

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 22

Introduced by Assembly Member Torres

December 1, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

AB 22, as amended, Torres. Computer hacking: ~~financial institutions; unauthorized access; punishment.~~

Existing law provides that any person who, among other things, knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, as defined, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network, is punishable by a fine not exceeding \$10,000, or by imprisonment in the state prison 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 ~~provide that in the case of a violation involving the computer, computer system, or computer network of a bank, savings and loan, credit card issuer, or other financial institution, the fine for the felony conviction would be increased, not to exceed \$50,000~~ *increase the fine for the felony conviction to an amount not exceeding \$15,000.*

Existing law provides that any person who knowingly and without permission provides or assists in providing a means of accessing a

computer, computer system, or computer network, or who knowingly and without permission accesses or causes to be accessed a computer, computer system, or computer network, is punishable as provided for a first offense not resulting in injury, a violation resulting in a victim expenditure of an amount not greater than \$5,000, or for a 2nd or subsequent violation, or for a violation resulting in a victim expenditure in an amount greater than \$5,000. A violation resulting in a victim expenditure in an amount greater than \$5,000 is punishable by a fine not exceeding \$10,000, or by imprisonment in the state prison 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 for the felony conviction to an amount not exceeding \$15,000.

Existing law provides that any person who knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of electronic mail, and who thereby damages or causes damage to a computer, computer system, or computer network, is punishable for a violation resulting in injury, or for a 2nd or subsequent violation, 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 that fine to an amount not exceeding \$15,000.

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

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.

1 The Legislature further finds and declares that protection of the
2 integrity of all types and forms of lawfully created computers,
3 computer systems, and computer data is vital to the protection of
4 the privacy of individuals as well as to the well-being of financial
5 institutions, business concerns, governmental agencies, and others
6 within this state that lawfully utilize those computers, computer
7 systems, and data.

8 (b) For the purposes of this section, the following terms have
9 the following meanings:

10 (1) "Access" means to gain entry to, instruct, or communicate
11 with the logical, arithmetical, or memory function resources of a
12 computer, computer system, or computer network.

13 (2) "Computer network" means any system that provides
14 communications between one or more computer systems and
15 input/output devices including, but not limited to, display terminals
16 and printers connected by telecommunication facilities.

17 (3) "Computer program or software" means a set of instructions
18 or statements, and related data, that when executed in actual or
19 modified form, cause a computer, computer system, or computer
20 network to perform specified functions.

21 (4) "Computer services" includes, but is not limited to, computer
22 time, data processing, or storage functions, or other uses of a
23 computer, computer system, or computer network.

24 (5) "Computer system" means a device or collection of devices,
25 including support devices and excluding calculators that are not
26 programmable and capable of being used in conjunction with
27 external files, one or more of which contain computer programs,
28 electronic instructions, input data, and output data, that performs
29 functions including, but not limited to, logic, arithmetic, data
30 storage and retrieval, communication, and control.

31 (6) "Data" means a representation of information, knowledge,
32 facts, concepts, computer software, computer programs, or
33 instructions. Data may be in any form, in storage media, or as
34 stored in the memory of the computer or in transit or presented on
35 a display device.

36 (7) "Supporting documentation" includes, but is not limited to,
37 all information, in any form, pertaining to the design, construction,
38 classification, implementation, use, or modification of a computer,
39 computer system, computer network, computer program, or
40 computer software, which information is not generally available

1 to the public and is necessary for the operation of a computer,
2 computer system, computer network, computer program, or
3 computer software.

4 (8) “Injury” means any alteration, deletion, damage, or
5 destruction of a computer system, computer network, computer
6 program, or data caused by the access, or the denial of access, to
7 legitimate users of a computer system, network, or program.

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

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

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

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

31 (1) Knowingly accesses and without permission alters, damages,
32 deletes, destroys, or otherwise uses any data, computer, computer
33 system, or computer network in order to either (A) devise or
34 execute any scheme or artifice to defraud, deceive, or extort, or
35 (B) wrongfully control or obtain money, property, or data.

36 (2) Knowingly accesses and without permission takes, copies,
37 or makes use of any data from a computer, computer system, or
38 computer network, or takes or copies any supporting
39 documentation, whether existing or residing internal or external
40 to a computer, computer system, or computer network.

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

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

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

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

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

16 (8) Knowingly introduces any computer contaminant into any
17 computer, computer system, or computer network.

18 (9) Knowingly and without permission uses the Internet domain
19 name of another individual, corporation, or entity in connection
20 with the sending of one or more electronic mail messages, and
21 thereby damages or causes damage to a computer, computer
22 system, or computer network.

23 (d) (1) ~~(A)~~ Any person who violates any of the provisions of
24 paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by
25 a fine not exceeding ~~ten thousand dollars (\$10,000)~~ *fifteen thousand*
26 *dollars (\$15,000)*, or by imprisonment in the state prison for 16
27 months, or two or three years, or by both that fine and
28 imprisonment, or by a fine not exceeding five thousand dollars
29 (\$5,000), or by imprisonment in a county jail not exceeding one
30 year, or by both that fine and imprisonment.

31 ~~(B) A violation of paragraph (2) of subdivision (c) is punishable~~
32 ~~by a fine not exceeding fifty thousand dollars (\$50,000), or by~~
33 ~~imprisonment in the state prison for 16 months, or two or three~~
34 ~~years, or by both that fine and imprisonment, or by a fine not~~
35 ~~exceeding five thousand dollars (\$5,000), or by imprisonment in~~
36 ~~a county jail not exceeding one year, or by both that fine and~~
37 ~~imprisonment.~~

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

1 (A) For the first violation that does not result in injury, and
2 where the value of the computer services used does not exceed
3 four hundred dollars (\$400), by a fine not exceeding five thousand
4 dollars (\$5,000), or by imprisonment in a county jail not exceeding
5 one year, or by both that fine and imprisonment.

6 (B) For any violation that results in a victim expenditure in an
7 amount greater than five thousand dollars (\$5,000) or in an injury,
8 or if the value of the computer services used exceeds four hundred
9 dollars (\$400), or for any second or subsequent violation, by a fine
10 not exceeding ten thousand dollars (\$10,000), or by imprisonment
11 in the state prison for 16 months, or two or three years, or by both
12 that fine and imprisonment, or by a fine not exceeding five
13 thousand dollars (\$5,000), or by imprisonment in a county jail not
14 exceeding one year, or by both that fine and imprisonment.

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

17 (A) For a first violation that does not result in injury, an
18 infraction punishable by a fine not exceeding one thousand dollars
19 (\$1,000).

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

25 (C) For any violation that results in a victim expenditure in an
26 amount greater than five thousand dollars (\$5,000), by a fine not
27 exceeding ~~ten thousand dollars (\$10,000)~~ *fifteen thousand dollars*
28 *(\$15,000)*, or by imprisonment in the state prison for 16 months,
29 or two or three years, or by both that fine and imprisonment, or
30 by a fine not exceeding five thousand dollars (\$5,000), or by
31 imprisonment in a county jail not exceeding one year, or by both
32 that fine and imprisonment.

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

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

39 (B) For any violation that results in injury, or for a second or
40 subsequent violation, by a fine not exceeding ten thousand dollars

1 (\$10,000), or by imprisonment in a county jail not exceeding one
2 year, or in the state prison, or by both that fine and imprisonment.

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

5 (A) For a first violation that does not result in injury, an
6 infraction punishable by a fine not *exceeding* one thousand dollars
7 (\$1,000).

8 (B) For any violation that results in injury, or for a second or
9 subsequent violation, by a fine not exceeding ~~five thousand dollars~~
10 ~~(\$5,000)~~ *fifteen thousand dollars (\$15,000)*, or by imprisonment
11 in a county jail not exceeding one year, or by both that fine and
12 imprisonment.

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

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

29 (3) A community college, state university, or academic
30 institution accredited in this state is required to include
31 computer-related crimes as a specific violation of college or
32 university student conduct policies and regulations that may subject
33 a student to disciplinary sanctions up to and including dismissal
34 from the academic institution. This paragraph shall not apply to
35 the University of California unless the Board of Regents adopts a
36 resolution to that effect.

37 (4) In any action brought pursuant to this subdivision for a
38 willful violation of the provisions of subdivision (c), where it is
39 proved by clear and convincing evidence that a defendant has been
40 guilty of oppression, fraud, or malice as defined in subdivision (c)

1 of Section 3294 of the Civil Code, the court may additionally award
2 punitive or exemplary damages.

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

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

11 (g) Any computer, computer system, computer network, or any
12 software or data, owned by the defendant, that is used during the
13 commission of any public offense described in subdivision (c) or
14 any computer, owned by the defendant, which is used as a
15 repository for the storage of software or data illegally obtained in
16 violation of subdivision (c) shall be subject to forfeiture, as
17 specified in Section 502.01.

18 (h) (1) Subdivision (c) does not apply to punish any acts which
19 are committed by a person within the scope of his or her lawful
20 employment. For purposes of this section, a person acts within the
21 scope of his or her employment when he or she performs acts
22 which are reasonably necessary to the performance of his or her
23 work assignment.

24 (2) Paragraph (3) of subdivision (c) does not apply to penalize
25 any acts committed by a person acting outside of his or her lawful
26 employment, provided that the employee's activities do not cause
27 an injury, as defined in paragraph (8) of subdivision (b), to the
28 employer or another, or provided that the value of supplies or
29 computer services, as defined in paragraph (4) of subdivision (b),
30 which are used does not exceed an accumulated total of one
31 hundred dollars (\$100).

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

35 (j) For purposes of bringing a civil or a criminal action under
36 this section, a person who causes, by any means, the access of a
37 computer, computer system, or computer network in one
38 jurisdiction from another jurisdiction is deemed to have personally
39 accessed the computer, computer system, or computer network in
40 each jurisdiction.

1 (k) In determining the terms and conditions applicable to a
2 person convicted of a violation of this section the court shall
3 consider the following:

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

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

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