SENATE . . . . . No. 185

By Mr. Wetmore, petition (accompanied by bill, Senate, No. 185) of Robert D. Wetmore and Michael J. Corley for legislation to establish the computer crimes act of nineteen hundred and ninety-one. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT TO ESTABLISH THE COMPUTER CRIMES ACT OF 1991.

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

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

4 **Chapter 266A.**
5 **Computer Crimes**

6 1. Short title
7 This Act may be cited as "The Computer Crimes Act".
8 2. Legislative Intent.
9 It is the intent of the Legislature in enacting this Act to expand
10 the degree of protection afforded to individuals, businesses, and
11 governmental agencies from tampering, interference, damage and
12 unauthorized access to lawfully created computer data and
13 computer systems. The Legislature finds and declares that the
14 proliferation of computer technology has resulted in the
15 concomitant proliferation of computer crime and other forms of
16 unauthorized access to computers, computer systems and
17 computer data.
18 The Legislature finds and declares that protection of the
19 integrity of all types and forms of lawfully created computers,
20 computer systems and computer data is vital to the protection of

21 the privacy of individuals as well as the well-being of financial
22 institutions, business concerns, governmental agencies and others
23 within this Commonwealth that lawfully utilize those computers,
24 computer systems and data.
25 3. Definitions
26 As used in this Act: —
27 "Access" means to gain entry to or to communicate with a
28 computer system or computer network by using a computer
29 terminal or similar device.
30 "Computer", "Computer equipment" or "computer hardware"
31 means central processing units, microprocessors, data storage and
32 other computer memory devices, and computer terminals or
33 similar devices.
34 "Computer functions" means data input, data output, data
35 processing or data storage by or in a computer system or computer
36 network.
37 "Computer network" means two or more computer systems
38 connected so as to permit the exchange or sharing of data between
39 or among them.
40 "Computer program" or "Computer software" means a set of
41 computer-readable instructions or statements that when executed
42 by the central processing unit or microprocessor of a computer
43 system causes the computer system or the computer network to
44 which it is connected to perform computer functions.
45 "Computer system" means computer equipment or hardware
46 connected together and operating under the control of one or
47 more computer programs.
48 "Injury" means alteration, damage, deletion, destruction, denial
49 of access with respect to data in or functions of a computer system
50 or network.
51 "Victim expenditure" means any expenditure reasonably and
52 necessarily incurred by the lawful user of a computer system or
53 computer network.
54 "Victim expenditure" means any expenditure reasonable and
55 necessarily incurred by the lawful user of a computer system or
56 computer network to verify that the user's date or computer
57 programs were or were not injured and to repair any injury.
58 "Without authorization" means without the permission of or
59 in excess of the permission of an owner, lessor or rightful user
60 to grant such permission.

4. Prohibited acts

It is unlawful for any person who willfully, and knowingly accesses a computer, computer system or computer network without authorization and

(1) adds, alters, deletes, destroys or otherwise uses any data, computer, computer system or computer network in order to (A) devise or execute any scheme or artifice to steal, defraud, deceive or extort or (B) control or obtain money, property, computer system or computer network;

(2) adds, alters, damages, deletes or destroys any data which resides or exists internal or external to a computer, computer system or computer network;

(3) disrupts or causes the disruption of computer services to an authorized user of a computer, computer system, or computer network; or

(4) provides or assists in providing a means of accessing a computer, computer system, or computer network.

5. Fines and penalties

Any person who violates any provision of section four of this Act shall be punished by imprisonment in the state prison for not more than three years, or by a fine of not more than one hundred thousand dollars or by both such fine and imprisonment.

6. Enhanced fines and penalties for accessing, damaging, or destroying government, educational, medical, or public utility computers, computer systems or computer networks.

In addition to any fines or punishment under any other provision of this Act, any person who violates any provision of section four of this Act and the accessed computer, computer system, or computer network is owned, leased or otherwise operated by a state, county or municipal agency or authority, a public or private educational system, a public or private institution of higher education, a public or private medical facility or a public utility shall be subject to fines up to two hundred and fifty thousand dollars or five years in the state prison or by both such fine and imprisonment.

7. Prosecution of other crimes.

A person who violates any provision of this Act and who commits any other crime may be punished for that other crime as well as any prosecutions authorized by this Act.

8. Civil actions; invasion of privacy.

(a) It is prohibited for any person who knowingly or recklessly accesses a computer, computer system or computer network without authorization and

(1) uses or causes to be used computer services; or

(2) views or uses any employment, medical, family, credit, academic, commercial or personal information relating to any other person or corporation that resides in such computer, computer system or computer network.

(b) It is prohibited for any person who knowingly or recklessly accesses a computer, computer system or computer network without reasonable grounds to believe that th has authorization to access said computer, computer system, or computer network.

(c) Any owner or lessee of a computer, computer system, computer network or computer program who has been injured by another person's act or conduct in violation of this section or section four of this Act may bring an action in superior court for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper. For the purposes of actions authorized by this section, damages may include any expenditure reasonable and necessarily incurred by the owner or lessee to verify that a computer, computer system, computer network or computer program was not altered, deleted or otherwise damaged by the access. If the court finds that there was a violation of this section or section four of this Act, the owner or lessee of the computer, computer system, computer network or computer program shall, in addition to other relief provided by this section, be awarded reasonable attorneys' fees and cost in connection with said action. If the court finds that the act or conduct in violation of this section or section four of this Act was knowing, the court may award up to three times the amount of the actual damages.

9. Conduct of minors.

For the purpose of any civil action under this Act, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor.

10. Reporting requirement.

It is the duty of every business, partnership, college university, person, state, county or local governmental agency or department,

139 corporation, or other business entity which has reasonable
140 grounds to believe that a violation of this Act has been committed
141 to report promptly the suspected violation to law enforcement
142 authorities. When acting in good faith, such business, partnership,
143 college university, person, state, county or local governmental
144 agency or department, corporation, or other business entity shall
145 be immune from any civil liability for such reporting.
146 11. Venue.
147 For the purposes of bringing any action authorized by this Act,
148 a person who causes by any means the access of a computer,
149 computer system or computer network in one jurisdiction from
150 another jurisdiction is deemed to have personally accessed the
151 computer, computer system or computer network in each
152 jurisdiction.
153 12. Computer Crime Advisory Council.
154 (a) There is hereby established a computer crime advisory
155 council to consist to seven members who shall serve without
156 compensation. Notwithstanding any provision of section six of
157 chapter two hundred and sixty-eight A to the contrary, the board
158 shall consist of the attorney general or his designee who shall be
159 chairman, two district attorneys who shall be appointed by the
160 governor, tow members of the computer industry appointed by
161 the governor, and a police chief appointed by the governor.
162 The council shall seek to promote the following objective: —
163 (2) to increase and enhance the communication of computer-
164 related criminal activity between police, district attorney's offices,
165 the attorney general and the users or makers of high technology
166 hardware or software;
167 (3) to assist in the training of computer crime prevention and
168 investigations;
169 (4) to provide a clearinghouse for information of incidents of
170 computer crime;
171 (5) to conduct a statewide needs assessment for the develop-
172 ment of computer crime prosecution units;
173 (6) to assist in the effective prosecution of computer crimes; and
174 (7) to make such reports to the legislature for the need for
175 additional legislation to assist in the prosecution of high
176 technology crimes.

The Council is hereby declared to be within the department of the attorney general. The attorney general shall provide such assistance to the council as is necessary to fulfill its responsibilities.

(b) The provisions of paragraph (a) of this section shall cease to be effective four years after the effective date of this Act.