



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/5/2004, by Richard J. Winkel Jr.

SYNOPSIS AS INTRODUCED:

720 ILCS 5/16D-3

from Ch. 38, par. 16D-3

Amends the Criminal Code of 1961 relating to the offense of computer tampering. Increases the penalties for the offense of computer tampering by accessing a computer and damaging or destroying the computer or altering, deleting, or removing a computer program or data; or by inserting or attempting to insert a program into a computer knowing or having reason to believe that the program contains information or commands that will or may damage or destroy a computer, or that will or may alter, delete, or remove a computer program or data from a computer.

LRB093 20781 RLC 46692 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT in relation to criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Section 16D-3 as follows:

6 (720 ILCS 5/16D-3) (from Ch. 38, par. 16D-3)

7 Sec. 16D-3. Computer Tampering.

8 (a) A person commits the offense of computer tampering when
9 he knowingly and without the authorization of a computer's
10 owner, as defined in Section 15-2 of this Code, or in excess of
11 the authority granted to him:

12 (1) Accesses or causes to be accessed a computer or any
13 part thereof, or a program or data;

14 (2) Accesses or causes to be accessed a computer or any
15 part thereof, or a program or data, and obtains data or
16 services;

17 (3) Accesses or causes to be accessed a computer or any
18 part thereof, or a program or data, and damages or destroys
19 the computer or alters, deletes or removes a computer
20 program or data;

21 (4) Inserts or attempts to insert a "program" into a
22 computer or computer program knowing or having reason to
23 believe that such "program" contains information or
24 commands that will or may damage or destroy that computer,
25 or any other computer subsequently accessing or being
26 accessed by that computer, or that will or may alter,
27 delete or remove a computer program or data from that
28 computer, or any other computer program or data in a
29 computer subsequently accessing or being accessed by that
30 computer, or that will or may cause loss to the users of
31 that computer or the users of a computer which accesses or
32 which is accessed by such "program";

1 (5) Falsifies or forges electronic mail transmission
2 information or other routing information in any manner in
3 connection with the transmission of unsolicited bulk
4 electronic mail through or into the computer network of an
5 electronic mail service provider or its subscribers;

6 (a-5) It shall be unlawful for any person knowingly to
7 sell, give, or otherwise distribute or possess with the intent
8 to sell, give, or distribute software which (1) is primarily
9 designed or produced for the purpose of facilitating or
10 enabling the falsification of electronic mail transmission
11 information or other routing information; (2) has only a
12 limited commercially significant purpose or use other than to
13 facilitate or enable the falsification of electronic mail
14 transmission information or other routing information; or (3)
15 is marketed by that person or another acting in concert with
16 that person with that person's knowledge for use in
17 facilitating or enabling the falsification of electronic mail
18 transmission information or other routing information.

19 (b) Sentence.

20 (1) A person who commits the offense of computer
21 tampering as set forth in subsection (a)(1), (a)(5), or
22 (a-5) of this Section shall be guilty of a Class B
23 misdemeanor.

24 (2) A person who commits the offense of computer
25 tampering as set forth in subsection (a)(2) of this Section
26 shall be guilty of a Class A misdemeanor and a Class 4
27 felony for the second or subsequent offense.

28 (3) A person who commits the offense of computer
29 tampering as set forth in subsection (a)(3) or subsection
30 (a)(4) of this Section, if the amount of damage caused does
31 not exceed \$10,000, shall be guilty of a Class 4 felony and
32 a Class 3 felony for the second or subsequent offense. A
33 person who commits the offense of computer tampering as set
34 forth in subsection (a)(3) or subsection (a)(4) of this
35 Section, if the amount of damage caused is over \$10,000 but
36 does not exceed \$50,000, shall be guilty of a Class 3

1 felony for the first offense and a Class 2 felony for the
2 second or subsequent offense. A person who commits the
3 offense of computer tampering as set forth in subsection
4 (a)(3) or subsection (a)(4) of this Section, if the amount
5 of damage caused is over \$50,000 but does not exceed
6 \$100,000, shall be guilty of a Class 2 felony for the first
7 offense and a Class 1 felony for the second or subsequent
8 offense. A person who commits the offense of computer
9 tampering as set forth in subsection (a)(3) or subsection
10 (a)(4) of this Section, if the amount of damage caused is
11 over \$100,000, shall be guilty of a Class 1 felony for the
12 first offense and a Class X felony for the second or
13 subsequent offense.

14 (4) If the injury arises from the transmission of
15 unsolicited bulk electronic mail, the injured person,
16 other than an electronic mail service provider, may also
17 recover attorney's fees and costs, and may elect, in lieu
18 of actual damages, to recover the lesser of \$10 for each
19 and every unsolicited bulk electronic mail message
20 transmitted in violation of this Section, or \$25,000 per
21 day. The injured person shall not have a cause of action
22 against the electronic mail service provider that merely
23 transmits the unsolicited bulk electronic mail over its
24 computer network.

25 (5) If the injury arises from the transmission of
26 unsolicited bulk electronic mail, an injured electronic
27 mail service provider may also recover attorney's fees and
28 costs, and may elect, in lieu of actual damages, to recover
29 the greater of \$10 for each and every unsolicited
30 electronic mail advertisement transmitted in violation of
31 this Section, or \$25,000 per day.

32 (6) The provisions of this Section shall not be
33 construed to limit any person's right to pursue any
34 additional civil remedy otherwise allowed by law.

35 (c) Whoever suffers loss by reason of a violation of
36 subsection (a)(4) of this Section may, in a civil action

1 against the violator, obtain appropriate relief. In a civil
2 action under this Section, the court may award to the
3 prevailing party reasonable attorney's fees and other
4 litigation expenses.

5 (Source: P.A. 91-233, eff. 1-1-00.)