~~(10)~~  
38 (12) “Computer contaminant” means any set of computer  
39 instructions that are designed to modify, damage, destroy, record,  
40 or transmit information within a computer, computer system, or

1 computer network without the intent or permission of the owner  
2 of the information. They include, but are not limited to, a group  
3 of computer instructions commonly called viruses or worms, that  
4 are self-replicating or self-propagating and are designed to  
5 contaminate other computer programs or computer data, consume  
6 computer resources, modify, destroy, record, or transmit data, or  
7 in some other fashion usurp the normal operation of the computer,  
8 computer system, or computer network.

9 ~~(H)~~

10 (13) “Internet domain name” means a globally unique,  
11 hierarchical reference to an Internet host or service, assigned  
12 through centralized Internet naming authorities, comprising a series  
13 of character strings separated by periods, with the rightmost  
14 character string specifying the top of the hierarchy.

15 (14) “*Electronic mail*” means an electronic message or  
16 computer file that is transmitted between two or more  
17 telecommunications devices; computers; computer networks,  
18 regardless of whether the network is a local, regional, or global  
19 network; or electronic devices capable of receiving electronic  
20 messages, regardless of whether the message is converted to hard  
21 copy format after receipt, viewed upon transmission, or stored for  
22 later retrieval.

23 (15) “*Profile*” means either of the following:

24 (A) A configuration of user data required by a computer so that  
25 the user may access programs or services and have the desired  
26 functionality on that computer.

27 (B) An Internet Web site user’s personal page or section of a  
28 page that is made up of data, in text or graphical form, that displays  
29 significant, unique, or identifying information, including, but not  
30 limited to, listing acquaintances, interests, associations, activities,  
31 or personal statements.

32 (c) Except as provided in subdivision (h), any person who  
33 commits any of the following acts is guilty of a public offense:

34 (1) Knowingly accesses and without permission alters, damages,  
35 deletes, destroys, or otherwise uses any data, computer, computer  
36 system, or computer network in order to either (A) devise or  
37 execute any scheme or artifice to defraud, deceive, or extort, or

38 (B) wrongfully control or obtain money, property, or data.

39 (2) Knowingly accesses and without permission takes, copies,  
40 or makes use of any data from a computer, computer system, or

1 computer network, or takes or copies any supporting  
2 documentation, whether existing or residing internal or external  
3 to a computer, computer system, or computer network.

4 (3) Knowingly and without permission uses or causes to be used  
5 computer services.

6 (4) Knowingly accesses and without permission adds, alters,  
7 damages, deletes, or destroys any data, computer software, or  
8 computer programs which reside or exist internal or external to a  
9 computer, computer system, or computer network.

10 (5) Knowingly and without permission disrupts or causes the  
11 disruption of computer services or denies or causes the denial of  
12 computer services to an authorized user of a computer, computer  
13 system, or computer network.

14 (6) Knowingly and without permission provides or assists in  
15 providing a means of accessing a computer, computer system, or  
16 computer network in violation of this section.

17 (7) Knowingly and without permission accesses or causes to be  
18 accessed any computer, computer system, or computer network.

19 (8) Knowingly introduces any computer contaminant into any  
20 computer, computer system, or computer network.

21 (9) Knowingly and without permission uses the Internet domain  
22 name *or profile* of another individual, corporation, or entity in  
23 connection with the sending of one or more electronic mail  
24 messages; *or posts* and thereby damages or causes damage to a  
25 computer, *computer data*, computer system, or computer network.

26 (10) *Knowingly and without permission disrupts or causes the*  
27 *disruption of government computer services or denies or causes*  
28 *the denial of government computer services to an authorized user*  
29 *of a government computer, computer system, or computer network.*

30 (11) *Knowingly accesses and without permission adds, alters,*  
31 *damages, deletes, or destroys any data, computer software, or*  
32 *computer programs which reside or exist internal or external to*  
33 *a public safety infrastructure computer system computer, computer*  
34 *system, or computer network.*

35 (12) *Knowingly and without permission disrupts or causes the*  
36 *disruption of public safety infrastructure computer system computer*  
37 *services or denies or causes the denial of computer services to an*  
38 *authorized user of a public safety infrastructure computer system*  
39 *computer, computer system, or computer network.*

1 (13) Knowingly and without permission provides or assists in  
2 providing a means of accessing a computer, computer system, or  
3 public safety infrastructure computer system computer, computer  
4 system, or computer network in violation of this section.

5 (14) Knowingly introduces any computer contaminant into any  
6 public safety infrastructure computer system computer, computer  
7 system, or computer network.

8 (d) (1) Any person who violates any of the provisions of  
9 paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by  
10 a fine not exceeding ten thousand dollars (\$10,000), or by  
11 imprisonment pursuant to subdivision (h) of Section 1170 for 16  
12 months, or two or three years, or by both that fine and  
13 imprisonment, or by a fine not exceeding five thousand dollars  
14 (\$5,000), or by imprisonment in a county jail not exceeding one  
15 year, or by both that fine and imprisonment.

16 (2) Any person who violates paragraph (3) of subdivision (c)  
17 is punishable as follows:

18 (A) For the first violation that does not result in injury, and  
19 where the value of the computer services used does not exceed  
20 nine hundred fifty dollars (\$950), by a fine not exceeding five  
21 thousand dollars (\$5,000), or by imprisonment in a county jail not  
22 exceeding one year, or by both that fine and imprisonment.

23 (B) For any violation that results in a victim expenditure in an  
24 amount greater than five thousand dollars (\$5,000) or in an injury,  
25 or if the value of the computer services used exceeds nine hundred  
26 fifty dollars (\$950), or for any second or subsequent violation, by  
27 a fine not exceeding ten thousand dollars (\$10,000), or by  
28 imprisonment pursuant to subdivision (h) of Section 1170 for 16  
29 months, or two or three years, or by both that fine and  
30 imprisonment, or by a fine not exceeding five thousand dollars  
31 (\$5,000), or by imprisonment in a county jail not exceeding one  
32 year, or by both that fine and imprisonment.

33 (3) Any person who violates paragraph (6) or (7) of subdivision  
34 (c) is punishable as follows:

35 (A) For a first violation that does not result in injury, an  
36 infraction punishable by a fine not exceeding one thousand dollars  
37 (\$1,000).

38 (B) For any violation that results in a victim expenditure in an  
39 amount not greater than five thousand dollars (\$5,000), or for a  
40 second or subsequent violation, by a fine not exceeding five

1 thousand dollars (\$5,000), or by imprisonment in a county jail not  
2 exceeding one year, or by both that fine and imprisonment.

3 (C) For any violation that results in a victim expenditure in an  
4 amount greater than five thousand dollars (\$5,000), by a fine not  
5 exceeding ten thousand dollars (\$10,000), or by imprisonment  
6 pursuant to subdivision (h) of Section 1170 for 16 months, or two  
7 or three years, or by both that fine and imprisonment, or by a fine  
8 not exceeding five thousand dollars (\$5,000), or by imprisonment  
9 in a county jail not exceeding one year, or by both that fine and  
10 imprisonment.

11 (4) Any person who violates paragraph (8) of subdivision (c)  
12 is punishable as follows:

13 (A) For a first violation that does not result in injury, a  
14 misdemeanor punishable by a fine not exceeding five thousand  
15 dollars (\$5,000), or by imprisonment in a county jail not exceeding  
16 one year, or by both that fine and imprisonment.

17 (B) For any violation that results in injury, or for a second or  
18 subsequent violation, by a fine not exceeding ten thousand dollars  
19 (\$10,000), or by imprisonment in a county jail not exceeding one  
20 year, or by imprisonment pursuant to subdivision (h) of Section  
21 1170, or by both that fine and imprisonment.

22 (5) Any person who violates paragraph (9) of subdivision (c)  
23 is punishable as follows:

24 (A) For a first violation that does not result in injury, an  
25 infraction punishable by a fine not one thousand dollars.

26 (B) For any violation that results in injury, or for a second or  
27 subsequent violation, by a fine not exceeding five thousand dollars  
28 (\$5,000), or by imprisonment in a county jail not exceeding one  
29 year, or by both that fine and imprisonment.

30 (6) *Any person who violates paragraph (10) of subdivision (c)*  
31 *is punishable by a fine not exceeding twenty thousand dollars*  
32 *(\$20,000), or by imprisonment pursuant to subdivision (h) of*  
33 *Section 1170 for 16 months, or two or three years, or by both that*  
34 *fine and imprisonment, or by a fine not exceeding ten thousand*  
35 *dollars (\$10,000), or by imprisonment in a county jail not*  
36 *exceeding one year, or by both that fine and imprisonment.*

37 (7) *Any person who violates any of the provisions of paragraph*  
38 *(11) or (12) of subdivision (c) is punishable by a fine not exceeding*  
39 *twenty thousand dollars (\$20,000), or by imprisonment pursuant*  
40 *to subdivision (h) of Section 1170 for 16 months, or two or three*

1 years, or by both that fine and imprisonment, or by a fine not  
 2 exceeding ten thousand dollars (\$10,000), or by imprisonment in  
 3 a county jail not exceeding one year, or by both that fine and  
 4 imprisonment.

5 (8) Any person who violates paragraph (13) of subdivision (c)  
 6 is punishable as follows:

7 (A) For a first violation that does not result in injury, an  
 8 infraction punishable by a fine not exceeding two thousand dollars  
 9 (\$2,000).

10 (B) For a violation that results in a victim expenditure in an  
 11 amount not greater than five thousand dollars (\$5,000), or for a  
 12 second or subsequent violation, by a fine not exceeding ten  
 13 thousand dollars (\$10,000), or by imprisonment in a county jail  
 14 not exceeding one year, or by both that fine and imprisonment.

15 (C) For any violation that results in a victim expenditure in an  
 16 amount greater than five thousand dollars (\$5,000), by a fine not  
 17 exceeding twenty thousand dollars (\$20,000), or by imprisonment  
 18 pursuant to subdivision (h) of Section 1170 for 16 months, or two  
 19 or three years, or by both that fine and imprisonment, or by a fine  
 20 not exceeding ten thousand dollars (\$10,000), or by imprisonment  
 21 in a county jail not exceeding one year, or by both that fine and  
 22 imprisonment.

23 (9) Any person who violates paragraph (14) of subdivision (c)  
 24 is punishable as follows:

25 (A) For a first violation that does not result in injury, a  
 26 misdemeanor punishable by a fine not exceeding ten thousand  
 27 dollars (\$10,000), or by imprisonment in a county jail not  
 28 exceeding one year, or by both that fine and imprisonment.

29 (B) For any violation that results in injury, or for a second or  
 30 subsequent violation, by a fine not exceeding twenty thousand  
 31 dollars (\$20,000), or by imprisonment in a county jail not  
 32 exceeding one year, or by imprisonment pursuant to subdivision  
 33 (h) of Section 1170, or by both that fine and imprisonment.

34 (e) (1) In addition to any other civil remedy available, the owner  
 35 or lessee of the computer, computer system, computer network,  
 36 computer program, or data who suffers damage or loss by reason  
 37 of a violation of any of the provisions of subdivision (c) may bring  
 38 a civil action against the violator for compensatory damages and  
 39 injunctive relief or other equitable relief. Compensatory damages  
 40 shall include any expenditure reasonably and necessarily incurred

1 by the owner or lessee to verify that a computer system, computer  
2 network, computer program, or data was or was not altered,  
3 damaged, or deleted by the access. For the purposes of actions  
4 authorized by this subdivision, the conduct of an unemancipated  
5 minor shall be imputed to the parent or legal guardian having  
6 control or custody of the minor, pursuant to the provisions of  
7 Section 1714.1 of the Civil Code.

8 (2) In any action brought pursuant to this subdivision the court  
9 may award reasonable attorney's fees.

10 (3) A community college, state university, or academic  
11 institution accredited in this state is required to include  
12 computer-related crimes as a specific violation of college or  
13 university student conduct policies and regulations that may subject  
14 a student to disciplinary sanctions up to and including dismissal  
15 from the academic institution. This paragraph shall not apply to  
16 the University of California unless the Board of Regents adopts a  
17 resolution to that effect.

18 (4) In any action brought pursuant to this subdivision for a  
19 willful violation of the provisions of subdivision (c), where it is  
20 proved by clear and convincing evidence that a defendant has been  
21 guilty of oppression, fraud, or malice as defined in subdivision (c)  
22 of Section 3294 of the Civil Code, the court may additionally award  
23 punitive or exemplary damages.

24 (5) No action may be brought pursuant to this subdivision unless  
25 it is initiated within three years of the date of the act complained  
26 of, or the date of the discovery of the damage, whichever is later.

27 (f) This section shall not be construed to preclude the  
28 applicability of any other provision of the criminal law of this state  
29 which applies or may apply to any transaction, nor shall it make  
30 illegal any employee labor relations activities that are within the  
31 scope and protection of state or federal labor laws.

32 (g) Any computer, computer system, computer network, or any  
33 software or data, owned by the defendant, that is used during the  
34 commission of any public offense described in subdivision (c) or  
35 any computer, owned by the defendant, which is used as a  
36 repository for the storage of software or data illegally obtained in  
37 violation of subdivision (c) shall be subject to forfeiture, as  
38 specified in Section 502.01.

39 (h) (1) Subdivision (c) does not apply to punish any acts which  
40 are committed by a person within the scope of his or her lawful

1 employment. For purposes of this section, a person acts within the  
2 scope of his or her employment when he or she performs acts  
3 which are reasonably necessary to the performance of his or her  
4 work assignment.

5 (2) Paragraph (3) of subdivision (c) does not apply to penalize  
6 any acts committed by a person acting outside of his or her lawful  
7 employment, provided that the employee’s activities do not cause  
8 an injury, as defined in paragraph (8) of subdivision (b), to the  
9 employer or another, or provided that the value of supplies or  
10 computer services, as defined in paragraph (4) of subdivision (b),  
11 which are used does not exceed an accumulated total of two  
12 hundred fifty dollars (\$250).

13 (i) No activity exempted from prosecution under paragraph (2)  
14 of subdivision (h) which incidentally violates paragraph (2), (4),  
15 or (7) of subdivision (c) shall be prosecuted under those paragraphs.

16 (j) For purposes of bringing a civil or a criminal action under  
17 this section, a person who causes, by any means, the access of a  
18 computer, computer system, or computer network in one  
19 jurisdiction from another jurisdiction is deemed to have personally  
20 accessed the computer, computer system, or computer network in  
21 each jurisdiction.

22 (k) In determining the terms and conditions applicable to a  
23 person convicted of a violation of this section the court shall  
24 consider the following:

25 (1) The court shall consider prohibitions on access to and use  
26 of computers.

27 (2) Except as otherwise required by law, the court shall consider  
28 alternate sentencing, including community service, if the defendant  
29 shows remorse and recognition of the wrongdoing, and an  
30 inclination not to repeat the offense.

31 SEC. 2. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district will be incurred because this act creates a new crime or  
35 infraction, eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section 17556 of  
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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