

SENATE BILL 1081

By Burks

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 14, relative to computer privacy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-14-601(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(2) "Authorization" means the express or implied consent given by a person to another to access or use that person's computer, computer network, computer program, computer system, data, password identifying code, or personal identification number;

SECTION 2. Tennessee Code Annotated, Section 39-14-601(21), is amended by adding the following new subdivision:

() "Without authorization," "not authorized" and "unauthorized" mean not having consent or permission of the owner, or person licensed or authorized by the owner to grant consent or permission, to access or use any computer, computer network, or the computer services of an electronic mail service provider or accessing or using any computer, computer network, or the computer services of an electronic mail service provider in a manner exceeding the consent or permission of the owner or person licensed or authorized by the owner to grant consent or permission. A person is "without authorization," "not authorized" or "unauthorized" when the person knows or reasonably should know that the person has no right, agreement, or permission to use a computer, computer network, or the computer services of an electronic mail provider or acts in a manner knowingly exceeding or beyond the scope of the express or implied consent of such right, agreement, or permission to use a computer, computer network, or the computer services of an electronic mail provider;

SECTION 3. Tennessee Code Annotated, Section 39-14-602, is amended by deleting subsection (d) in its entirety and redesignating existing subsections accordingly.

SECTION 4. Tennessee Code Annotated, Section 39-14-603, is amended by deleting subsection (d) in its entirety.

SECTION 5. Tennessee Code Annotated, Title 39, Chapter 14, Part 6, is amended by adding the following new section:

39-14-607

(a) A person is guilty of criminal invasion of computer privacy if the person intentionally accesses any computer, computer software, computer program, data, computer system, computer network, or any part thereof when the person is not authorized to do so.

(b) It shall be an affirmative defense to a prosecution for invasion of computer privacy that:

(1) The person reasonably believed that the owner of the computer, or a person empowered to license access thereto, had authorized such person to access the computer, computer software, computer program, data, computer system, computer network, or any part thereof;

(2) The person reasonably believed that the owner of the computer, or a person empowered to license access thereto, would have authorized the person to access without payment of any consideration; or

(3) The person reasonably could not have known that the person's access was unauthorized.

(c) Except as provided in subsection (d), criminal invasion of computer privacy is a Class E felony.

(d) A person is guilty of a Class D felony if the person is found guilty of invasion of computer privacy on any computer, computer software, computer program, data, computer system, or computer network that is owned by a law enforcement agency.

SECTION 6. Tennessee Code Annotated, Title 39, Chapter 14, Part 6, is amended by adding the following section.

39-14-608

(a) A person is guilty of misuse of a computer when, without authorization:

(1) The person, as a result of accessing or causing to be accessed a computer, computer software, computer program, data, computer system, computer network, or any part thereof, intentionally makes or causes to be made an unauthorized display, use, disclosure or copy, in any form, of data communicated by or produced by the unauthorized use;

(2) The person intentionally or recklessly:

(A) Alters, deletes, tampers with, damages, destroys or takes data intended for use by a computer, computer software, computer program, data, computer system, computer program, or any part thereof, whether within or external to the accessed item or whether such action is temporary or permanent; or

(B) Intercepts or adds data to data residing within a computer, computer software, computer program, data, computer system, computer program, or any part thereof;

(3) The person installs or causes to be installed computer software that records all or a majority of the keystrokes made on the computer of another;

(4) The person discloses a number, code, password, or other means of access to a computer or computer system knowing that disclosure is without authority and such disclosure results in damages (including the fair market value of any services used and victim expenditure) to the owner of the computer or computer system in excess of \$500.00; or

(5) The person knowingly receives or retains data obtained in violation of subdivision (a)(1), (a)(2), (a)(3), or (a)(4).

(b) A violation of subdivision (a)(1), (a)(2), or (a)(3) is a Class E felony.

(c) A violation of subdivision (a)(4) or (a)(5) is a Class A misdemeanor.

(d) A person is guilty of a Class D Felony if the person is guilty of misuse of a computer on any computer, computer software, computer program, data, computer system, computer network, or any part thereof that is owned by a law enforcement agency.

(e) Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer software, computer programs, data, computer systems, or computer networks or to create any liability by reason of terms or conditions adopted by, or technical measures implemented by, a Tennessee-based electronic mail service provider to prevent the transmission of unsolicited electronic mail. Nothing in this section shall be construed to prohibit the monitoring of computer usage of, the otherwise lawful copying of data of, or the denial of computer or Internet access to a minor by a parent or legal guardian of the minor.

SECTION 7. This act shall take effect July 1, 2013, the public welfare requiring it.