

ACT 33

H.B. NO. 524

A Bill for an Act Relating to Computer Crime.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding ten new sections to part IX to be appropriately designated and to read as follows:

“§708- Computer fraud in the first degree. (1) A person commits the offense of computer fraud in the first degree if the person knowingly, and with intent to defraud, accesses a computer without authorization and, by means of such conduct, obtains or exerts control over the property of another.

(2) In a prosecution for computer fraud in the first degree, it is a defense that the object of the fraud and the property obtained consists only of the use of the computer and the value of such use is not more than \$300 in any one-year period.

(3) Computer fraud in the first degree is a class B felony.

§708- Computer fraud in the second degree. (1) A person commits the offense of computer fraud in the second degree if the person knowingly, and with the intent to defraud, transfers, or otherwise disposes of, to another, or obtains control of, with the intent to transfer or dispose of, any password or similar information through which a computer, computer system, or computer network may be accessed.

(2) Computer fraud in the second degree is a class C felony.

§708- Computer damage in the first degree. (1) A person commits the offense of computer damage in the first degree if:

- (a) The person knowingly causes the transmission of a program, information, code, or command, and thereby knowingly causes unauthorized damage to a computer, computer system, or computer network; or
 - (b) The person intentionally accesses a computer, computer system, or computer network without authorization and thereby knowingly causes damage.
- (2) As used in this section, the “damage” must:
- (a) Result in a loss aggregating at least \$5,000 in value, including the costs associated with diagnosis, repair, replacement, or remediation, during any one-year period to one or more individuals;
 - (b) Result in the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of one or more individuals;
 - (c) Result in physical injury to any person;
 - (d) Threaten public health or safety; or
 - (e) Impair the administration of justice.
- (3) Computer damage in the first degree is a class B felony.

§708- Computer damage in the second degree. (1) A person commits the offense of computer damage in the second degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby recklessly causes damage.

(2) Computer damage in the second degree is a class C felony.

§708- Use of a computer in the commission of a separate crime. (1) A person commits the offense of use of a computer in the commission of a separate crime if the person knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, or procure the victim or intended victim of the following offenses:

- (a) Section 707-726, relating to custodial interference in the first degree;
- (b) Section 707-727, relating to custodial interference in the second degree;
- (c) Section 707-731, relating to sexual assault in the second degree;
- (d) Section 707-732, relating to sexual assault in the third degree;
- (e) Section 707-733, relating to sexual assault in the fourth degree;
- (f) Section 707-751, relating to promoting child abuse in the second degree; and
- (g) Section 712-1215, relating to promoting pornography for minors.

(2) Use of a computer in the commission of a separate crime is an offense one class or grade, as the case may be, greater than the offense facilitated. Notwithstanding any other law to the contrary, a conviction under this section shall not merge with a conviction for the separate crime.

§708- Forfeiture of property used in computer crimes. Any property used or intended for use in the commission of, attempt to commit, or conspiracy to

commit an offense under this part, or which facilitated or assisted such activity, shall be forfeited subject to the requirements of chapter 712A.

§708- Jurisdiction. For purposes of prosecution under this part, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

§708- Unauthorized computer access in the first degree. (1) A person commits the offense of unauthorized computer access in the first degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information, and:

- (a) The offense was committed for the purpose of commercial or private financial gain;
 - (b) The offense was committed in furtherance of any other crime;
 - (c) The value of the information obtained exceeds \$5,000; or
 - (d) The information has been determined by statute or rule of court to require protection against unauthorized disclosure.
- (2) Unauthorized computer access in the first degree is a class B felony.

§708- Unauthorized computer access in the second degree. (1) A person commits the offense of unauthorized computer access in the second degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information.

- (2) Unauthorized computer access in the second degree is a class C felony.

§708- Unauthorized computer access in the third degree. (1) A person commits the offense of unauthorized computer access in the third degree if the person knowingly accesses a computer, computer system, or computer network without authorization.

- (2) Unauthorized computer access in the third degree is a misdemeanor.”

SECTION 2. Section 701-108, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

- (a) A prosecution for manslaughter where the death was not caused by the operation of a motor vehicle must be commenced within ten years after it is committed;
- (b) A prosecution for a class A felony must be commenced within six years after it is committed;
- (c) A prosecution for any felony under part IX of chapter 708 must be commenced within five years after it is committed;
- [~~(e)~~] (d) A prosecution for any other felony must be commenced within three years after it is committed;
- [~~(f)~~] (e) A prosecution for a misdemeanor or parking violation must be commenced within two years after it is committed; and
- [~~(g)~~] (f) A prosecution for a petty misdemeanor or a violation other than a parking violation must be commenced within one year after it is committed.”

SECTION 3. Section 707-764, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§707-764]]~~ **Extortion.** A person commits extortion if ~~[he]~~ the person does any of the following:

- (1) Obtains, or exerts control over, the property or services of another with intent to deprive ~~[him]~~ another of ~~[the]~~ property or services by threatening by word or conduct to:
 - (a) Cause bodily injury in the future to the person threatened or to any other person; ~~[or]~~
 - (b) Cause damage to property~~;~~ or cause damage, as defined in section 708-890, to a computer, computer system, or computer network; ~~[or]~~
 - (c) Subject the person threatened or any other person to physical confinement or restraint; ~~[or]~~
 - (d) Commit a penal offense; ~~[or]~~
 - (e) Accuse some person of any offense or cause a penal charge to be instituted against some person; ~~[or]~~
 - (f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair ~~[his]~~ the threatened person's credit or business repute; ~~[or]~~
 - (g) Reveal any information sought to be concealed by the person threatened or any other person; ~~[or]~~
 - (h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; ~~[or]~~
 - (i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action; ~~[or]~~
 - (j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property ~~[which]~~ that is not demanded or received for the benefit of the group ~~[which]~~ that the defendant purports to represent; or
 - (k) Do any other act ~~[which]~~ that would not in itself substantially benefit the defendant but which is calculated to harm substantially some person with respect to ~~[his]~~ the threatened person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; ~~[or]~~
- (2) Intentionally compels or induces another person to engage in conduct from which ~~[he]~~ another has a legal right to abstain or to abstain from conduct in which ~~[he]~~ another has a legal right to engage by threatening by word or conduct to do any of the actions set forth in ~~[paragraphs (a)]~~ paragraph (1)(a) through (k) ~~[of this section]; or~~

(3) Makes or finances any extortionate extension of credit, or collects any extension of credit by extortionate means.”

SECTION 4. Section 708-890, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§708-890]]~~ **Definitions.** As used in this part, unless the context otherwise requires:

“Access” means to gain entry to ~~[or]~~, instruct, communicate with, store data in, reprieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

“Computer” means any ~~[device which performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities which are connected or related to such a device in a computer system or computer~~

network:] electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

“Computer equipment” [or “hardware” means central processing units, microprocessors, data storage and other computer memory devices, and computer terminals or similar devices.] means any equipment or devices, including all input, output, processing, storage, software, or communications facilities, intended to interface with the computer.

“Computer network” means two or more [computer systems connected so as to permit the exchange or sharing of data between or among them.] computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

“Computer program” or “software” means a set of computer-readable instructions or statements [which,] and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.

“Computer services” [means data input, data output, data processing, or data storage by or in a computer system or computer network.] includes but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.

“Computer system” means [computer equipment or hardware connected together and operating under the control of one or more computer programs.] a set of interconnected computer equipment intended to operate as a cohesive system.

“Damage” means any impairment to the integrity or availability of data, a program, a system, a network, or computer services.

“Data” means information [stored in a computer system or on electronic media or processed in a computer system.], facts, concepts, software, or instructions prepared for use in a computer, computer system, or computer network.

[“Disruption” means any deviation from normal operations of any computer, computer system, or computer network.

“Injury” includes addition, alteration, damage, deletion, destruction, denial of access with respect to data in, or functions of, a computer system or computer network.]

“Obtain information” includes but is not limited to mere observation of the data.

“Property” includes financial instruments, data, computer software, computer programs, documents associated with computer systems [and computer programs, or copies, whether tangible or intangible, and data while in transit.], money, computer services, or anything else of value.

“Rule of court” means any rule adopted by the supreme court of this State, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

“Statute” means any statute of this State or the federal government.

“Without authorization” means without the permission of or in excess of the permission of an owner, lessor, or rightful user or someone licensed or privileged by an owner, lessor, or rightful user to grant [such] the permission.”

SECTION 5. Section 708-891, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 708-892, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 708-893, Hawaii Revised Statutes, is repealed.

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SECTION 8. There is established within the department of the attorney general for administrative purposes only, a temporary advisory commission on computer crimes laws.

The commission shall form a working committee to review the implementation of this Act and determine whether it allows the comprehensive prosecution of computer crimes without inhibiting legitimate computer activities.

The commission may include as members, representatives from the information and communication services division of the department of accounting and general services, University of Hawaii department of information technology service, department of the attorney general, the prosecuting attorneys, the county police departments, private citizens concerned with computer crimes, knowledgeable computer professionals from both the business and academic sectors, the office of the public defender, and Hawaii attorneys in private practice who handle criminal cases. Members of the committee should be selected based on knowledge and experience in criminal law, law enforcement and computer technology.

The commission shall meet no later than September 1, 2001, and on a regular basis thereafter as necessary to carry out the purpose of the commission. The commission shall prepare a comprehensive report of findings and recommendations for action. The commission shall transmit copies of their report to the legislature, the attorney general, the prosecuting attorneys, and the public defender no later than twenty days prior to the convening of the regular session of 2003.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved April 26, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.