



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB1044

Introduced 2/11/2009, by Rep. Karen May

SYNOPSIS AS INTRODUCED:

720 ILCS 5/16D-3

from Ch. 38, par. 16D-3

Amends the Criminal Code of 1961. Provides that it is a Class B misdemeanor for any person knowingly to sell, give, possess, use, or otherwise distribute or possess with the intent to sell, give, or distribute software that is primarily designed or produced for the purpose of interfering with the operations of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind by circumventing any security measures on the ticket seller's website, circumventing any access control systems of the ticket seller's website, or circumventing any controls or measures that are instituted by the ticket seller on its website to ensure an equitable ticket buying process. Provides that telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under the computer tampering provisions, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provisions of other related telecommunications, commercial mobile services, or information services used by others in violation of the computer tampering provisions.

LRB096 09877 RLC 20040 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning 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, a computer network, or a program or data;

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

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

1 commands that will or may damage or destroy that computer,
2 or any other computer subsequently accessing or being
3 accessed by that computer, or that will or may alter,
4 delete or remove a computer program or data from that
5 computer, or any other computer program or data in a
6 computer subsequently accessing or being accessed by that
7 computer, or that will or may cause loss to the users of
8 that computer or the users of a computer which accesses or
9 which is accessed by such "program";

10 (5) Falsifies or forges electronic mail transmission
11 information or other routing information in any manner in
12 connection with the transmission of unsolicited bulk
13 electronic mail through or into the computer network of an
14 electronic mail service provider or its subscribers;

15 (a-5) It shall be unlawful for any person knowingly to
16 sell, give, or otherwise distribute or possess with the intent
17 to sell, give, or distribute software which (1) is primarily
18 designed or produced for the purpose of facilitating or
19 enabling the falsification of electronic mail transmission
20 information or other routing information; (2) has only a
21 limited commercially significant purpose or use other than to
22 facilitate or enable the falsification of electronic mail
23 transmission information or other routing information; or (3)
24 is marketed by that person or another acting in concert with
25 that person with that person's knowledge for use in
26 facilitating or enabling the falsification of electronic mail

1 transmission information or other routing information.

2 (a-7) It is unlawful for any person knowingly to sell,
3 give, possess, use, or otherwise distribute or possess with the
4 intent to sell, give, or distribute software that is primarily
5 designed or produced for the purpose of interfering with the
6 operations of any person or entity that sells, over the
7 Internet, tickets of admission to a sporting event, theater,
8 musical performance, or place of public entertainment or
9 amusement of any kind by circumventing any security measures on
10 the ticket seller's website, circumventing any access control
11 systems of the ticket seller's website, or circumventing any
12 controls or measures that are instituted by the ticket seller
13 on its website to ensure an equitable ticket buying process.

14 (a-8) Telecommunications carriers, commercial mobile
15 service providers, and providers of information services,
16 including, but not limited to, Internet service providers and
17 hosting service providers, are not liable under this Section,
18 except for willful and wanton misconduct, by virtue of the
19 transmission, storage, or caching of electronic communications
20 or messages of others or by virtue of the provisions of other
21 related telecommunications, commercial mobile services, or
22 information services used by others in violation of this
23 Section.

24 (a-10) For purposes of subsection (a), accessing a computer
25 network is deemed to be with the authorization of a computer's
26 owner if:

1 (1) the owner authorizes patrons, customers, or guests
2 to access the computer network and the person accessing the
3 computer network is an authorized patron, customer, or
4 guest and complies with all terms or conditions for use of
5 the computer network that are imposed by the owner; or

6 (2) the owner authorizes the public to access the
7 computer network and the person accessing the computer
8 network complies with all terms or conditions for use of
9 the computer network that are imposed by the owner.

10 (b) Sentence.

11 (1) A person who commits the offense of computer
12 tampering as set forth in subsection (a)(1), (a)(5), ~~or~~
13 (a-5), or (a-7) of this Section shall be guilty of a Class
14 B misdemeanor.

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

19 (3) A person who commits the offense of computer
20 tampering as set forth in subsection (a)(3) or subsection
21 (a)(4) of this Section shall be guilty of a Class 4 felony
22 and a Class 3 felony for the second or subsequent offense.

23 (4) If the injury arises from the transmission of
24 unsolicited bulk electronic mail, the injured person,
25 other than an electronic mail service provider, may also
26 recover attorney's fees and costs, and may elect, in lieu

1 of actual damages, to recover the lesser of \$10 for each
2 and every unsolicited bulk electronic mail message
3 transmitted in violation of this Section, or \$25,000 per
4 day. The injured person shall not have a cause of action
5 against the electronic mail service provider that merely
6 transmits the unsolicited bulk electronic mail over its
7 computer network.

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

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

18 (c) Whoever suffers loss by reason of a violation of
19 subsection (a)(4) of this Section may, in a civil action
20 against the violator, obtain appropriate relief. In a civil
21 action under this Section, the court may award to the
22 prevailing party reasonable attorney's fees and other
23 litigation expenses.

24 (Source: P.A. 95-326, eff. 1-1-08.)