Sacramento, California  
August 31, 1984

Honorable George Deukmejian  
Governor of California  
Sacramento, CA

Assembly Bill No. 2551  

Dear Governor Deukmejian:

Pursuant to your request we have reviewed the above-numbered bill authored by Assembly Member Farr and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory  
Legislative Counsel

Two copies to Honorable Sam Farr  
pursuant to Joint Rule 34.
Honorable George Deukmejian  
Governor  
State of California  
State Capitol  
Sacramento, California 95814  

Dear Governor Deukmejian:

This letter is to respectfully request you to sign Assembly Bill 2551, relating to penalties for computer trespassing, which was recently sent to enrollment.

Assembly Bill 2551 would close a current loophole in the Penal Code which allows individuals to use home computers to legally browse through confidential computer data bases, so long as that "computer trespassing" is non-malicious and causes no damages.

Assembly Bill 2551 would close this loophole in a way supportive of computer network owners by:

- Establishing as a misdemeanor the intentional unauthorized entry into any computer system with the knowledge that the entry was not authorized.
- Establishing a flexible penalty schedule that prosecutors can realistically apply to different levels of offense.
- Including in the definition of injury any expenditure reasonably and necessarily incurred by the computer system owner to determine if the system has been damaged by the access.
- Specifically authorizing civil actions by computer system owners to recover compensatory damages, including attorneys' fees.
This measure is supported by many groups including:

State Attorney General (Sponsor)
California District Attorney's Association
California Chamber of Commerce
California Correctional Peace Officers Association
California Manufacturers Association
Bank of America
Blue Cross
IBM
TRW, Inc.
Hewlett-Packard
Ford Motor Company
California Railroad Association
Bank of California
Syntex USA
City and County of San Francisco

I urge you to sign Assembly Bill 2551.

Sincerely,

[Signature]
SAM FARR
Chairman
This bill would make any unauthorized computer access a public offense. The bill also changes the definition of computer system and prohibits any malicious disruption of computer operations.

**Summary of Reasons for Signature:**

Will help protect the confidentiality and integrity of computerized data.

**Fiscal Summary—State Level**

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**Fiscal Summary—Local Level**

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**Analysis**

A. Specific Findings

Under existing law, the malicious access, alteration, deletion, damage, or destruction of a computer system, network, program or data is a public offense and a felony. This bill would add to that category of offenses the disruption of the operation of a computer system, network, program, or data. The bill would classify specified unauthorized access as a public offense and would express certain legislative findings and intent relating to that offense. The bill would make certain changes in the definition of the term "computer system."

B. Fiscal Analysis

This bill does not impact any State department or program. Any impact on local governments is appropriately addressed by the "crimes and infractions" disclaimer in the bill.
Summary
This bill would establish a range of penalties for those who commit computer crimes and would also attempt to both clarify and add components to the range of penalties.

Sponsor
This legislation is being sponsored by Assemblyman Farr, Chair of the Assembly Committee of Economic Development and New Technologies.

Impact Assessment
Under existing law, the malicious access, alteration, deletion, damage, or destruction of a computer system, network, program, or data is a public offense and a felony. This bill would add to that category of offenses the disruption of the operation of a computer system, network, program, or data.

This bill would also classify specified unauthorized computer access as a public offense.

The implementation of these changes would have an overall positive effect upon both the public and private data processing community.

Arguments Pro & Con
Teale Data Center is in full support of this bill. The passage of this bill will serve as a deterrent for those who might contemplate committing computer crimes.

Recommendation
Teale Data Center recommends that the Governor sign this bill.

The increasing usage of computers and computer terminals in business and industry, coupled with the proliferation of personal computers have provided the opportunity for widespread computer crime. The passage of this bill will insure generally stiffer and more consistent penalties for those caught.

Veto Message
N/A
AB 2551 has been introduced to amend Section 502 of the Penal Code, relating to computers. Under existing law, the malicious access, alteration, deletion of a computer system, network, program or data is a public offense and a felony.

This bill adds to the category of offenses the disruption of the operation of a computer system network, program or data. It classifies "unauthorized access" as a public offense, punishable as specified, depending on whether there is injury, and would express certain legislative findings and intent relating to that offense. (Injury being any deletion, damage or destruction of a computer system or any expenditures incurred by the owner/lessee to verify that a computer system was not damaged by the access.)

This bill also provides certain civil remedies to the person who intentionally and without authorization accesses a computer system. This does not apply, however, to the person who accesses the system when acting within the scope of his/her employment. Violations are punishable by a fine and/or imprisonment depending upon injury.

FISCAL IMPACT:
There is no fiscal impact to the Data Center.

VOTE COUNT:

| Criminal Law & Public Safety | Ayes: 6 | Noes: 0 |
| Assembly Floor | Ayes: 78 | Noes: 0 |
| Committee on Judiciary | Ayes: 6 | Noes: 0 |
| Senate Floor | Ayes: 53 | Noes: 0 |

RECOMMENDATION:

This bill strengthens the current law, therefore, the Data Center recommends the signing of the bill.
This bill establishes new criminal penalties for using computer systems under certain circumstances, and also provides certain civil remedies, as specified.

FISCAL EFFECT

Appropriation: No. Fiscal Committee: Yes. Local: Yes.

The bill would increase General Fund costs to the extent that additional persons are sentenced to state prison. The Department of Corrections estimates that the bill would have a negligible, if any, fiscal impact.

The new criminal penalties provided by the bill would result in undetermined revenues to local governments and certain state special funds from fines and penalty assessments.

Mandated Local Program. The bill would result in undetermined local law enforcement and incarceration costs. It contains a crimes and infractions disclaimer.

COMMENTS

Under existing law, any malicious access of a computer system is punishable as a misdemeanor or felony.

This bill would make any intentional and knowingly unauthorized, but non-malicious, computer access punishable as a public offense. A first offense which did not cause injury, as defined, would be punishable as
Problem of computer hackers

According to proponents, existing law prohibiting malicious (intent to vex, injure, or do an unlawful act) access does not adequately protect against computer hackers who may intentionally and without authorization access a computer system for "the fun of it." Because the act was performed without malice and without any damage or alteration to the computer system or program, these computer hackers are not guilty of any crime.

The accesses, however, are not always harmless. Proponents assert that the access may invade the confidentiality of stored records or may require the owner to expend significant sums of money to ensure that the records were not tampered with.

Reason for graduated penalties

Proponents state that a $250 infraction fine is an appropriate penalty for a first offense with no injury. For purposes of deterrence, however, any subsequent offense would be punishable as a misdemeanor.

Misdemeanor penalty for injury

An offense resulting in injury would be punishable by a one year county jail term and for a $5,000 fine or both.

Definition of "injury"

The bill would define injury to include "any ... damage ... of a computer system ... or program, or any expenditure reasonably and necessarily incurred by the business or owner to verify that a computer program ... or data was not altered, deleted, damaged, or destroyed by the access."

Proponents assert that computer hacking is a modern and unique crime, that the offense deprives a computer owner of resources whenever, to make his system "whole," he must verify that an unauthorized access has not damaged the program or data, that this deprivation is an injury to the owner, and that, therefore, the definition of injury should include an owner's costs of verifying a program's security after an unauthorized entry.
ANALYSIS CONTINUED:

1. Scope of employment exception

This bill would not apply to any person who accessed his or her employer's computer system when acting within the scope of employment. This provision is intended to except the authorized office computer worker who used the computer system for personal reasons in violation of company policy. The exception, however, would not apply to office workers who were not authorized to use the computer.

2. Provision of attorney's fees in seeking civil remedy

The bill would state the right of a computer owner to sue a convicted offender for any "compensatory" damages including reasonable expenses caused by an unlawful access.

3. Similar Legislation

SB 2149 (Doolittle) would also enact criminal penalties to deter computer hackers. It provides for a 6 month jail term and/or a $1,000 fine misdemeanor penalty regardless of whether any damage was done.

4. Introductions

Introduced by Committee on Economic Development and New Technologies, Assembly Members Farr (Chairman), Bader, Baker, Clute, Prezee, Hauser and Kiilles.

5. Assembly Coauthors: Assembly Members Alatorre, Areias, Condit, Cortese, Davis, Katz, Kelley, Konnyu, Mo'ina, Moorhead, O'Connell, and Hornan Waters.


NOTE:

See attached Support letters.