

SENATE No. 752

By Mr. Keating, petition (accompanied by bill, Senate, No. 752) of William R. Keating and John H. Rogers for legislation to prohibit certain acts relative to computers and computer systems. The Judiciary.

The Commonwealth of Massachusetts

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

**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:

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

4 **CHAPTER 266A.**
5 **COMPUTER CRIMES.**

6 The general court hereby declares finds and declares as follows:
7 1. The development of computer technology has given rise to
8 new communications, privacy, and property interests of
9 importance to individuals, businesses and government agencies in
10 the Commonwealth.

11 2. The protection of computer systems is vital to the welfare
12 of individuals and businesses in the Commonwealth.

13 3. Computers and computer networks have enabled new forms
14 of communication, including electronic publications, electronic
15 bulletin boards, electronic conferences, and electronic mail, which
16 are protected by fundamental rights, including freedom of speech
17 and association, and freedom from unreasonable search and
18 seizure.

19 4. The integrity of computer systems must be protected in a
20 manner that does not infringe on the fundamental rights of the

21 users of computer technology, including freedom of speech and
22 association and privacy, and does not impede legitimate use of
23 computer systems.

1 SECTION 2. (A) Whoever knowingly accesses a controlled
2 access computer system knowing such access to be without
3 authorization and knowingly causes the transmission of a
4 program, information, code or command to a computer or
5 computer system without authorization and intending such
6 program, information, code or command will damage or cause
7 damage to a computer, computer system, network, information
8 data or program, or withhold or deny, or cause the withholding
9 or denial, of the use of a computer, computer services, system or
10 network, information, data or program, and thereby causes loss
11 or damage to one or more persons of \$10,000 or more shall be
12 punished by imprisonment in a jail or house of correction for not
13 more than two and one-half years, or a fine of not more
14 than \$25,000 or both.

15 (B) Whoever knowingly accesses a controlled access computer
16 system knowing such access to be without authorization and
17 knowingly causes the transmission of a program, information,
18 code or command to a computer or computer system without
19 authorization and with reckless disregard of a substantial and
20 unjustifiable risk that such program, information, code or
21 command will damage or cause damage to a computer, computer
22 system, network, information, data or program, or withhold or
23 deny, or cause the withholding or denial, of the use of a computer,
24 computer services, system or network, information, data or
25 program, and thereby causes the loss or damage to one or more
26 persons of \$10,000 or more shall be punished by imprisonment
27 in a jail or house of correction for not more than one year, or
28 by a fine of not more than \$5,000, or both.

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

31 (1) The Attorney General shall, within six months of the
32 effective date of this act, issue guidelines consistent with the
33 findings and goals set out in Section 1, for the procedures
34 governing the investigation or prosecution of an offense under this

35 Act, including, but not limited to, the conduct of searches or
36 seizures of a computer, computer system, or electronic
37 communication system under this section.

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

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

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

1 SECTION 3. There is hereby established a study commission
2 of computer technology and law: The commission shall consist
3 of seventeen members who shall serve without compensation.
4 Notwithstanding any provision of section six of chapter two
5 hundred and sixty-eight A to the contrary, the commission shall
6 consist of the attorney general or his designee who shall be
7 chairman, the secretary of the executive office of economic affairs
8 or his designee, the senate chair of the joint committee on criminal
9 justice, the house chair of the joint committee on criminal justice
10 and thirteen persons appointed by the governor, one of whom
11 shall be a representative from each of the following organizations,
12 to be selected from a list of recommendations provided by that
13 organization: the Massachusetts Computer Software Council, the
14 Massachusetts Bar Association, the Boston Bar Association, the
15 state council of the AFL-CIO, and the Boston Computer Society,
16 one representative from the computer hardware industry, one
17 representative from the financial services industry, one
18 representative of the telecommunications industry, one major
19 commercial user, one district attorney or his designee, one chief
20 of police of a city or town in the Commonwealth, one
21 representative from an institution of higher education, and one
22 representative with expertise in the defense of civil liberties in the
23 Commonwealth.

24 Said commission shall investigate the legitimate communica-
25 tion, privacy and property interests of individuals, businesses and
26 government agencies within the commonwealth implicated by the
27 application of new computer technologies and shall evaluate the
28 sufficiency of existing Massachusetts law to protect and preserve
29 those interests.

30 The Commission shall report to the General Court the results
31 of its investigation and study, and its recommendation, if any,
32 together with drafts of legislation to carry its recommendations
33 into effect, by filing its report with the clerk of the house of
34 representatives and with the clerk of the senate on or before July 1,
35 1992.

1 SECTION 4. Section 3 of the Act shall take place upon its
2 passage.