CHAPTER 600

S.B. No. 72

An Act relating to the creation and prosecution of offenses involving computers; providing penalties and an affirmative defense; adding Chapter 33 to the Penal Code.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 7, Penal Code, is amended by adding Chapter 33 to read as follows:

"CHAPTER 33. COMPUTER CRIMES

"Section 33.01. DEFINITIONS. In this chapter:

"(1) 'Communications common carrier' means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications and who receives compensation from persons who use that system.

"(2) 'Computer' means an electronic device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device. 'Computer' includes a network of two or more computers that are interconnected to function or communicate together.

"(3) 'Computer program' means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions.

"(4) 'Computer security system' means the design, procedures, or other measures that the person responsible for the operation and use of a computer employs to restrict the use of the

computer to particular persons or uses or that the owner or licensee of data stored or maintained by a computer in which the owner or licensee is entitled to store or maintain the data employs to restrict access to the data.

"(5) 'Data' means a representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared in a formalized manner and is intended to be stored or processed, is being stored or processed, or has been stored or processed in a computer. Data may be embodied in any form, including but not limited to computer printouts, magnetic storage media, and punchcards, or may be stored internally in the memory of the computer.

"(6) 'Electric utility' has the meaning assigned by Subsection (c), Section 3, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

"Section 33.02. BREACH OF COMPUTER SECURITY. (a) A person commits an offense if the person:

"(1) uses a computer without the effective consent of the owner of the computer or a person authorized to license access to the computer and the actor knows that there exists a computer security system intended to prevent him from making that use of the computer; or

"(2) gains access to data stored or maintained by a computer without the effective consent of the owner or licensee of the data and the actor knows that there exists a computer security system intended to prevent him from gaining access to that data.

"(b) A person commits an offense if the person intentionally or knowingly gives a password, identifying code, personal identification number, or other confidential information about a computer security system to another person without the effective consent of the person employing the computer security system to restrict the use of a computer or to restrict access to data stored or maintained by a computer.

"(c) An offense under this section is a Class A misdemeanor.

"Section 33.03. HARMFUL ACCESS. (a) A person commits an offense if the person intentionally or knowingly:

"(1) causes a computer to malfunction or interrupts the operation of a computer without the effective consent of the owner of the computer or a person authorized to license access to the computer; or

"(2) alters, damages, or destroys data or a computer program stored, maintained, or produced by a computer, without the effective consent of the owner or licensee of the data or computer program.

"(b) An offense under this section is:

"(1) a Class B misdemeanor if the conduct did not cause any loss or damage or if the value of the loss or damage caused by the conduct is less than $200;

"(2) a Class A misdemeanor if the value of the loss or damage caused by the conduct is $200 or more but less than $2,500; or

"(3) a felony of the third degree if the value of the loss or damage caused by the conduct is $2,500 or more.

"Section 33.04. DEFENSES. It is an affirmative defense to prosecution under Sections 33.02 and 33.03 of this code that the actor was an officer, employee, or agent of a communications common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the communications common carrier or electric utility.

"Section 33.05. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of a computer."

SECTION 2. This Act takes effect September 1, 1985.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 11, 1985, by a viva-voce vote; Senate concurred in House amendment on May 25, 1985, by a viva-voce vote; passed the House, with amendment, on May 22, 1985, by the following vote: Yeas 138, Nays 0, six present not voting.

Approved: June 14, 1985

Effective: September 1, 1985