

State of South Dakota

EIGHTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2013

526U0549

HOUSE BILL NO. 1216

Introduced by: Representatives Kirschman, Bartling, Bolin, Ecklund, Erickson, Feickert, Hawks, Hawley, Hickey, Hunhoff (Bernie), Killer, Kopp, Magstadt, Otten (Herman), Parsley, Peterson, Ring, Rounds, Russell, Schoenfish, Schrempp, Soli, and Tyler and Senators Maher, Bradford, Frerichs, Krebs, Lucas, Sutton, and Welke

1 FOR AN ACT ENTITLED, An Act to prohibit computer damage, computer theft, and
2 unauthorized computer access and provide penalties therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Access," to instruct, communicate with, store data in, or retrieve data from a
6 computer, computer system, or computer network;

7 (2) "Authorization," the permission of the owner of the computer, computer system,
8 computer network, computer software, or other property. The owner may limit the
9 authorization by:

10 (a) Giving the user actual notice orally or in writing;

11 (b) Posting a written notice in a prominent location adjacent to the computer being
12 used; or

13 (c) Using a notice displayed on or announced by the computer being used;



- 1 (3) "Computer," an electronic device which performs logical, arithmetic or memory
2 functions by the manipulations of signals, including but not limited to electronic or
3 magnetic impulses;
- 4 (4) "Computer system," related, connected or unconnected, computers and peripheral
5 equipment;
- 6 (5) "Computer network," means the interconnection of a communication system with a
7 computer through a remote terminal, or with two or more interconnected computers
8 or computer systems, and includes private and public telecommunications networks;
- 9 (6) "Property," includes, but it not limited to, electronically processed or produced data
10 and information contained in a computer or computer software in either machine or
11 human readable form;
- 12 (7) "Services," includes but is not limited to, computer time, data processing, and storage
13 functions;
- 14 (8) "Computer program," an instruction or statement or a series of instructions or
15 statements, in a form acceptable to a computer, which directs the functioning of a
16 computer system in a manner designed to provide appropriate products from the
17 computer;
- 18 (9) "Computer software," a computer program or procedures, or associated
19 documentation concerned with the operation of a computer;
- 20 (10) "Loss," the greatest of the following:
 - 21 (a) The retail market value of the property or services involved;
 - 22 (b) The reasonable repair or replacement cost, whichever is less; or
 - 23 (c) The reasonable value of the damage created by the unavailability or lack of
24 utility of the property or services involved until repair or replacement can be

1 effected;

2 (11) "Computer security system," a software program or computer device that is intended
3 to protect the confidentiality and secrecy of data and information stored in or
4 accessible through the computer system;

5 (12) "Destructive computer program," computer program that performs a destructive
6 function or produces a destructive product. A program performs a destructive
7 function if it degrades performance of the affected computer, associated peripherals
8 or a computer program; disables the computer, associated peripherals or a computer
9 program; or destroys or alters computer programs or data. A program produces a
10 destructive product if it produces unauthorized data, including data that make
11 computer memory space unavailable; results in the unauthorized alteration of data or
12 computer programs; or produces a destructive computer program, including a self-
13 replicating computer program;

14 (13) "Encryption," any protective or disruptive measure, including but not limited to,
15 cryptography, enciphering, or encoding that:

16 (a) Causes or makes any data, information, image, program, signal, or sound
17 unintelligible or unusable; or

18 (b) Prevents, impedes, delays, or disrupts access to any data, information, image,
19 program, signal, or sound.

20 (14) "Personal data," any computer property or computer program which contains records
21 of the employment, salary, credit, or other financial or personal information relating
22 to another person.

23 Section 2. Any person who does any of the following is guilty of computer damage and may
24 be sentenced as provided in section 3 of this Act:

- 1 (1) Intentionally and without authorization damages or destroys any computer, computer
2 system, computer network, computer software, or any other property specifically
3 defined in section 1 of this Act;
- 4 (2) Intentionally and without authorization or with intent to injure or defraud alters any
5 computer, computer system, computer network, computer software, or any other
6 property specifically defined in section 1 of this Act; or
- 7 (3) Distributes a destructive computer program, without authorization and with intent to
8 damage or destroy any computer, computer system, computer network, computer
9 software, or any other property specifically defined in section 1 of this Act.

10 Section 3. Any person who commits computer damage may be sentenced as follows:

- 11 (1) To imprisonment for not more than ten years or to payment of a fine of not more than
12 fifty thousand dollars, or both, if the damage, destruction or alteration results in a loss
13 in excess of two thousand five hundred dollars, to the owner, or the owner's agent,
14 or lessee:
- 15 (2) To imprisonment for not more than five years or to payment of a fine of not more
16 than ten thousand dollars, or both, if the damage, destruction or alteration results in
17 a loss of more than five hundred dollars, but not more than two thousand five
18 hundred dollars to the owner, or the owner's agent or lessee; or
- 19 (3) In all other cases to imprisonment for not more than ninety days or to payment of a
20 fine of not more than one thousand dollars, or both.

21 Section 4. Any person who does any of the following is guilty of computer theft and may
22 be sentenced as provided in section 5 of this Act:

- 23 (1) Intentionally and without authorization or claim of right accesses or causes to be
24 accessed any computer, computer system, computer network or any part thereof for

1 the purpose of obtaining services or property; or

2 (2) Intentionally and without claim of right, and with intent to deprive the owner of use
3 or possession, takes, transfers, conceals or retains possession of any computer,
4 computer system, or any computer software or data contained in a computer system,
5 or computer network.

6 Section 5. Any person who commits computer theft may be sentenced as follows:

7 (1) To imprisonment for not more than ten years or to payment of a fine of not more than
8 fifty thousand dollars, or both, if the loss to the owner, or the owner's agent, or lessee
9 is in excess of two thousand five hundred dollars; or

10 (2) To imprisonment for not more than five years or to payment of a fine of not more
11 than ten thousand dollars, or both, if the loss to the owner, or the owner's agent, or
12 lessee is more than five hundred dollars but not more than two thousand five hundred
13 dollars; or

14 (3) In all other cases to imprisonment for not more than ninety days or to payment of a
15 fine of not more than one thousand dollars, or both.

16 Section 6. A person is guilty of unauthorized computer access if the person intentionally and
17 without authorization attempts to or does penetrate a computer security system.

18 (1) A person who violates this section in a manner that creates a grave risk of causing the
19 death of a person is guilty of a felony and may be sentenced to imprisonment for not
20 more than ten years or to payment of a fine of not more than twenty thousand dollars,
21 or both.

22 (2) A person who is convicted of a second or subsequent gross misdemeanor violation
23 of this section is guilty of a felony and may be sentenced under paragraph (1).

24 Section 7. A person who violates section 6 of this Act in a manner that creates a risk to

1 public health and safety is guilty of a gross misdemeanor and may be sentenced to imprisonment
2 for a term of not more than one year or to payment of a fine of not more than three thousand
3 dollars, or both.

4 (1) A person who violates section 6 of this Act and gains access to personal data is guilty
5 of a gross misdemeanor and may be sentenced under this section.

6 (2) A person who is convicted of a second or subsequent misdemeanor violation of
7 section 6 of this Act within five years is guilty of a gross misdemeanor and may be
8 sentenced under this section.

9 Section 8. A person who violates section 6 of this Act is guilty of a misdemeanor and may
10 be sentenced to imprisonment for a term of not more than ninety days or to payment of a fine
11 of not more than one thousand dollars or both.