

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1649

Introduced by Assembly Member Waldron

February 11, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1649, as amended, 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, make it a crime for a person who~~ to knowingly and without permission ~~disrupts~~ *disrupt* or ~~causes~~ *cause* the disruption of government computer services or public safety infrastructure computer system computer services, as defined, or ~~denies or causes~~ *deny or cause* the denial of government computer services or public safety infrastructure computer system computer services to an authorized user. *The bill would make a violation of these provisions punishable in the same manner as the above provisions of existing law.*

(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,~~ *make it a crime* for a person ~~who to knowingly accesses~~ *access* and without permission ~~adds, alters, damages, deletes, or destroys~~ *add, alter, delete, or destroy* 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. *The bill would make a violation of these provisions punishable in the same manner as the above provisions of existing law.*

(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~~ *make it a crime* for any person ~~who to knowingly and without permission provides or assists~~ *provide or assist* in providing a means of accessing a public

safety infrastructure computer system computer, computer system, or computer network. *The bill would make a violation of these provisions punishable in the same manner as the above provisions of existing law.*

(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 make it a crime for any person to knowingly introduce any computer contaminant into any public safety infrastructure computer system computer, computer system, or computer network. The bill would make a violation of these provisions punishable in the same manner as the above provisions of existing law.

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

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

19 (b) For the purposes of this section, the following terms have
20 the following meanings:

21 (1) "Access" means to gain entry to, instruct, cause input to,
22 cause output from, cause data processing with, or communicate
23 with, the logical, arithmetical, or memory function resources of a
24 computer, computer system, or computer network.

25 (2) "Computer network" means any system that provides
26 communications between one or more computer systems and
27 input/output devices including, but not limited to, display terminals,
28 remote systems, mobile devices, and printers connected by
29 telecommunication facilities.

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

5 (4) “Computer services” includes, but is not limited to, computer
6 time, data processing, or storage functions, Internet services,
7 electronic mail services, electronic message services, or other uses
8 of a computer, computer system, or computer network.

9 (5) “Computer system” means a device or collection of devices,
10 including support devices and excluding calculators that are not
11 programmable and capable of being used in conjunction with
12 external files, one or more of which contain computer programs,
13 electronic instructions, input data, and output data, that performs
14 functions including, but not limited to, logic, arithmetic, data
15 storage and retrieval, communication, and control.

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

19 (7) “Public safety infrastructure computer system” means any
20 computer system, or part thereof, that is necessary for the health
21 and safety of the public including computer systems owned,
22 operated, or used by drinking water and wastewater treatment
23 facilities, hospitals, emergency service providers,
24 telecommunication companies, and gas and electric utility
25 companies.

26 (8) “Data” means a representation of information, knowledge,
27 facts, concepts, computer software, computer programs or
28 instructions. Data may be in any form, in storage media, or as
29 stored in the memory of the computer or in transit or presented on
30 a display device.

31 (9) “Supporting documentation” includes, but is not limited to,
32 all information, in any form, pertaining to the design, construction,
33 classification, implementation, use, or modification of a computer,
34 computer system, computer network, computer program, or
35 computer software, which information is not generally available
36 to the public and is necessary for the operation of a computer,
37 computer system, computer network, computer program, or
38 computer software.

39 (10) “Injury” means any alteration, deletion, damage, or
40 destruction of a computer system, computer network, computer

1 program, or data caused by the access, or the denial of access to
 2 legitimate users of a computer system, network, or program.

3 (11) “Victim expenditure” means any expenditure reasonably
 4 and necessarily incurred by the owner or lessee to verify that a
 5 computer system, computer network, computer program, or data
 6 was or was not altered, deleted, damaged, or destroyed by the
 7 access.

8 (12) “Computer contaminant” means any set of computer
 9 instructions that are designed to modify, damage, destroy, record,
 10 or transmit information within a computer, computer system, or
 11 computer network without the intent or permission of the owner
 12 of the information. They include, but are not limited to, a group
 13 of computer instructions commonly called viruses or worms, that
 14 are self-replicating or self-propagating and are designed to
 15 contaminate other computer programs or computer data, consume
 16 computer resources, modify, destroy, record, or transmit data, or
 17 in some other fashion usurp the normal operation of the computer,
 18 computer system, or computer network.

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

24 (14) “Electronic mail” means an electronic message or computer
 25 file that is transmitted between two or more telecommunications
 26 devices; computers; computer networks, regardless of whether the
 27 network is a local, regional, or global network; or electronic devices
 28 capable or receiving electronic messages, regardless of whether
 29 the message is converted to hard copy format after receipt, viewed
 30 upon transmission, or stored for later retrieval.

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

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

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

- 1 (c) Except as provided in subdivision (h), any person who
2 commits any of the following acts is guilty of a public offense:
- 3 (1) Knowingly accesses and without permission alters, damages,
4 deletes, destroys, or otherwise uses any data, computer, computer
5 system, or computer network in order to either (A) devise or
6 execute any scheme or artifice to defraud, deceive, or extort, or
7 (B) wrongfully control or obtain money, property, or data.
- 8 (2) Knowingly accesses and without permission takes, copies,
9 or makes use of any data from a computer, computer system, or
10 computer network, or takes or copies any supporting
11 documentation, whether existing or residing internal or external
12 to a computer, computer system, or computer network.
- 13 (3) Knowingly and without permission uses or causes to be used
14 computer services.
- 15 (4) Knowingly accesses and without permission adds, alters,
16 damages, deletes, or destroys any data, computer software, or
17 computer programs which reside or exist internal or external to a
18 computer, computer system, or computer network.
- 19 (5) Knowingly and without permission disrupts or causes the
20 disruption of computer services or denies or causes the denial of
21 computer services to an authorized user of a computer, computer
22 system, or computer network.
- 23 (6) Knowingly and without permission provides or assists in
24 providing a means of accessing a computer, computer system, or
25 computer network in violation of this section.
- 26 (7) Knowingly and without permission accesses or causes to be
27 accessed any computer, computer system, or computer network.
- 28 (8) Knowingly introduces any computer contaminant into any
29 computer, computer system, or computer network.
- 30 (9) Knowingly and without permission uses the Internet domain
31 name or profile of another individual, corporation, or entity in
32 connection with the sending of one or more electronic mail
33 messages or posts and thereby damages or causes damage to a
34 computer, computer data, computer system, or computer network.
- 35 (10) Knowingly and without permission disrupts or causes the
36 disruption of government computer services or denies or causes
37 the denial of government computer services to an authorized user
38 of a government computer, computer system, or computer network.
- 39 (11) Knowingly accesses and without permission adds, alters,
40 damages, deletes, or destroys any data, computer software, or

1 computer programs which reside or exist internal or external to a
2 public safety infrastructure computer system computer, computer
3 system, or computer network.

4 (12) Knowingly and without permission disrupts or causes the
5 disruption of public safety infrastructure computer system computer
6 services or denies or causes the denial of computer services to an
7 authorized user of a public safety infrastructure computer system
8 computer, computer system, or computer network.

9 (13) Knowingly and without permission provides or assists in
10 providing a means of accessing a computer, computer system, or
11 public safety infrastructure computer system computer, computer
12 system, or computer network in violation of this section.

13 (14) Knowingly introduces any computer contaminant into any
14 public safety infrastructure computer system computer, computer
15 system, or computer network.

16 (d) (1) Any person who violates any of the provisions of
17 paragraph (1), (2), (4), ~~(5)~~, (10), (11), or (12) of subdivision (c)
18 is punishable by a fine not exceeding ten thousand dollars
19 (\$10,000), or by imprisonment pursuant to subdivision (h) of
20 Section 1170 for 16 months, or two or three years, or by both that
21 fine and imprisonment, or by a fine not exceeding five thousand
22 dollars (\$5,000), or by imprisonment in a county jail not exceeding
23 one year, or by both that fine and imprisonment.

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

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

31 (B) For any violation that results in a victim expenditure in an
32 amount greater than five thousand dollars (\$5,000) or in an injury,
33 or if the value of the computer services used exceeds nine hundred
34 fifty dollars (\$950), or for any second or subsequent violation, by
35 a fine not exceeding ten thousand dollars (\$10,000), or by
36 imprisonment pursuant to subdivision (h) of Section 1170 for 16
37 months, or two or three years, or by both that fine and
38 imprisonment, or by a fine not exceeding five thousand dollars
39 (\$5,000), or by imprisonment in a county jail not exceeding one
40 year, or by both that fine and imprisonment.

1 (3) Any person who violates paragraph (6) ~~or~~, (7), *or* (13) of
2 subdivision (c) is punishable as follows:

3 (A) For a first violation that does not result in injury, an
4 infraction punishable by a fine not exceeding one thousand dollars
5 (\$1,000).

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

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

19 (4) Any person who violates paragraph (8) *or* (14) of subdivision
20 (c) is punishable as follows:

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

25 (B) For any violation that results in injury, or for a second or
26 subsequent violation, by a fine not exceeding ten thousand dollars
27 (\$10,000), or by imprisonment in a county jail not exceeding one
28 year, or by imprisonment pursuant to subdivision (h) of Section
29 1170, or by both that fine and imprisonment.

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

32 (A) For a first violation that does not result in injury, an
33 infraction punishable by a fine not *exceeding* one thousand dollars
34 (\$1,000).

35 (B) For any violation that results in injury, or for a second or
36 subsequent violation, by a fine not exceeding five thousand dollars
37 (\$5,000), or by imprisonment in a county jail not exceeding one
38 year, or by both that fine and imprisonment.

39 ~~(6) Any person who violates paragraph (10) of subdivision (c)~~
40 ~~is punishable by a fine not exceeding twenty thousand dollars~~

1 (\$20,000), or by imprisonment pursuant to subdivision (h) of
 2 Section 1170 for 16 months, or two or three years, or by both that
 3 fine and imprisonment, or by a fine not exceeding ten thousand
 4 dollars (\$10,000), or by imprisonment in a county jail not
 5 exceeding one year, or by both that fine and imprisonment.

6 ~~(7) Any person who violates any of the provisions of paragraph~~
 7 ~~(11) or (12) of subdivision (c) is punishable by a fine not exceeding~~
 8 ~~twenty thousand dollars (\$20,000), or by imprisonment pursuant~~
 9 ~~to subdivision (h) of Section 1170 for 16 months, or two or three~~
 10 ~~years, or by both that fine and imprisonment, or by a fine not~~
 11 ~~exceeding ten thousand dollars (\$10,000), or by imprisonment in~~
 12 ~~a county jail not exceeding one year, or by both that fine and~~
 13 ~~imprisonment.~~

14 ~~(8) Any person who violates paragraph (13) of subdivision (c)~~
 15 ~~is punishable as follows:~~

16 ~~(A) For a first violation that does not result in injury, an~~
 17 ~~infraction punishable by a fine not exceeding two thousand dollars~~
 18 ~~(\$2,000).~~

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

24 ~~(C) For any violation that results in a victim expenditure in an~~
 25 ~~amount greater than five thousand dollars (\$5,000), by a fine not~~
 26 ~~exceeding twenty thousand dollars (\$20,000), or by imprisonment~~
 27 ~~pursuant to subdivision (h) of Section 1170 for 16 months, or two~~
 28 ~~or three years, or by both that fine and imprisonment, or by a fine~~
 29 ~~not exceeding ten thousand dollars (\$10,000), or by imprisonment~~
 30 ~~in a county jail not exceeding one year, or by both that fine and~~
 31 ~~imprisonment.~~

32 ~~(9) Any person who violates paragraph (14) of subdivision (c)~~
 33 ~~is punishable as follows:~~

34 ~~(A) For a first violation that does not result in injury, a~~
 35 ~~misdemeanor punishable by a fine not exceeding ten thousand~~
 36 ~~dollars (\$10,000), or by imprisonment in a county jail not~~
 37 ~~exceeding one year, or by both that fine and imprisonment.~~

38 ~~(B) For any violation that results in injury, or for a second or~~
 39 ~~subsequent violation, by a fine not exceeding twenty thousand~~
 40 ~~dollars (\$20,000), or by imprisonment in a county jail not~~

1 ~~exceeding one year, or by imprisonment pursuant to subdivision~~
2 ~~(h) of Section 1170, or by both that fine and imprisonment.~~

3 (e) (1) In addition to any other civil remedy available, the owner
4 or lessee of the computer, computer system, computer network,
5 computer program, or data who suffers damage or loss by reason
6 of a violation of any of the provisions of subdivision (c) may bring
7 a civil action against the violator for compensatory damages and
8 injunctive relief or other equitable relief. Compensatory damages
9 shall include any expenditure reasonably and necessarily incurred
10 by the owner or lessee to verify that a computer system, computer
11 network, computer program, or data was or was not altered,
12 damaged, or deleted by the access. For the purposes of actions
13 authorized by this subdivision, the conduct of an unemancipated
14 minor shall be imputed to the parent or legal guardian having
15 control or custody of the minor, pursuant to the provisions of
16 Section 1714.1 of the Civil Code.

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

19 (3) A community college, state university, or academic
20 institution accredited in this state is required to include
21 computer-related crimes as a specific violation of college or
22 university student conduct policies and regulations that may subject
23 a student to disciplinary sanctions up to and including dismissal
24 from the academic institution. This paragraph shall not apply to
25 the University of California unless the Board of Regents adopts a
26 resolution to that effect.

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

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

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

1 (g) Any computer, computer system, computer network, or any
2 software or data, owned by the defendant, that is used during the
3 commission of any public offense described in subdivision (c) or
4 any computer, owned by the defendant, which is used as a
5 repository for the storage of software or data illegally obtained in
6 violation of subdivision (c) shall be subject to forfeiture, as
7 specified in Section 502.01.

8 (h) (1) Subdivision (c) does not apply to punish any acts which
9 are committed by a person within the scope of his or her lawful
10 employment. For purposes of this section, a person acts within the
11 scope of his or her employment when he or she performs acts
12 which are reasonably necessary to the performance of his or her
13 work assignment.

14 (2) Paragraph (3) of subdivision (c) does not apply to penalize
15 any acts committed by a person acting outside of his or her lawful
16 employment, provided that the employee's activities do not cause
17 an injury, ~~as defined in paragraph (8) of subdivision (b)~~, to the
18 employer or another, or provided that the value of supplies or
19 computer services, ~~as defined in paragraph (4) of subdivision (b)~~,
20 which are used does not exceed an accumulated total of two
21 hundred fifty dollars (\$250).

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

25 (j) For purposes of bringing a civil or a criminal action under
26 this section, a person who causes, by any means, the access of a
27 computer, computer system, or computer network in one
28 jurisdiction from another jurisdiction is deemed to have personally
29 accessed the computer, computer system, or computer network in
30 each jurisdiction.

31 (k) In determining the terms and conditions applicable to a
32 person convicted of a violation of this section the court shall
33 consider the following:

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

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

1 SEC. 2. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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