

1 **ENROLLED**

2 **Senate Bill No. 385**

3 (BY SENATORS UNGER, BEACH, KESSLER (MR. PRESIDENT), KLEMPA AND JENKINS)

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5 [Passed March 2, 2012; in effect ninety days from passage.]
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10 AN ACT to amend and reenact §61-3C-3 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §61-8A-1 of said
12 code, all relating to updating the definition of "computer" in
13 the commission of certain crimes.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §61-3C-3 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted; and that §61-8A-1 of said code be amended
17 and reenacted, all to read as follows:

18 **ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

19 **§61-3C-3. Definitions.**

20 As used in this article, unless the context clearly indicates
21 otherwise:

22 (a) "Access" means to instruct, communicate with, store data
23 in, retrieve data from, intercept data from or otherwise make use

1 of any computer, computer network, computer program, computer
2 software, computer data or other computer resources.

3 (b) "Authorization" means the express or implied consent given
4 by a person to another to access or use said person's computer,
5 computer network, computer program, computer software, computer
6 system, password, identifying code or personal identification
7 number.

8 (c) "Computer" means an electronic, magnetic, optical,
9 electrochemical or other high-speed data processing device
10 performing logical, arithmetic or storage functions and includes
11 any data storage facility or communication facility directly
12 related to or operating in conjunction with such device. The term
13 "computer" includes any connected or directly related device,
14 equipment or facility which enables the computer to store, retrieve
15 or communicate computer programs, computer data or the results of
16 computer operations to or from a person, another computer or
17 another device, file servers, mainframe systems, desktop personal
18 computers, laptop personal computers, tablet personal computers,
19 cellular telephones, game consoles and any other electronic data
20 storage device or equipment, but such term does not include an
21 automated typewriter or typesetter, a portable hand-held calculator
22 or other similar device.

23 (d) "Computer contaminant" means any set of computer
24 instructions that are designed to damage or destroy information

1 within a computer, computer system or computer network without the
2 consent or permission of the owner of the information. They
3 include, but are not limited to, a group of computer instructions
4 commonly called viruses or worms that are self-replicating or self-
5 propagating and are designed to contaminate other computer programs
6 or computer data, consume computer resources or damage or destroy
7 the normal operation of the computer.

8 (e) "Computer data" means any representation of knowledge,
9 facts, concepts, instruction or other information computed,
10 classified, processed, transmitted, received, retrieved,
11 originated, stored, manifested, measured, detected, recorded,
12 reproduced, handled or utilized by a computer, computer network,
13 computer program or computer software and may be in any medium,
14 including, but not limited to, computer printouts, microfilm,
15 microfiche, magnetic storage media, optical storage media, punch
16 paper tape or punch cards, or it may be stored internally in read-
17 only memory or random access memory of a computer or any other
18 peripheral device.

19 (f) "Computer network" means a set of connected devices and
20 communication facilities, including more than one computer, with
21 the capability to transmit computer data among them through such
22 communication facilities.

23 (g) "Computer operations" means arithmetic, logical, storage,
24 display, monitoring or retrieval functions or any combination

1 thereof and includes, but is not limited to, communication with,
2 storage of data in or to, or retrieval of data from any device and
3 the human manual manipulation of electronic magnetic impulses. A
4 "computer operation" for a particular computer shall also mean any
5 function for which that computer was designed.

6 (h) "Computer program" means an ordered set of computer data
7 representing instructions or statements, in a form readable by a
8 computer, which controls, directs or otherwise influences the
9 functioning of a computer or computer network.

10 (I) "Computer software" means a set of computer programs,
11 procedures and associated documentation concerned with computer
12 data or with the operation of a computer, computer program or
13 computer network.

14 (j) "Computer services" means computer access time, computer
15 data processing or computer data storage and the computer data
16 processed or stored in connection therewith.

17 (k) "Computer supplies" means punch cards, paper tape,
18 magnetic tape, magnetic disks or diskettes, optical disks or
19 diskettes, disk or diskette packs, paper, microfilm and any other
20 tangible input, output or storage medium used in connection with a
21 computer, computer network, computer data, computer software or
22 computer program.

23 (l) "Computer resources" includes, but is not limited to,
24 information retrieval; computer data processing, transmission and

1 storage; and any other functions performed, in whole or in part, by
2 the use of a computer, computer network, computer software or
3 computer program.

4 (m) "Owner" means any person who owns or leases or is a
5 licensee of a computer, computer network, computer data, computer
6 program, computer software, computer resources or computer
7 supplies.

8 (n) "Person" means any natural person, general partnership,
9 limited partnership, trust, association, corporation, joint venture
10 or any state, county or municipal government and any subdivision,
11 branch, department or agency thereof.

12 (o) "Property" includes:

13 (1) Real property;

14 (2) Computers and computer networks;

15 (3) Financial instruments, computer data, computer programs,
16 computer software and all other personal property regardless of
17 whether they are:

18 (I) Tangible or intangible;

19 (ii) In a format readable by humans or by a computer;

20 (iii) In transit between computers or within a computer
21 network or between any devices which comprise a computer; or

22 (iv) Located on any paper or in any device on which it is
23 stored by a computer or by a human; and

24 (4) Computer services.

1 (p) "Value" means having any potential to provide any direct
2 or indirect gain or advantage to any person.

3 (q) "Financial instrument" includes, but is not limited to,
4 any check, draft, warrant, money order, note, certificate of
5 deposit, letter of credit, bill of exchange, credit or debit card,
6 transaction authorization mechanism, marketable security or any
7 computerized representation thereof.

8 (r) "Value of property or computer services" shall be: (1) The
9 market value of the property or computer services at the time of a
10 violation of this article; or (2) if the property or computer
11 services are unrecoverable, damaged or destroyed as a result of a
12 violation of section six or seven of this article, the cost of
13 reproducing or replacing the property or computer services at the
14 time of the violation.

15 **ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE**
16 **MATTER TO MINORS.**

17 **§61-8A-1. Definitions.**

18 When used in this article, the following words, and any
19 variations thereof required by the context, shall have the meaning
20 ascribed to them in this section:

21 (a) "Adult" means a person eighteen years of age or older.

22 (b) "Computer" means an electronic, magnetic, optical,
23 electrochemical or other high-speed data processing device
24 performing logical, arithmetic or storage functions and includes

1 any data storage facility or communication facility directly
2 related to or operating in conjunction with such device. As used
3 in this article, computer includes file servers, mainframe systems,
4 desktop personal computers, laptop personal computers, tablet
5 personal computers, cellular telephones, game consoles and any
6 electronic data storage device or equipment. The term "computer"
7 includes any connected or directly related device, equipment or
8 facility which enables the computer to store, retrieve or
9 communicate computer programs, computer data or the results of
10 computer operations to or from a person, another computer or
11 another device, but such term does not include an automated
12 typewriter or typesetter, a portable hand-held calculator or other
13 similar device.

14 (c) "Computer network" means the interconnection of hardware
15 or wireless communication lines with a computer through remote
16 terminals, or a complex consisting of two or more interconnected
17 computers.

18 (d) "Display" means to show, exhibit or expose matter, in a
19 manner visible to general or invited public, including minors. As
20 used in this article, display shall include the placing or
21 exhibiting of matter on or in a billboard, viewing screen, theater,
22 marquee, newsstand, display rack, window, showcase, display case or
23 similar public place.

24 (e) "Distribute" means to transfer possession, transport,

1 transmit, sell or rent, whether with or without consideration.

2 (f) "Employee" means any individual who renders personal
3 services in the course of a business, who receives compensation and
4 who has no financial interest in the ownership or operation of the
5 business other than his or her salary or wages.

6 (g) "Internet" means the international computer network of
7 both federal and nonfederal interoperable packet switched data
8 networks.

9 (h) "Knowledge of the character of the matter" means having
10 awareness of or notice of the overall sexual content and character
11 of matter as depicting, representing or describing obscene matter.

12 (I) "Matter" means any visual, audio, or physical item,
13 article, production transmission, publication, exhibition, or live
14 performance, or reproduction thereof, including any two- or three-
15 dimensional visual or written material, film, picture, drawing,
16 video, graphic, or computer generated or reproduced image; or any
17 book, magazine, newspaper or other visual or written material; or
18 any motion picture or other pictorial representation; or any statue
19 or other figure; or any recording, transcription, or mechanical,
20 chemical, or electrical reproduction; or any other articles, video
21 laser disc, computer hardware and software, or computer generated
22 images or message recording, transcription, or object, or any
23 public or commercial live exhibition performed for consideration or
24 before an audience of one or more.

1 (j) "Minor" means an unemancipated person under eighteen years
2 of age.

3 (k) "Obscene matter" means matter that:

4 (1) An average person, applying contemporary adult community
5 standards, would find, taken as a whole, appeals to the prurient
6 interest, is intended to appeal to the prurient interest, or is
7 pandered to a prurient interest;

8 (2) An average person, applying community standards, would
9 find depicts or describes, in a patently offensive way, sexually
10 explicit conduct; and

11 (3) A reasonable person would find, taken as a whole, lacks
12 serious literary, artistic, political or scientific value.

13 (l) "Parent" includes a biological or adoptive parent, legal
14 guardian or legal custodian.

15 (m) "Person" means any adult, partnership, firm, association,
16 corporation or other legal entity.

17 (n) "Sexually explicit conduct" means an ultimate sexual act,
18 normal or perverted, actual or simulated, including sexual
19 intercourse, sodomy, oral copulation, sexual bestiality, sexual
20 sadism and masochism, masturbation, excretory functions and lewd
21 exhibition of the genitals.