

The Commonwealth of Massachusetts



MICHAEL S. DUKAKIS
GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

October 19, 1990

To the Honorable Senate and House of Representatives:

Carefully balancing the need to make unlawful entry into computer systems a criminal offense against the need to protect the privacy and First Amendment rights of users of computers has, and remains, a basic tenet guiding Massachusetts efforts to prevent computer crime. To better strike this vital balance, and pursuant to authority vested in me by Article LVI of the Amendments to the Massachusetts Constitution, I am returning for amendment S.1543, "An Act Prohibiting Certain Acts Relative to Computers, Computer Data and Computer Systems."

S.1543 would have the unintended effect of restricting access to computers by legitimate users. Such restricted access would inadvertently chill the energy and creativity which are the hallmarks of Massachusetts business and industry.

I agree with the bill's sponsors that there is a need for Massachusetts to make more clear that it is a crime to unlawfully enter someone else's computer system and through reckless or intentional behavior cause harm or damage. Therefore, in lieu of vetoing S.1543, I recommend that it be amended by striking the language of the bill in its entirety and substituting in its place the following:

AN ACT PROHIBITING CERTAIN ACTS RELATIVE TO COMPUTERS AND COMPUTER SYSTEMS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws of Massachusetts, as appearing in the 1988 Official Edition are hereby amended by inserting after Chapter 266 the following new chapter: —

Chapter 266A.
Computer Crimes

The general court hereby finds and declares as follows:

1. The development of computer technology has given rise to new communication, privacy, and property interests of importance to individuals, businesses and government in the Commonwealth.
2. The protection of computer systems is vital to the welfare of individuals and businesses in the Commonwealth.
3. Computers and computer networks have enabled new forms of communication, including electronic publications, electronic bulletin boards, electronic conferences, and electronic mail, which are protected by fundamental rights, including freedom of speech and association.
4. The integrity of computer systems must be protected in a manner that does not infringe on the fundamental rights of the users of computer technology, including freedom of speech and association and privacy, and does not impede legitimate use of computer systems.

SECTION 2.

(A) Whoever knowingly accesses a controlled access computer system knowing such access to be without authorization and knowingly causes the transmission of a program information, code or command to a computer or computer system without authorization and intending that such program, information, code or command will damage or cause damage to a computer, computer system, network, information, data or program, or withhold or deny, or cause the withholding or denial, of the use of a computer, computer services, system or network, information, data or program, and thereby causes loss or damage to one or more other persons of \$10,000 or more shall be punished by imprisonment in a jail or house of correction for not more than 2½ years, or a fine of not more than \$25,000 or both.

(B) Whoever knowingly accesses a controlled access computer system knowing such access to be without authorization and knowingly causes the transmission of a program, information, code or command to a computer or computer system without authorization and with reckless disregard of a substantial and unjustifiable risk that such program, information, code or command will damage or cause damage to a computer, computer system, network, information, data or program, or withhold or deny, or cause the withholding or denial,

of the use of a computer, computer services, system or network, information, data or program, and thereby causes loss or damage to one or more other persons of \$10,000 or more shall be punished by imprisonment in a jail or house of correction for not more than 1 year, or a fine of not more than \$5,000, or both.

(C) Prosecutions under this section shall be brought only by the Attorney General.

(1) The Attorney General shall, within six months of the effective date of this Act, issue guidelines for the procedures governing the investigation or prosecution of an offense under this Act, including, but not limited to, the conduct of searches or seizures of a computer, computer system, or electronic communication system under this section.

(2) Any application for a warrant to conduct a search or seizure of a computer, computer system, or electronic communication system under this section must be approved by an attorney for the Commonwealth.

Such guidelines shall not provide a basis for dismissal of an otherwise proper complaint brought under this section or for the exclusion of evidence that is otherwise admissible in a proceeding under this section.

(3) The Attorney General shall collect and compile information on, and report to the general court annually on, searches, seizures, and prosecutions commenced pursuant to this Act.

SECTION 3.

There is hereby established a study commission on computer technology and law. The commission shall consist of seventeen members who shall serve without compensation. Notwithstanding any provision of section six of chapter two hundred and sixty-eight A to the contrary, the commission shall consist of the attorney general or his designee who shall be chairman, the secretary of the executive office of economic affairs or his designee, the senate chair of the joint committee on criminal justice, the house chair of the joint committee on criminal justice and thirteen persons appointed by the governor, one of whom shall be a representative from each of the following organizations, to be selected from a list of recommendations provided by that organization: the Massachusetts Computer Software Council, the Massachusetts Bar Association, the Boston Bar Association, the

state council of the AFL-CIO, and the Boston Computer Society, one representative from the computer hardware industry, one representative from the financial services industry, one representative of the telecommunications industry, one major commercial user, one district attorney or his designee, one chief of police of a city or town in the Commonwealth, one representative from an institution of higher education, and one representative with expertise in the defense of civil liberties in the Commonwealth.

Said commission shall investigate the legitimate communication, privacy and property interests of individuals, businesses, and government agencies within the Commonwealth implicated by the application of new computer technologies and shall evaluate the sufficiency of existing Massachusetts law to protect and preserve those interests.

The Commission shall report to the General Court the results of its investigation and study, and its recommendations, if any, together with drafts of legislation to carry its recommendations into effect, by filing its report with the clerk of the house of representatives and with the clerk of the senate on or before July 1, 1990.

SECTION 4.

(1) This Act shall cease to be effective after January 1, 1994.

(2) Notwithstanding the provisions of clause (1) above, prosecutions of an offense under the Act for which a complaint has been issued on or before January 1, 1994 may be pursued in accordance with the provisions of this Act.

SECTION 5. SECTION 3 of this Act shall take effect upon its passage.

I urge your favorable consideration of this amendment.

Sincerely,

MICHAEL S. DUKAKIS
Governor.