HB400

138511-5

By Representative DeMarco

RFD: Judiciary

First Read: 23-FEB-12

ENGROSSED

A BILL

TO BE ENTITLED

AN ACT

To provide for the crimes of computer tampering, encoded data fraud, phishing, electronic harassment, and cyberstalking; to provide for jurisdiction in the investigation and prosecution of certain computer crimes; to provide for forfeiture of certain computers used in a crime; to repeal Sections 13A-8-100, 13A-8-101, 13A-8-102, and 13A-8-103, Code of Alabama 1975; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act may be cited as The Alabama Digital Crime Act.

Section 2. As used in this act, the following terms shall have the following meanings:

(1) ACCESS. To gain entry to, instruct, communicate with, store data in, retrieve or intercept data from, alter

data or computer software in, or otherwise make use of any resource of a computer, computer system, or computer network.

(2) COMPUTER. An electronic, magnetic, optical, electrochemical, or other high speed data processing device or system 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.

(3) COMPUTER NETWORK. The interconnection of two or more computers or computer systems that transmit data over communication circuits connecting them.

(4) COMPUTER PROGRAM. 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.

(5) COMPUTER SECURITY SYSTEM. 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.

(6) COMPUTER SERVICES. The product of the use of a computer, the information stored in the computer, or the personnel supporting the computer, including computer time, data processing, and storage functions.

(7) COMPUTER SOFTWARE. A set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specific functions.

(8) COMPUTER SYSTEM. A set of related or interconnected computer or computer network equipment, devices and software.

(9) DATA. A representation of information, knowledge, facts, concepts, or instructions, which are prepared and are intended for use in a computer, computer system, or computer network. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit.

(10) ELECTRONIC MAIL MESSAGE. A message sent to a unique destination that consists of a unique user name or mailbox and a reference to an Internet domain, whether or not displayed, to which such message can be sent or delivered.

(11) EXCEEDS AUTHORIZATION OF USE. Accessing a computer, computer network, or other digital device with actual or perceived authorization, and using such access to obtain or alter information that the accessor is not entitled to obtain or alter.

~~(11)~~ (12) FINANCIAL INSTRUMENT. Includes, but is not limited to, any check, cashier's check, draft, warrant, money order, certificate of deposit, negotiable instrument, letter of credit, bill of exchange, credit or debit card, transaction

authorization mechanism, marketable security, or any computer system representation thereof.

~~(12)~~ (13) HARM. Partial or total alteration, damage, or erasure of stored data, interruption of computer services, introduction of a virus, or any other loss, disadvantage, or injury that might reasonably be suffered as a result of the actor's conduct.

~~(13)~~ (14) IDENTIFICATION DOCUMENT. Any document containing data that is issued to an individual and which that individual, and only that individual, uses alone or in conjunction with any other information for the primary purpose of establishing his or her identity or accessing his or her financial information or benefits. Identification documents specifically include, but are not limited to, the following:

a. Government issued driver's licenses or identification cards.

b. Payment cards such as credit cards, debit cards, and ATM cards.

c. Passports.

d. Health insurance or benefit cards.

e. Identification cards issued by educational institutions.

f. Identification cards for employees or contractors.

g. Benefit cards issued in conjunction with any government supported aid program.

h. Library cards issued by any public library.

~~(14)~~ (15) IDENTIFYING INFORMATION. Specific details that can be used to access a person's financial accounts, obtain identification, or to obtain goods or services, including, but not limited to:

a. Social Security number.

b. Driver's license number.

c. Bank account number.

d. Credit card or debit card number.

e. Personal identification number (PIN).

f. Automated or electronic signature.

g. Unique biometric data.

h. Account password.

~~(15)~~ (16) INTEGRATED CIRCUIT CARD. Also known as a smart card or chip card, a pocket sized, plastic card with embedded integrated circuits used for data storage or special purpose processing used to validate personal identification numbers (PINs), authorize purchases, verify account balances and store personal records. When inserted into a reader, it transfers data to and from a central computer.

~~(16)~~ (17) OWNER. An owner or lessee of a computer or a computer network, or an owner, lessee, or licensee of computer data, computer programs, or computer software.

~~(17)~~ (18) PROPERTY. Includes a financial instrument, data, databases, data while in transit, computer software, computer programs, documents associated with computer systems and computer programs, or copies whether tangible or intangible.

~~(18)~~ (19) RADIO FREQUENCY IDENTIFICATION (RFID). A technology that uses radio waves to transmit data remotely from an RFID tag, through a reader, from identification documents. It is used in contactless integrated circuit cards, also known as proximity cards.

~~(19)~~ (20) RADIO FREQUENCY IDENTIFICATION (RFID) TAGS. Also known as RFID labels, the hardware for an RFID system that electronically stores and processes information, and receives and transmits the signal.

~~(20)~~ (21) REENCODER. An electronic device that places encoded information from the magnetic strip, integrated circuit, RFID tag of an identification document onto the magnetic strip, integrated circuit, or RFID tag of a different identification document.

~~(21)~~ (22) SCANNING DEVICE. A scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip, integrated circuit, or RFID tag of an identification document.

~~(22) (23) TRAIT OR CHARACTERISTIC OF THAT PERSON. Includes, but is not limited to, age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, ancestry, political party preferences, political beliefs, socio-economic status, family status, or education.~~

~~(23) (24)~~ (23) VIRUS. Means an unwanted computer program or other set of instructions inserted into a

computer's memory, operating system, or program that is specifically constructed with the ability to replicate itself or to affect the other programs or files in the computer by attaching a copy of the unwanted program or other set of instructions to one or more computer programs or files.

~~(24) (25)~~ (24) WEB PAGE. A location that has a single uniform resource locator or other single location with respect to the Internet.

Section 3. (a) A person who acts without authority or who exceeds authorization of use commits the crime of computer tampering by knowingly or recklessly with intent to commit an unlawful act:

(1) Accessing, altering, damaging, or destroying any computer, computer system, or computer network.

(2) Altering, damaging, deleting, or destroying computer programs or data.

(3) Disclosing, using, controlling, or taking computer programs, data, or supporting documentation residing in, or existing internal or external to, a computer, computer system, or network.

(4) Directly or indirectly introducing a computer contaminator or a virus into any computer, computer system, or network.

(5) Disrupting or causing the disruption of a computer, computer system, or network services or denying or causing the denial of computer or network services to any authorized user of a computer, computer system, or network.

(6) Preventing a computer user from exiting a site, computer system, or network-connected location in order to compel the user's computer to continue communicating with, connecting to, or displaying the content of the service, site, or system.

(7) Obtaining any information that is required by law to be kept confidential or any records that are not public records by accessing any computer, computer system, or network that is operated by this state, a political subdivision of this state, or a medical institution.

(8) Giving a password, identifying code, personal identification number, debit card number, bank account number, or other confidential information about a computer security system to another person without the consent of the person using the computer security system to restrict access to a computer, computer network, computer system, or data.

(b)(1) Except as otherwise provided in this subsection, the offense of computer tampering is a Class A misdemeanor, punishable as provided by law.

(2) If the actor's intent is to commit an unlawful act or obtain a benefit, or defraud or harm another, the offense is a Class C felony, punishable as provided by law.

(3) If any violation results in a victim expenditure of greater than two thousand five hundred dollars ($2,500), or if the actor's intent is to obtain a benefit<u>, commit an unlawful act,</u> or defraud or harm another and there is an interruption or impairment of governmental operations or

public communication, transportation, or supply of water, gas, or other public or utility service, then the offense is a Class B felony, punishable as provided by law.

(4) If any violation results in a victim expenditure of greater than one hundred thousand dollars ($100,000), or if the committed offense causes physical injury to any person who is not involved in the act, then the offense is a Class A felony, punishable as provided by law.

(5) If any violation relates to access to an Alabama Criminal Justice Information Center information system or to data regulated under the authority of the Alabama Criminal Justice Information Center Commission, the offense is a Class B felony, punishable as provided by law. Misuse of each individual record constitutes a separate offense under this subsection.

(c) A prosecution for a violation of this section may be tried in any of the following:

(1) The county in which the victimized computer, computer system, or network is located.

(2) The county in which the computer, computer system, or network that was used in the commission of the offense is located or in which any books, records, documents, property, financial instruments, computer software, data, access devices, or instruments of the offense were used.

(3) The county in which any authorized user was denied service or in which an authorized user's service was interrupted.

(4) The county in which critical infrastructure resources were tampered with or affected.

Section 4. (a) A person commits the crime of encoded data fraud by:

(1) Knowingly and with the intent to commit an unlawful act or to defraud, possessing a scanning device; or knowingly and with intent to commit an unlawful act or defraud, using or attempting to use a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on an identification document by means of magnetic strip, integrated circuit, or radio frequency identification tag without the permission of the authorized user or issuer of the identification document.

(2) Knowingly and with the intent to commit an unlawful act or to defraud, possessing a reencoder; or knowingly and with intent to commit an unlawful act or defraud, using or attempting to use a reencoder to place encoded information on an identification document by means of magnetic strip, integrated circuit, or radio frequency identification tag without the permission of the authorized user or issuer of the identification document from which the information is being reencoded.

(b) Any person violating this section, upon conviction, shall be guilty of a Class C felony.

(c) Any scanning device or reencoder owned by the defendant and possessed or used in violation of this section may be seized and be destroyed as contraband by the

investigating law enforcement agency by which the scanning device or reencoder was seized.

Section 5. (a) A person commits the crime of phishing if the person by means of an Internet web page, electronic mail message, or otherwise using the Internet, solicits, requests, or takes any action to induce another person to provide identifying information by representing that the person, either directly or by implication, is a business, without the authority or approval of the business.

(b) Any person violating this section, upon conviction, shall be guilty of a Class C felony. Multiple violations resulting from a single action or act shall constitute one violation for the purposes of this section.

(c) The following persons may bring an action against a person who violates or is in violation of this section:

(1) A person who is engaged in the business of providing Internet access service to the public, owns a web page, or owns a trademark, and is adversely affected by a violation of this section.

(2) An individual who is adversely affected by a violation of this section.

(d) In any criminal proceeding brought pursuant to this section, the crime shall be considered to be committed in any county in which any part of the crime took place, regardless of whether the defendant was ever actually present in that county, or in the county of residence of the person

who is the subject of the identification documents or identifying information.

(e) The Attorney General or the district attorney may file a civil action in circuit court to enforce this section and to enjoin further violations of this section. The Attorney General~~, district attorney, a designee of the district attorney, or such aggrieved person~~ or the district attorney may recover actual damages or twenty-five thousand dollars ($25,000), whichever is greater, for each violation of subsection (a).

(f) In a civil action under subsection (e), the court may increase the damage award to an amount equal to not more than three times the award provided in subsection (d) if the court determines that the defendant has engaged in a pattern and practice of violating subsection (a).

(g) Proceeds from an action under subsection (e) shall first be used for payment of all proper expenses, including court costs, of the proceedings for the civil action with the remaining proceeds payable first towards the restitution of any victims, as determined by the court. Any remaining proceeds shall be awarded equally between the State General Fund and the office of the Attorney General, the office of the district attorney bringing the action, or both.

(h) An interactive computer service provider shall not be held liable or found in violation of this section for identifying, removing, or disabling access to an Internet web page or other online location that such provider believes in

good faith is being used to engage in a violation of this section.

Section 6. (a) A law enforcement officer, a prosecuting attorney, or the Attorney General may require the disclosure of stored wire or electronic communications, as well as transactional records and subscriber information pertaining thereto, to the extent and under the procedures and conditions provided for by the laws of the United States.

(b) A provider of electronic communication service or remote computing service shall provide subscriber information as well as the contents of, and transactional records pertaining to, wire and electronic communications in its possession or reasonably accessible thereto when a requesting law enforcement officer, a prosecuting attorney, or the Attorney General complies with the provisions for access thereto set forth by the laws of the United States.

(c) Warrants or appropriate orders for production of stored wire or electronic communications and transactional records pertaining thereto shall have statewide application or application as provided by the laws of the United States when issued by a judge with jurisdiction over the criminal offense under investigation or to which such records relate.

(d) This section specifically authorizes any law enforcement official, prosecuting attorney, or the Attorney General to issue a subpoena to obtain any stored electronic records governed by 18 U.S.C. § 2703(b) et seq, and any

successor statute. The subpoena shall be issued with a showing that the subpoenaed material relates to an investigation.

(e) Intentional violation of this section shall be punishable as contempt.

Section 7. (a) An Alabama corporation or business entity that provides electronic communication services or remote computing services to the general public, when served with a warrant issued by another state to produce records that could reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if that warrant had been issued by an Alabama court.

(b) Intentional violation of this section shall be punishable as contempt.

Section 8. (a) On conviction of a violation of this act or any other violation of the criminal laws of Alabama, the court shall order that any computer, computer system, computer network, instrument of communication, software or data that was owned or used by the defendant <u>with the owner's knowledge of the unlawful act or where the owner had reason to know of the unlawful act,</u> and that was used in the commission of the offense be forfeited to the State of Alabama and sold, destroyed, or otherwise properly disposed. If the defendant is a minor, it also includes the above listed property of the

parent or guardian of the defendant. The manner, method, and procedure for the forfeiture and condemnation or forfeiture of such thing shall be the same as that provided by law for the confiscation or condemnation or forfeiture of automobiles, conveyances, or vehicles in which alcoholic beverages are illegally transported. If the computer, computer system, computer network, instrument of communication, software, or data that was used by a defendant, in conjunction with a violation of this act, is owned or leased by the defendant's employer or a client or vendor of the defendant's employer and such owner or lessor did not authorize the activity violating the act, then this section shall not apply.

(b) When property is forfeited under this act or any other violation of the criminal laws of Alabama, the court may award the property to any state, county, or municipal law enforcement agency or department who participated in the investigation or prosecution of the offense given rise to the seizure. The recipient law enforcement agency shall use such property for law enforcement purposes but, at its discretion, may transfer the tangible property to another governmental department or agency to support crime prevention. The agencies may sell that which is not required to be destroyed and which is not harmful to the public. The proceeds from a sale authorized by this act shall be used first for payment of all proper expenses of the proceedings for forfeiture and sale and the remaining proceeds from the sale shall be awarded and

distributed by the court to the participating agencies to be used exclusively for law enforcement purposes.

(c) Pursuant to Section 15-18-67 of the Code of Alabama 1975, and in addition to any other cost ordered pursuant to law, the district attorney may request and the court may order the defendant to pay the cost of prosecution or investigation, or both. Restitution shall include any and all costs associated with the violation of the criminal laws of this state.

Section 9. A person who is subject to prosecution under this section and any other law of this state may be prosecuted under either or both laws.

Section 10. Nothing in this act prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of this state or a political subdivision of this state or a law enforcement agency of the United States or of an intelligence agency of the United States.

Section 11. Article 5, consisting of Sections 13A-8-100, 13A-8-101, 13A-8-102, and 13A-8-103 of Chapter 8 of Title 13A of, the Code of Alabama 1975, relating to computer crimes, is repealed.

Section 12. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of

the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 13. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

House of Representatives

Read for the first time and referred to the House of Representatives committee on Judiciary	.....	23-FEB-12
Read for the second time and placed on the calendar with 1 substitute and 3 amendments.....	.....	08-MAR-12
Read for the third time and passed as amended.....	.....	15-MAR-12

Yeas 100, Nays 0, Abstains 0

Greg Pappas
Clerk