2019 Regular Session

HOUSE BILL NO. 74

BY REPRESENTATIVE TERRY LANDRY

1	AN ACT
2	To amend and reenact R.S. 14:73.1(12), (13), and (14), and to enact R.S. 14:73.1(15) and
3	73.11, relative to computer-related crimes; to create the crime of trespass against
4	state computers; to provide for elements of the crime; to provide for criminal
5	penalties; to provide for definitions; and to provide for related matters.
6	Be it enacted by the Legislature of Louisiana:
7	Section 1. R.S. 14:73.1(12), (13), and (14) are hereby amended and reenacted and
8	R.S. 14:73.1(15) and 73.11 are hereby enacted to read as follows:
9	§73.1. Definitions
10	As used in this Subpart unless the context clearly indicates otherwise:
11	* * *
12	(12) "Internet-connected device" means a physical object to which both of
13	the following apply:
14	(a) Is capable of connecting to, and is in regular connection with, the
15	internet.
16	(b) Has computer processing capabilities that can collect, send, or receive
17	data.
18	(12)(13) "Proper means" includes:
19	(a) Discovery by independent invention.
20	(b) Discovery by "reverse engineering", that is by starting with the known
21	product and working backward to find the method by which it was developed. The
22	acquisition of the known product must be by lawful means.
23	(c) Discovery under license or authority of the owner.
24	(d) Observation of the property in public use or on public display.
25	(e) Discovery in published literature.

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1	(13)(14) "Property" means property as defined in R.S. 14:2(8) and shall
2	specifically include but not be limited to financial instruments, electronically stored
3	or produced data, and computer programs, whether in machine readable or human
4	readable form.
5	(14)(15) "Unsolicited bulk electronic mail" means any electronic message
6	which is developed and distributed in an effort to sell or lease consumer goods or
7	services and is sent in the same or substantially similar form to more than one
8	thousand recipients.
9	* * *
10	§73.11. Trespass against state computers
11	A. It is unlawful for any person to knowingly or intentionally access, or to
12	exceed authorized access of, a computer, computer server, computer program,
13	computer service, computer software, internet-connected device, or computer system
14	or program that is owned, operated, or utilized by the state of Louisiana, its
15	contractors, or its political subdivisions, without authorization when it is done for
16	any of the following purposes:
17	(1) Obtaining, seeking, utilizing, destroying, viewing, or affecting
18	information that has been determined by the state of Louisiana to require protection
19	against unauthorized disclosure for reasons of protecting public health, safety,
20	welfare, or an ongoing law enforcement investigation.
21	(2) Willfully communicating, delivering, transmitting, or causing or
22	threatening to communicate, deliver, or transmit information to any person not
23	entitled to receive such information when the information has been determined by
24	the state of Louisiana to require protection against unauthorized disclosure for
25	reasons of protecting public health, safety, welfare, or an ongoing law enforcement
26	investigation.
27	(3) Initiating a denial of service attack or introducing malicious or any type
28	of destructive or harmful software or program that negatively affects or impacts such
29	computers, computer servers, computer programs, computer services, computer
30	software, internet-connected devices or computer systems or programs.

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1	B. Information, documents, or records deemed confidential or not subject to
2	disclosure or inspection under R.S. 44.1 et seq., shall be considered information that
3	has been determined by the state of Louisiana to require protection against
4	unauthorized disclosure for reasons of protecting the public health, safety, welfare,
5	or an ongoing law enforcement investigation under Paragraphs (A)(1) and (2) of this
6	Section.
7	<u>C.(1)</u> Any person convicted of a first offense of Paragraph (A)(1) of this
8	Section shall be subject to a fine of not more than three thousand dollars,
9	imprisonment, with or without hard labor, for not more than three years, or both.
10	(2) Any person convicted of a first offense of Paragraph (A)(2) or (3) of this
11	Section shall be subject to a fine of not more than five thousand dollars,
12	imprisonment, with or without hard labor, for not more than three years, or both.
13	(3) Any person convicted of a second or subsequent offense of Subsection
14	A of this Section shall be subject to a fine of not more than ten thousand dollars,
15	imprisonment, with or without hard labor, for not more than five years, or both.
16	(4) Except as provided in Subsection D of this Section, in addition to the
17	penalties provided in Paragraphs (C)(1) and (2) of this Section, the following
18	property of any individual who is convicted of trespass against state computers shall
19	be subject to forfeiture to the state of Louisiana and no property rights shall exist
20	therein:
21	(a) Any movable property used or intended to be used to commit or to
22	facilitate the commission of any violation of this Section, or conspiracy to commit
23	a violation of this Section.
24	(b) Any property, movable or immovable, which constitutes or is derived
25	from proceeds traceable to any violation of this Section, or a conspiracy to commit
26	a violation of this Section.
27	(c) When property is forfeited under the provisions of this Paragraph, the
28	district attorney shall authorize a public sale or a public auction conducted by a
29	licensed auctioneer, without appraisal, of that which is not required by law to be
30	destroyed and which is not harmful to the public.

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1	(d) The proceeds of the public sale or public auction shall pay the costs of
2	the public sale or public auction, court costs, and fees related to the seizure and
3	storage of the property. Any proceeds remaining shall be distributed by the district
4	attorney in the following manner:
5	(i) Thirty percent to the seizing agency or agencies in an equitable manner.
6	(ii) Twenty percent to the prosecuting agency.
7	(iii) Twenty percent to the criminal court fund of the parish in which the
8	offender was prosecuted.
9	(iv) Thirty percent to the public defender in the jurisdiction in which the
10	offender was prosecuted.
11	D.(1) Any property seized pursuant to the provisions of Paragraph (C)(4) of
12	this Section shall be exempt from forfeiture and sale if it was stolen or if the
13	possessor of the property was not the owner and the owner did not know that the
14	personal property was being used in the violation of the provisions of this Section.
15	If the exemption provided by this Subsection is applicable, the property shall not be
16	released until such time as all applicable fees related to its seizure and storage are
17	paid. However, an internet service provider shall not be required to pay seizure or
18	storage fees to secure the release of equipment leased to an offender.
19	(2)(a) Property subject to forfeiture pursuant to the provisions of Paragraph
20	(C)(4) of this Section shall be exempt from forfeiture and sale when a spouse, co-
21	owner, or interest holder in the property establishes by sworn affidavit executed
22	before a notary public the following:
23	(i) That he had no knowledge of the commission of the criminal conduct and
24	could not have reasonably known of the conduct.
25	(ii) That he did not consent to the use of property in the commission of the
26	criminal conduct.
27	(iii) That he owns an interest in the property otherwise subject to forfeiture.
28	(b) Intentionally falsifying the affidavit information required by the
29	provisions of this Paragraph shall subject the affiant to prosecution under the
30	provisions of R.S. 14:125.

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(3) The property of an internet service provider shall be exempt from	1
forfeiture.	2
(4) Any property seized pursuant to the provisions of Paragraph (C)(4) sha	3
be exempt from sale if it is subject to a lien, security interest, or mortgage recorde	4
prior to the date of the offense and if the applicable fees related to the property	5
seizure and storage are paid by a holder of a valid lien, security interest, or mortgag	6

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____