MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

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S.P. 392 In Senate, March 6, 2003

An Act To Control Unsolicited Commercial E-mail

Reference to the Committee on Utilities and Energy suggested and ordered printed.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SHOREY of Washington.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. **10 MRSA c. 228** is enacted to read:

CHAPTER 228

COMPUTER TRESPASS

§1500-G. Definitions

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

1. **Computer.** "Computer" means an electronic, magnetic, optical, hydraulic or organic device or group of devices that, pursuant to a computer program, human instruction or permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or a person. "Computer" includes any connected or directly related device, equipment or facility that enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device.

2. **Computer data or data.** "Computer data" or "data" means any representation of information, knowledge, facts, concepts or instructions that is being prepared or has been prepared and is intended to be processed, is being processed or has been processed in a computer or computer network. "Computer data" may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched cards, or stored internally in the memory of the computer.

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.

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

5. **Computer operation.** "Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions

and any combination of those functions and includes, but is not limited to, communication with, storage of data to or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A "computer operation" for a particular computer may also be any function for which that computer was generally designed.

6. 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.

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

8. Computer services. "Computer services" means external services, including data processing services, Internet services, electronic mail services and electronic message services, and information or data stored in connection with those services.

9. Computer software. "Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

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

11. Computer trespass. "Computer trespass" is defined as using a computer or computer network without authority and with the intent to disable or damage computer software, data or programs; to make an unauthorized copy of computer software, data or programs; to falsify electronic mail transmission information in connection with unsolicited bulk electronic mail; or to possess, with the intent to distribute, software designed to facilitate the falsification of electronic mail transmission information.

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

13. Electronic mail service provider. "Electronic mail service provider" means any person who is an intermediary in sending or receiving electronic mail and provides to end users of electronic mail services the ability to send or receive electronic mail.

14. Financial instrument. "Financial instrument" means, without limitation, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism or marketable security and any computerized representation of a financial instrument.

15. Property. "Property" means:

A. Real property;

B. Computers and computer networks;

C. Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether the property is:

(1) Tangible or intangible;

(2) In a format readable by humans or by a computer;

(3) In transit between computers or within a computer network or between any devices that comprise a computer; or

(4) Located on any paper or device on which it is stored by a computer or by a human; and

D. Computer services.

16. Unsolicited bulk electronic mail. "Unsolicited bulk electronic mail" means any electronically mailed document consisting of advertising material for the lease, sale, rental, gift offer or other disposition of any realty, goods, services or extension of credit that:

A. Is addressed to a recipient with whom the initiator does not have an existing business or personal relationship; and

B. Is not sent at the request of, or with the express consent of, the recipient.

Transmission of electronic mail from an organization to its members is not unsolicited bulk electronic mail.

§1500-H. Computer trespass

It is illegal to use a computer or computer network with the intent to distribute software designed to facilitate the falsification of electronic mail transmission information.

1. Civil relief; damages. A person who suffers damages through computer trespass is entitled to the following civil relief.

 A. Any person whose property or person is injured by reason of a violation of any provision of Title 17-A, section 434 may sue therefor and recover for any damages sustained and the costs of suit. Without limiting the generality of the term, "damages" includes loss of profits.

 B. If the injury under paragraph A arises from the transmission of unsolicited bulk electronic mail, the injured person, other than an electronic mail service provider, may also recover attorney's fees and costs and may elect, in lieu of actual damages, to recover $10 for each unsolicited bulk electronic mail message transmitted in violation of Title 17-A, chapter 18 or $25,000 per day, whichever is less. The injured person does not have a cause of action against the electronic mail service provider, which merely transmits the unsolicited bulk electronic mail over its computer network.

 C. If the injury under paragraph A arises from the transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorney's fees and costs and may elect, in lieu of actual damages, to recover $10 for each unsolicited bulk electronic mail message transmitted in violation of Title 17-A, chapter 18 or $25,000 per day, whichever is greater.

At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

The provisions of this chapter may not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

 Sec. 2. 17-A MRSA §431, sub-§2, as enacted by PL 1989, c. 620, is repealed and the following enacted in its place:

 2. "Computer" means an electronic, magnetic, optical, hydraulic or organic device or group of devices that, pursuant to a computer program, human instruction or permanent instructions contained in the device or group of devices, can automatically

perform computer operations with or on computer data and can communicate the results to another computer or a person. "Computer" includes any connected or directly related device, equipment or facility that enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device.

Sec. 3. 17-A MRSA §431, sub-§2-A is enacted to read:

2-A. "Computer data" or "data" means any representation of information, knowledge, facts, concepts or instructions that is being prepared or has been prepared and is intended to be processed, is being processed or has been processed in a computer or computer network. "Computer data" may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched cards, or stored internally in the memory of the computer.

Sec. 4. 17-A MRSA §431, sub-§4-A is enacted to read:

4-A. "Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any combination of those functions and includes, but is not limited to, communication with, storage of data to or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A "computer operation" for a particular computer may also be any function for which that computer was generally designed.

Sec. 5. 17-A MRSA §431, sub-§5-A is enacted to read:

5-A. "Computer services" means external services, including data processing services, Internet services, electronic mail services and electronic message services, and information or data stored in connection with those services.

Sec. 6. 17-A MRSA §431, sub-§6, as enacted by PL 1989, c. 620, is repealed and the following enacted in its place:

6. "Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

Sec. 7. 17-A MRSA §431, sub-§8, as enacted by PL 1989, c. 620, is amended to read:

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

Sec. 8. 17-A MRSA §431, sub-§§10-A and 10-B are enacted to read:

10-A. "Electronic mail service provider" means any person who is an intermediary in sending or receiving electronic mail and provides to end users of electronic mail services the ability to send or receive electronic mail.

10-B. "Financial instrument" means, without limitation, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism or marketable security and any computerized representation of a financial instrument.

Sec. 9. 17-A MRSA §431, sub-§11, as enacted by PL 1989, c. 620, is repealed and the following enacted in its place:

11. "Not authorized" and "without authority" mean not having the:

A. Right or permission of the owner to use a computer or using a computer in a manner exceeding that right or permission; or

B. Authority granted by, or being in violation of, the policies set by an electronic mail service provider to use a computer, a computer network or the computer services of the electronic mail service provider to transmit unsolicited bulk electronic mail.

Sec. 10. 17-A MRSA §431, sub-§§12 to 14 are enacted to read:

12. "Owner" means an owner or lessee of a computer or a computer network or an owner, lessee or licensee of computer data, computer programs or computer software.

13. "Property" means:

A. Real property;

B. Computers and computer networks;

C. Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether the property is:

(1) Tangible or intangible;

(2) In a format readable by humans or by a computer;

(3) In transit between computers or within a computer network or between any devices that comprise a computer; or

(4) Located on any paper or in any device on which it is stored by a computer or by a human; and

D. Computer services.

14. "Unsolicited bulk electronic mail" means any electronically mailed document consisting of advertising material for the lease, sale, rental, gift offer or other disposition of any realty, goods, services or extension of credit that meets both of the following requirements:

A. The document is addressed to a recipient with whom the initiator does not have an existing business or personal relationship; and

B. The document is not sent at the request of, or with the express consent of, the recipient.

Transmission of electronic mail from an organization to its members is not unsolicited bulk electronic mail.

Sec. 11. 17-A MRSA §434 is enacted to read:

§434. Computer trespass; penalty

1. A person is guilty of computer trespass if that person intentionally or knowingly:

A. Uses a computer or computer network without authority and with the intent to:

(1) Temporarily or permanently remove, halt or otherwise disable any computer data, computer programs or computer software from the computer or computer network;

(2) Cause the computer to malfunction, regardless of how long the malfunction persists;

(3) Alter or erase any computer data, computer programs or computer software;

    (4) Effect the creation or alteration of a financial
2   instrument or of an electronic transfer of funds;

4   (5) Cause physical injury to the property of another;

6   (6) Make or cause to be made an unauthorized copy in
    any form, including, but not limited to, any printed or
8   electronic form of computer data, computer programs or
    computer software residing in, communicated by or
10   produced by the computer or computer network; or

12   (7) Falsify or forge electronic mail transmission
    information or other routing information in any manner
14   in connection with the transmission of unsolicited bulk
    electronic mail through or into the computer network of
16   an electronic mail service provider or its subscribers;
    or
18
   B. Sells, gives or otherwise distributes, or possesses with
20   the intent to sell, give or otherwise distribute, software
   that:
22
    (1) Is primarily designed or produced for the purpose
24   of facilitating or enabling the falsification of
    electronic mail transmission information or other
26   routing information;

28   (2) Has only limited commercially significant purpose
    or use other than to facilitate or enable the
30   falsification of electronic mail transmission
    information or other routing information; or
32
    (3) Is marketed by that person or another acting in
34   concert with that person with that person's knowledge
    for use in facilitating or enabling the falsification
36   of electronic mail transmission information or other
    routing information.
38
   2. Computer trespass is a Class E crime. If there is damage
40 to the property of another valued at $2,500 or more caused by a
person's reckless disregard for the consequences of that person's
42 act, the offense is a Class D crime. If there is damage to the
property of another valued at $5,000 or more caused by the
44 person's malicious act, the offense is a Class C crime.

46   **3.** This section may not be construed to interfere with or
prohibit terms or conditions in a contract or license related to
48 computers, computer data, computer networks, computer operations,
computer programs, computer services or computer software or to
50 create any liability by reason of terms or conditions adopted by,

2 or technical measures implemented by, an electronic mail service provider based in this State to prevent the transmission of unsolicited electronic mail in violation of this chapter.

4

6   **SUMMARY**

8   This bill amends the Maine Revised Statutes, Title 17-A by making "computer trespass" a crime. "Computer trespass" is
10 defined as using a computer or computer network without authority and with the intent to disable or damage computer software, data,
12 or programs; to make an unauthorized copy of computer software, data or programs; to falsify e-mail transmission information in
14 connection with unsolicited bulk e-mail; or to possess with the intent to distribute software designed to facilitate the
16 falsification of e-mail transmission information. This bill also amends Title 10 by creating civil relief when a person or
18 person's property is damaged by computer trespass.