

SENATE, No. 1619

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator JAMES W. HOLZAPFEL

District 10 (Ocean)

SYNOPSIS

Clarifies crime of unlawful access concerning certain password protected communications in electronic storage.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning unlawful access to certain communications in
2 electronic storage, and amending P.L.1993, c.29.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 21 of P.L.1993, c.29 (C.2A:156A-27) is amended to
8 read as follows:

9 21. Unlawful access to stored communications.

10 a. A person is guilty of a crime of the fourth degree if he (1)
11 knowingly accesses without authorization a facility through which
12 an electronic communication service is provided or exceeds an
13 authorization to access that facility, and (2) thereby obtains, alters,
14 or prevents authorized access to a wire or electronic communication
15 while that communication is in electronic storage. For purposes of
16 this subsection, a person “knowingly accesses without
17 authorization” or “exceeds an authorization to access” if he obtains,
18 alters, or prevents authorized access to a communication that is
19 protected by a password or other personal code, without first
20 knowing and inputting that password or other personal code, or
21 otherwise having the express consent of at least one of the parties to
22 whom that password or other personal code belongs.

23 b. A person is guilty of a crime of the third degree if, for the
24 purpose of commercial advantage, private commercial gain, or
25 malicious destruction or damage, he (1) knowingly accesses without
26 authorization a facility through which an electronic communication
27 service is provided or exceeds an authorization to access that
28 facility, and (2) thereby obtains, alters, or prevents authorized
29 access to a wire or electronic communication while that
30 communication is in electronic storage. For purposes of this
31 subsection, a person “knowingly accesses without authorization” or
32 “exceeds an authorization to access” if he obtains, alters, or
33 prevents authorized access to a communication that is protected by
34 a password or other personal code, without first knowing and
35 inputting that password or other personal code, or otherwise having
36 the express consent of at least one of the parties to whom that
37 password or other personal code belongs.

38 c. This section does not apply to conduct authorized: (1) by
39 the person or entity providing a wire or electronic communication
40 service; or (2) by a user of that service with respect to a
41 communication of or intended for that user; or (3) by section 10 of
42 P.L.1968, c.409 (C.2A:156A-10), section 13 of P.L.1968, c.409
43 (C.2A:156A-13), or by section 23 or 24 of P.L.1993, c.29
44 (C.2A:156A-29 or C.2A:156A-30).
45 (cf: P.L.1993, c.29, s.21)

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. This act shall take effect immediately, and apply to any act
2 of unlawful access occurring on or after the effective date.

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5 STATEMENT

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7 This bill amends the provisions of New Jersey's wiretapping
8 statute dealing with unlawful access to stored communications,
9 section 21 of P.L.1993, c.29 (C.2A:156A-27), to clarify criminal
10 liability concerning password protected wire or electronic
11 communications in electronic storage, such as e-mail accounts.

12 A person would be guilty of a fourth degree crime if that person
13 obtains, alters, or prevents authorized access to any such
14 communication that is protected by a password or other personal
15 code, without first knowing and inputting that password or other
16 personal code, or otherwise having the express consent of at least
17 one of the parties to whom that password or other personal code
18 belongs. As such, there would be no implied consent and no
19 defense from criminal liability for a person who accessed
20 communications after a party to those communications had failed to
21 properly log out or otherwise exit the electronic storage medium
22 containing the communications, leaving such communications
23 unprotected by password or other personal code.

24 A person would be guilty of a third degree crime for unlawful
25 access, if the person additionally acted for the purpose of
26 commercial advantage, private commercial gain, or malicious
27 destruction or damage.

28 A fourth degree crime is ordinarily punishable by a term of
29 imprisonment of up to 18 months, a fine of up to \$10,000, or both.
30 A third degree crime is ordinarily punishable by a term of
31 imprisonment of three to five years, a fine of up to \$15,000, or both.

32 This clarification to criminal liability for unlawful access would
33 also clarify liability in any civil action brought by an aggrieved
34 person whose communications were accessed, due to the
35 availability of such civil actions arising from criminal unlawful
36 access, as set forth in section 26 of P.L.1993, c.29 (C.2A:156A-32).