

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 462, L.D. 627, Bill, "An Act Relating to Computer Access"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'17-A MRSA c.18 is enacted to read:

CHAPTER 18

COMPUTER CRIMES

§431. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Access. "Access" means to gain logical entry into, instruct, communicate with, store data in or retrieve data from any computer resource.

2. Computer. "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 communications facility directly related to or operating in conjunction with such device.

3. Computer information. "Computer information" means a representation of information, knowledge, facts, concepts or instructions that are confidential or proprietary, are being prepared or have been prepared from an organized set of data and are located in computer memory or on magnetic, optical or mechanical media transferable directly to or useable directly by a computer as a source of data or instructions.

2 4. Computer network. "Computer network" means a
4 combination of one or more computers and communication facilities
 with the capability to transmit information among the devices or
 computers.

6
8 5. Computer program. "Computer program" means an ordered
 set of data representing coded instructions or statements that,
 when executed by a computer, cause the computer to process data.

10
12 6. Computer software. "Computer software" means a set of
 computer programs, procedures and associated documentation used
 in the operation of a computer system.

14
16 7. Computer system. "Computer system" means any
 combination of a computer or computers with the documentation,
 computer software or physical facilities supporting the computer.

18
20 8. Computer resource. "Computer resource" means a computer
 program, computer software, computer system, computer network,
 computer information or any combination thereof.

22
24 9. Computer virus. "Computer virus" means any computer
 instruction, information, data or program that degrades the
 performance of a computer resource; disables, damages or destroys
26 a computer resource; or attaches itself to another computer
 resource and executes when the host computer program, data or
28 instruction is executed or when some other event takes place in
 the host computer resource, data or instruction.

30
32 10. Damage. "Damage" means to destroy, alter, disrupt,
 delete, add, modify, or rearrange any computer resource by any
 means.

34
36 11. Not authorized and unauthorized. "Not authorized" and
 "unauthorized" mean not having consent or permission of the
 owner, or person licensed or authorized by the owner to grant
38 consent or permission, to access or use any computer resource, or
 accessing or using any computer resource in a manner exceeding
40 the consent or permission.

42 §432. Criminal invasion of computer privacy

44 1. A person is guilty of criminal invasion of computer
 privacy if the person intentionally accesses any computer
46 resource knowing that the person is not authorized to do so.

48 2. Criminal invasion of computer privacy is a Class D crime.

2 §433. Aggravated criminal invasion of computer privacy

4 1. A person is guilty of aggravated criminal invasion of
6 computer privacy if the person:

8 A. Intentionally makes an unauthorized copy of any computer
10 program, computer software or computer information, knowing
12 that the person is not authorized to do so;

14 B. Intentionally or knowingly damages any computer resource
16 of another person, having no reasonable ground to believe
18 that the person has the right to do so; or

20 C. Intentionally or knowingly introduces or allows the
22 introduction of a computer virus into any computer resource,
24 having no reasonable ground to believe that the person has
26 the right to do so.

28 2. Aggravated criminal invasion of computer privacy is a
30 Class C crime.

32

34

FISCAL NOTE

36

38 The Judicial Department anticipates an increase in the
40 number of cases filed as a result of the new category of computer
42 crimes. Additional costs associated with these increased cases
44 will be absorbed within existing resources.'

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48

STATEMENT OF FACT

50

52 This amendment replaces the original bill to more accurately
54 describe the exact conduct relating to computer access and
disruption that will be prohibited. The intent is to criminalize
the unauthorized access to, as well as the copying or damaging
of, any computer resource.

56

58 The 3 new sections of the Maine Criminal Code address
60 computer crime as conduct that invades the privacy of a person or
62 organization. The definitions of key terms and concepts were
64 drawn from the Model Computer Crime Act developed by the Data
66 Processing Management Association, the federal Computer Fraud and
Abuse Act of 1986 and existing statutes in the states of Florida
and Minnesota.

68

70 To "access" a computer resource is defined to include
72 gaining "logical entry" into any computer resource. "Logical
74 entry" is a term of art used in the computer industry and is
distinguished from actual physical entry into a place. A person
has gained logical entry into a computer resource if that person
can communicate with the computer and give it instructions to
perform calculations, retrieve data, store information or perform
any other function.

2 This amendment limits computer information to "confidential
4 or proprietary" information because it is logical to secure from
criminal invasion only that information in which an individual or
6 organization has a proprietary interest or reasonable expectation
of privacy. "Computer information" includes information stored
8 in the computer as well as information that is prepared to be
transferred directly into the computer, such as information on
10 disks, computer punch cards or tapes, and disks read by lasers.
The definition is not intended to include paper that contains
12 information, either before the information is entered into the
computer or after the information is printed out of the computer
14 onto paper.

16 The amendment defines "not authorized" to mean accessing a
"computer resource" in any manner that exceeds the authority
18 given by the owner, lessee, licensee or other lawful holder.

20 The Maine Revised Statutes, Title 17-A, section 432, as
enacted by this amendment, proscribes, as a Class D crime, the
22 less serious act of intentionally accessing any computer resource
without authorization. The illegal entry into a computer
24 resource is therefore similar to the crime of criminal trespass,
except that the unauthorized computer access must be
26 intentional. The requirement that the unauthorized access be
intentional eliminates the possibility that a person who
28 inadvertently gains access to a computer resource will be
committing a crime; the intent is to punish purposeful
30 unauthorized access.

32 Title 17-A, section 433, as enacted by this amendment, makes
it a Class C crime to engage in more serious forms of unlawful
34 invasion of computer privacy. Proscribed by this section are
three categories of activities. The Maine Criminal Code does not
36 adequately address copying computer programs, software or
information as a form of theft; paragraph A addresses this
38 activity. The new language makes it a Class C crime to
intentionally copy any computer information, software or program
40 when the person is not authorized to make the copy and knows that
the person is not authorized to make the copy.

42 Paragraph B of Title 17-A, section 433, as proposed by this
amendment, addresses the activity of actually damaging, or
44 damaging the information located in, the computer resource of
another person. Damage to programs, software or the information
46 contained in a computer memory can be difficult to detect and
often very expensive to correct. The damage must be done
48 intentionally or knowingly and without a reasonable ground to
believe that the person is authorized to cause the damage. This
50 would not prohibit, for instance, the repair, debugging or
deletion of information, software or programs by or at the
52 instruction of the owner of the resource. Also, it would not

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2 punish a person for the inadvertent damage to information,
software or programs resulting from activity performed by or at
the instruction of the owner of the resource.

4

6 Paragraph C of Title 17-A, section 433, as proposed by this
amendment, treats computer viruses separately from other forms of
8 damage or disruption because they are recognized by the computer
industry and its experts as a unique and complex form of abuse.
10 This amendment makes it a Class C crime for a person to
intentionally or knowingly introduce a computer virus into any
computer resource without a reasonable ground to believe that the
12 person has the right to do so. The definition of "computer
virus" is based on both the Model Computer Crime Act of the Data
14 Processing Management Association and the recently enacted
Minnesota law covering computer viruses.

Reported by the Committee on Judiciary
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