

2A:38A-1 to 2A:38A-6

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:38A-1 to 2A:38A-6

(Computer related offenses-civil liability)

LAWS OF: 1984

CHAPTER: 182

Bill No: A245

Sponsor(s): Kern and others

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes

Assembly Committee Substitute (2nd OCR) enacted. Amendments denoted by asterisks. Substituted for S1815 (OCR & original attached)

Date of Passage: Assembly: May 14, 1984

Senate: Sept. 13, 1984

Date of Approval: November 14, 1984

Following statements are attached if available:

Sponsor statements: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

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[SECOND OFFICIAL COPY REPRINT]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 245

STATE OF NEW JERSEY

ADOPTED APRIL 30, 1984

Sponsored by Assemblyman KERN

AN ACT concerning civil liability for computer-related offenses and supplementing subtitle 6 of Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 1. As used in this act:

2 a. "Access" means to instruct, communicate with, store data in,
 3 retrieve data from, or otherwise make use of any resources of a
 4 computer, computer system, or computer network.

5 b. "Computer" means an electronic device or another similar
 6 device capable of executing a computer program, including arith-
 7 metic, logic, memory or input-output operations, by the manipula-
 8 tion of electronic or magnetic impulses and includes all computer
 9 equipment connected to such a device in a computer system or
 10 network.

11 c. "Computer equipment" means any equipment or devices includ-
 12 ing all input, output, processing, storage, software, or communica-
 13 tions facilities, intended to interface with the computer.

14 d. "Computer network" means the interconnection of communi-
 15 cation lines, including microwave or other means of electronic
 16 communications, with a computer through remote terminals, or a
 17 complex consisting of two or more interconnected computers.

18 e. "Computer program" means a series of instructions or state-
 19 ments executable on a computer which directs the computer system
 20 in a manner to produce a desired result.

21 f. "Computer software" means a set of computer programs, data,
 22 procedures, and associated documentation concerned with the
 23 operation of a computer system.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendment adopted June 25, 1984.**

24 g. "Computer system" means a set of interconnected computer
25 equipment intended to operate as a cohesive system.

26 h. "Data" means information, facts, concepts, or instructions
27 prepared for use in a computer, computer system, or computer
28 network.

29 i. "Data base" means a collection of data.

30 j. "Financial instrument" includes but is not limited to a check,
31 draft, warrant, money order, note, certificate of deposit, letter of
32 credit, bill of exchange, credit or debit card, transaction authoriza-
33 tion mechanism, marketable security and any computer representa-
34 tion of these items.

35 k. "Property" includes but is not limited to financial instruments
36 information, data, and computer software in either human readable
37 or computer readable form, copies or originals, and any other tangi-
38 ble or intangible item of value.

39 l. "Services" includes but is not limited to the use of a computer
40 system, computer network, computer programs, data prepared for
41 computer use and data contained within a computer system or
42 computer network.

1 2. For the purposes of this act, the value of any property or
2 services, including the use of computer time, shall be their fair
3 market value if it is determined that a willing buyer and willing
4 buyer and willing seller exist. Alternatively, value shall include
5 but not be limited to the cost of generating or obtaining data and
6 storing it within a computer or computer system.

1 3. A person or enterprise damaged in business or property as a
2 result of any of the following actions may sue the actor therefor
3 in the Superior Court and ***[shall]*** *may* recover compensatory
4 and punitive damages and the cost of the suit including a reasonable
5 attorney's fee, costs of investigation and litigation :

6 a. The purposeful or knowing, and unauthorized altering, damag-
7 ing, taking or destruction of any data, data base, computer program,
8 computer software or computer equipment existing internally or
9 externally to a computer, computer system or computer network ;

10 b. The purposeful or knowing, and unauthorized altering, damag-
11 ing, taking or destroying of a computer, computer system or com-
12 puter network ;

13 c. The purposeful or knowing, and unauthorized accessing or
14 attempt to access any computer, computer system or computer
15 network ;

16 d. The purposeful or knowing, and unauthorized altering, access-
17 ing, tampering with, obtaining, intercepting, damaging or destroy-
18 ing of a financial instrument ; or

19 e. The purposeful or knowing accessing and reckless altering,
20 damaging, destroying or obtaining of any data, data base, computer,
21 computer program, computer software, computer equipment, com-
22 puter system or computer network.

1 4. The value of damage, loss, property or income involved in
2 any lawsuit shall be determined by the trier of fact.

1 5. In addition to any other action or proceeding authorized by
2 law, the Attorney General, or a person or enterprise alleging injury
3 or loss may bring an action in Superior Court to enjoin actions
4 causing damage as described in this act or to enjoin any acts in
5 furtherance thereof.

1 6. Actions brought under this act may be filed in the Superior
2 Court of the county in which the computer which is accessed is
3 located, or where the terminal used in the accessing is situated, or
4 where the actual damage occurs.

1 7. This act shall take effect on the 120th day after enactment.

STATEMENT

This bill creates a civil remedy for any person or enterprise suffering damages in business or property as a result of various computer-related transgressions. Under the bill, a person would be civilly liable for damages caused by his purposeful, knowing and unauthorized altering, damaging, taking or destruction of data, a computer system, computer software or a financial instrument. In addition, a person could seek damages caused by the purposeful and knowing accessing and reckless altering, damaging or taking of data or computer equipment of any kind.

The value of damage or property involved in any lawsuit would be determined by the trier of fact.

The Attorney General or any person alleging injury would be able to seek an injunction against actions causing damage as described in the bill.

ASSEMBLY, No. 245

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen KERN, SHUSTED, MARKERT, SCHUBER and
KOSCO

AN ACT concerning forgery and fraudulent practices and amending
N. J. S. 2C:21-1.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2C:21-1 is amended to read as follows:

2 2C:21-1. Forgery and Related Offenses. a. Forgery. A person
3 is guilty of forgery if, with purpose to defraud or injure anyone,
4 or with knowledge that he is facilitating a fraud or injury to be
5 perpetrated by anyone, the actor:

6 (1) Alters or changes any writing of another without his au-
7 thorization;

8 (2) Makes, completes, executes, authenticates, issues or transfers
9 any writing so that it purports to be the act of another who did not
10 authorize that act or of a fictitious person, or to have been executed
11 at a time or place or in a numbered sequence other than was in fact
12 the case, or to be a copy of an original when no such original
13 existed; or

14 (3) Utters any writing which he knows to be forged in a manner
15 specified in paragraphs (1) or (2); or

16 (4) *Intercepts, modifies, tampers, initiates, executes, or com-*
17 *pletes any transfer of funds contained in an account, through an*
18 *electronic access device, including a card, code, or other means of*
19 *access to an account, that may be used by a person for the purpose*
20 *of initiating electronic fund transfers, without actual authority to*
21 *initiate the transfer and with intent to obtain funds in the account.*

Matter printed in italics thus is new matter.

22 "Writing" includes printing or any other method of recording
 23 information, money, coins, tokens, stamps, seals, credit cards,
 24 badges, trademarks, and other symbols of value, right, privilege,
 25 or identification.

26 "*Account*" means a demand deposit, savings, or other consumer
 27 asset account, other than an occasional or incidental credit balance
 28 in a credit plan, held either directly or indirectly by a financial in-
 29 stitution and established primarily for personal, family or house-
 30 hold purposes.

31 b. Grading of forgery. Forgery is a crime of the third degree
 32 if the writing is or purports to be part of an issue of money, securi-
 33 ties, postage or revenue stamps, or other instruments, certificates
 34 or licenses issued by the government, or part of an issue of stock,
 35 bonds or other instruments representing interest in or claims
 36 against any property or enterprise.

37 Otherwise forgery is a crime of the fourth degree.

38 c. Possession of forgery devices. A person is guilty of posses-
 39 sion of forgery devices, a crime of the third degree, when with
 40 purpose to use, or to aid or permit another to use the same for
 41 purposes of forging written instruments, he makes or possesses
 42 any device, apparatus, equipment or article specially designed or
 43 adapted to such use.

1 2. This act shall take effect immediately.

Sponsored

STATEMENT

This bill would include within the definition of the offense of
 forgery, the unauthorized transfer of funds from checking, savings,
 and other consumer asset accounts.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

Assembly Committee Substitute for

ASSEMBLY, No. 245

STATE OF NEW JERSEY

DATED: MARCH 26, 1984

This committee substitute creates a civil remedy for any person or enterprise suffering damages in business for property as a result of various computer-related transgressions. Under the bill, a person would be civilly liable for damages caused by his purposeful, knowing and unauthorized altering, damaging, taking or destruction of data, a computer system, computer software or a financial instrument. In addition, a person could seek damages caused by the purposeful and knowing accessing and reckless altering, damaging or taking of data or computer equipment of any kind.

The value of damage or property involved in any lawsuit would be determined by the trier of fact.

The Attorney General or any person alleging injury would be able to seek an injunction against actions causing damage as described in the bill.

SENATE JUDICIARY COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 245

STATE OF NEW JERSEY

DATED: JUNE 25, 1984

This bill would establish a civil remedy for persons who suffered losses as a result of certain computer-related activities. These bills provide that a person would be civilly liable for damages caused by the person's intentionally or recklessly alteration, taking or destruction of data, computer-systems, computer soft ware or financial instruments. A person recovering under these acts could receive both compensatory and punitive damages as well as the cost of the action including reasonable attorney's fees and costs of investigation.

By amendment, the committee substituted the word "shall" for "may" in section 3 to indicate that the recovery of punitive damages under the bill is not mandatory.

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SENATE, No. 1815

STATE OF NEW JERSEY

INTRODUCED MAY 14, 1984

By Senator GRAVES

Referred to Committee on Judiciary

AN ACT concerning civil liability for computer-related offenses and supplementing subtitle 6 of Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Access" means to instruct, communicate with, store data in,
3 retrieve data from, or otherwise make use of any resources of a
4 computer, computer system, or computer network.

5 b. "Computer" means an electronic device or another similar
6 device capable of executing a computer program, including arith-
7 metic, logic, memory or input-output operations, by the manipula-
8 tion of electronic or magnetic impulses and includes all computer
9 equipment connected to such a device in a computer system or net-
10 work.

11 c. "Computer equipment" means any equipment or devices in-
12 cluding all input, output, processing, storage, software, or com-
13 munications facilities, intended to interface with the computer.

14 d. "Computer network" means the interconnection of communi-
15 cation lines, including microwave or other means of electronic
16 communications, with a computer through remote terminals, or a
17 complex consisting of two or more interconnected computers.

18 e. "Computer program" means a series of instructions or state-
19 ments executable on a computer which directs the computer system
20 in a manner to produce a desired result.

21 f. "Computer software" means a set of computer programs, data,
22 procedures, and associated documentation concerned with the opera-
23 tion of a computer system.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendment adopted June 25, 1984.

24 g. "Computer system" means a set of interconnected computer
25 equipment intended to operate as a cohesive system.

26 h. "Data" means information, facts, concepts, or instructions
27 prepared for use in a computer, computer system, or computer
28 network.

29 i. "Data base" means a collection of data.

30 j. "Financial instrument" includes but is not limited to a check,
31 draft, warrant, money order, note, certificate of deposit, letter of
32 credit, bill of exchange, credit or debit card, transaction authoriza-
33 tion mechanism, marketable security and any computer repre-
34 sentation of these items.

35 k. "Property" includes but is not limited to financial instruments,
36 information, data, and computer software in either human readable
37 or computer readable form, copies or originals, and any other
38 tangible or intangible item of value.

39 l. "Services" includes but is not limited to the use of a computer
40 system, computer network, computer programs, data prepared for
41 computer use and data contained within a computer system or
42 computer network.

1 2. For the purposes of this act, the value of any property or
2 services, including the use of computer time, shall be their fair
3 market value if it is determined that a willing buyer and willing
4 seller exist. Alternatively, value shall include but not be limited
5 to the cost of generating or obtaining data and storing it within a
6 computer or computer system.

1 3. A person or enterprise damaged in business or property as
2 a result of any of the following actions may sue the actor therefor
3 in the Superior Court and ***[shall]*** **may** recover compensatory
4 and punitive damages and the cost of the suit including a reason-
5 able attorney's fee, costs of investigation and litigation:

6 a. The purposeful or knowing, and unauthorized altering, dam-
7 aging, taking or destruction of any data, data base, computer pro-
8 gram, computer software or computer equipment existing internally
9 or externally to a computer, computer system or computer network;

10 b. The purposeful or knowing, and unauthorized altering, dam-
11 aging, taking or destroying of a computer, computer system or
12 computer network;

13 c. The purposeful or knowing, and unauthorized accessing or
14 attempt to access any computer, computer system or computer
15 network;

16 d. The purposeful or knowing, and unauthorized altering, acces-
17 soring, tampering with, obtaining, intercepting, damaging or destroy-
18 ing of a financial instrument; or

19 e. The purposeful or knowing accessing and reckless altering,
20 damaging, destroying or obtaining of any data, data base, computer,
21 computer program, computer software, computer equipment, com-
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2 any lawsuit shall be determined by the trier of fact.

1 5. In addition to any other action or proceeding authorized by
2 law, the Attorney General, or a person or enterprise alleging injury
3 or loss may bring an action in Superior Court to enjoin actions
4 causing damage as described in this act or to enjoin any acts in
5 furtherance thereof.

1 6. Actions brought under this act may be filed in the Superior
2 Court of the county in which the computer which is accessed is
3 located, or where the terminal used in the accessing is situated, or
4 where the actual damage occurs.

1 7. This act shall take effect on the 120th day after enactment.

SENATE, No. 1815

STATE OF NEW JERSEY

INTRODUCED MAY 14, 1984

By Senator GRAVES

Referred to Committee on Judiciary

AN ACT concerning civil liability for computer-related offenses and supplementing subtitle 6 of Title 2A of the New Jersey Statutes.

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2 *of New Jersey:*

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3 retrieve data from, or otherwise make use of any resources of a
4 computer, computer system, or computer network.

5 b. "Computer" means an electronic device or another similar
6 device capable of executing a computer program, including arith-
7 metic, logic, memory or input-output operations, by the manipula-
8 tion of electronic or magnetic impulses and includes all computer
9 equipment connected to such a device in a computer system or net-
10 work.

11 c. "Computer equipment" means any equipment or devices in-
12 cluding all input, output, processing, storage, software, or com-
13 munications facilities, intended to interface with the computer.

14 d. "Computer network" means the interconnection of communi-
15 cation lines, including microwave or other means of electronic
16 communications, with a computer through remote terminals, or a
17 complex consisting of two or more interconnected computers.

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19 ments executable on a computer which directs the computer system
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22 procedures, and associated documentation concerned with the opera-
23 tion of a computer system.

24 g. "Computer system" means a set of interconnected computer
25 equipment intended to operate as a cohesive system.

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32 credit, bill of exchange, credit or debit card, transaction authoriza-
33 tion mechanism, marketable security and any computer representa-
34 tion of these items.

35 k. "Property" includes but is not limited to financial instruments
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37 or computer readable form, copies or originals, and any other tangi-
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41 computer use and data contained within a computer system or
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1 2. For the purposes of this act, the value of any property or
2 services, including the use of computer time, shall be their fair
3 market value if it is determined that a willing buyer and willing
4 buyer and willing seller exist. Alternatively, value shall include
5 but not be limited to the cost of generating or obtaining data and
6 storing it within a computer or computer system.

1 3. A person or enterprise damaged in business or property as a
2 result of any of the following actions may sue the actor therefor
3 in the Superior Court and shall recover compensatory and punitive
4 damages and the cost of the suit including a reasonable attorney's
5 fee, costs of investigation and litigation :

6 a. The purposeful or knowing, and unauthorized altering, damag-
7 ing, taking or destruction of any data, data base, computer program,
8 computer software or computer equipment existing internally or
9 externally to a computer, computer system or computer network;

10 b. The purposeful or knowing, and unauthorized altering, damag-
11 ing, taking or destroying of a computer, computer system or com-
12 puter network;

13 c. The purposeful or knowing, and unauthorized accessing or
14 attempt to access any computer, computer system or computer
15 network;

16 d. The purposeful or knowing, and unauthorized altering, access-
17 ing, tampering with, obtaining, intercepting, damaging or destroy-
18 ing of a financial instrument; or

19 e. The purposeful or knowing accessing and reckless altering,
20 damaging, destroying or obtaining of any data, data base, computer,
21 computer program, computer software, computer equipment, com-
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1 4. The value of damage, loss, property or income involved in
2 any lawsuit shall be determined by the trier of fact.

1 5. In addition to any other action or proceeding authorized by
2 law, the Attorney General, or a person or enterprise alleging injury
3 or loss may bring an action in Superior Court to enjoin actions
4 causing damage as described in this act or to enjoin any acts in
5 furtherance thereof.

1 6. Actions brought under this act may be filed in the Superior
2 Court of the county in which the computer which is accessed is
3 located, or where the terminal used in the accessing is situated, or
4 where the actual damage occurs.

1 7. This act shall take effect on the 120th day after enactment.

STATEMENT

This bill creates a civil remedy for any person or enterprise suffering damages in business or property as a result of various computer-related transgressions. Under the bill, a person would be civilly liable for damages caused by his purposeful, knowing and unauthorized altering, damaging, taking or destruction of data, a computer system, computer software or a financial instrument. In addition, a person could seek damages caused by the purposeful and knowing accessing and reckless altering, damaging or taking of data or computer equipment of any kind.

The value of damage or property involved in any lawsuit would be determined by the trier of fact.

The Attorney General or any person alleging injury would be able to seek an injunction against actions causing damage as described in the bill.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1815

STATE OF NEW JERSEY

DATED: JUNE 25, 1984

This bill would establish a civil remedy for persons who suffered losses as a result of certain computer-related activities. These bills provide that a person would be civilly liable for damages caused by the person's intentionally or recklessly alteration, taking or destruction of data, computer-systems, computer soft ware or financial instruments. A person recovering under these acts could receive both compensatory and punitive damages as well as the cost of the action including reasonable attorney's fees and costs of investigation.

By amendment, the committee substituted the word "shall" for "may" in section 3 to indicate that the recovery of punitive damages under the bill is not mandatory.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: PAUL WOLCOTT
609-292-8956

TRENTON, N.J. 08625

Release: WED., NOV. 14, 1984

Governor Thomas H. Kean has signed legislation making it a crime to take information or services from a computer, and to establish civil liability for computer related offenses.

A-1301/S-1807, sponsored by Assemblyman William E. Flynn, D-Middlesex, and State Senator Frank X. Graves, D-Passaic, makes it a crime to damage or alter computer equipment or services, or to take or destroy any data, data base, computer program or computer software.

Included in the provisions of the bill is the unauthorized entry of a computer memory bank in order to use the computer capacity, even if the entry does not result in the alteration, damage or destruction of the computer equipment or services.

A-245/S-~~1015~~, sponsored by Assemblyman Walter M. D. Kern, R-Bergen, and Senator Graves, makes an individual civilly liable for damages resulting from unauthorized taking or destruction of computer information or programs. The bill provides for compensatory and punitive damages, as well as cost of the legal action.

Both bills become effective in 120 days.

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