

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.

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.

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           C.(1) 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.

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.

1                   (3) The property of an internet service provider shall be exempt from  
2                   forfeiture.

3                   (4) Any property seized pursuant to the provisions of Paragraph (C)(4) shall  
4                   be exempt from sale if it is subject to a lien, security interest, or mortgage recorded  
5                   prior to the date of the offense and if the applicable fees related to the property's  
6                   seizure and storage are paid by a holder of a valid lien, security interest, or mortgage.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_