

CHAPTER 350

(HB 193)

AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 434.840 is amended to read as follows:

For the purposes of *Sections 1 to 7 of this Act* ~~[KRS 434.845 and 434.850]~~, the following words, ~~{(including any form of the word,)} and terms shall have the following meanings:~~

- (1) "Access" means to approach, instruct, communicate with, *manipulate*, store data in, retrieve or intercept data from, or otherwise make use of any resources of, a computer, computer system, or computer network;
- (2) "Computer" means *any* ~~[a]~~ device, *equipment, or facility that uses a computer program or other instructions, stored either temporarily or permanently, to perform specific operations including, but not limited to, logical, arithmetic, or memory functions with or on data or a computer program that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network* ~~[that can perform substantial computation, including numerous arithmetic or logic operations, without intervention by a human operator during the processing of a job];~~
- (3) "Computer network" means *an interconnection* ~~[a set]~~ of two (2) or more *devices used for the purpose of transmitting any combination of voice, video, or data including, but not limited to, bridges, routers, switches, antennas, or towers connected by hardwire or wireless communications lines* ~~[computer systems that transmit data over communication circuits connecting them];~~
- (4) "Computer program" means *a* ~~[an ordered]~~ set of ~~[data that are coded]~~ instructions or statements *and related data* that, when executed *in actual or modified form, cause* ~~[by]~~ a computer, *computer system, or* ~~[cause the]~~ computer *network to perform specified functions* ~~[process data];~~
- (5) "Computer software" means ~~[a set of]~~ computer programs, procedures, *or* ~~[and]~~ associated documentation concerned with the operation of a computer, computer system, or computer network *for system control or processing of data;*
- (6) "Computer system" means a set of *related* ~~[connected devices including a]~~ computer *equipment,* ~~[and other]~~ devices, ~~[including, but not limited to, one (1) or more of the following:]~~ *data, software, or hardware that is designed to perform a specific function* ~~[input, output, or storage devices, data communication circuits, and operating system computer programs that make the system capable of performing data processing tasks];~~
- (7) "Data" *means* ~~[is]~~ a representation of information, knowledge, facts, concepts, or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be stored or processed, or is being stored or processed, or has been stored or processed, in a computer, computer system or computer network;
- (8) "*Device*" *includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses;*

- (9) *"Effective consent" means consent by a person legally authorized to act for the owner. Consent is not effective if it is:*
- (a) *Induced by deception or coercion;*
 - (b) *Given by a person who the actor knows is not legally authorized to act for the owner;*
 - (c) *Given by a person who by reason of age, mental disease or defect, or intoxication is known by the actor to be unable to make responsible property or data dispositions; or*
 - (d) *Used for a purpose other than that for which the consent is given;*
- (10) "Financial instruments" 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 [card,]~~ debit card, **transaction authorization mechanism**,~~[or]~~ marketable security, or any **electronic**~~[computer system]~~ representation thereof;
- (11)~~[(9)]~~ "Intellectual property" includes data, **text, images, sound, codes, computer programs, software, or databases** which may be in any form including, but not limited to, computer printouts, magnetic storage media, punched cards, or **which** may be stored internally in the memory of a computer;
- (12) *"Loss or damage" means the result of accessing, attempting to access, or causing to be accessed, without effective consent, any computer software, computer program, data, computer, computer system, computer network, or any part thereof, including, but not limited to, theft, alteration, or destruction of data, security breaches, or disruption of services;*
- (13) *"Owner" means a person who has title, license, or other lawful possession of the property, a person who has the right to restrict access to the property, or a person who has a greater right to possession of the property than the actor;*
- ~~(14) [(10)] "To process" is to use a computer to put data through a systematic sequence of operations for the purpose of producing a specified result;~~
- ~~(14)]~~ "Property" includes, but is not limited to, intellectual property, financial instruments, data, computer programs, documentation associated with data, computers, computer systems and computer programs, all in machine-readable or human-readable form, and any tangible or intangible item of value; and
- ~~(15) [(12)]~~ "Services" includes, but is not limited to, the use of a computer, a computer system, a computer network, computer software, computer program, or data to perform tasks.

Section 2. KRS 434.845 is amended to read as follows:

- (1) A person is guilty of unlawful access to a computer in the first degree when he **or she, without the effective consent of the owner**, knowingly and willfully, directly or indirectly accesses, causes to be accessed, or attempts to access any computer software, computer program, data, computer, computer system, computer network, or any part thereof, for the purpose of:
- (a) Devising or executing any scheme or artifice to defraud; or
 - (b) Obtaining money, property, or services for themselves or another by means of false or fraudulent pretenses, representations, or promises~~[-, or]~~

~~(c) Altering, damaging, destroying, or attempting to alter, damage, or destroy, any computer, computer system, or computer network, or any computer software, program, or data].~~

~~(2) Accessing, attempting to access, or causing to be accessed any computer software, computer program, data, computer, computer system, computer network, or any part thereof, even though fraud, false or fraudulent pretenses, representations, or promises may have been involved in the access or attempt to access shall not constitute a violation of this section if the sole purpose of the access was to obtain information and not to commit any other act proscribed by this section.~~

~~(3)]~~ Unlawful access to a computer in the first degree is a Class C felony.

Section 3. KRS 434.850 is amended to read as follows:

(1) A person is guilty of unlawful access to a computer in the second degree when he *or she*, without *the effective consent of the owner*,~~[authorization]~~ knowingly and willfully, directly or indirectly accesses, causes to be accessed, or attempts to access any computer software, computer program, data, computer, computer system, computer network, or any part thereof, *which results in the loss or damage of three hundred dollars (\$300) or more*.

(2) Unlawful access to a computer in the second degree is a Class *D felony*~~[A misdemeanor]~~.

SECTION 4. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

(1) *A person is guilty of unlawful access in the third degree when he or she, without the effective consent of the owner, knowingly and willfully, directly or indirectly accesses, causes to be accessed, or attempts to access any computer software, computer program, data, computer, computer system, computer network, or any part thereof, which results in the loss or damage of less than three hundred dollars (\$300).*

(2) *Unlawful access to a computer in the third degree is a class A misdemeanor.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

(1) *A person is guilty of unlawful access in the fourth degree when he or she, without the effective consent of the owner, knowingly and willfully, directly or indirectly accesses, causes to be accessed, or attempts to access any computer software, computer program, data, computer, computer system, computer network, or any part thereof, which does not result in loss or damage.*

(2) *Unlawful access to a computer in the fourth degree is a class B misdemeanor.*

Section 6. KRS 434.855 is amended to read as follows:

(1) A person is guilty of misuse of computer information when he *or she*:

(a) Receives, conceals, or uses, or aids another in doing so, any proceeds of a violation of KRS 434.845; or

(b) Receives, conceals, or uses or aids another in doing so, any books, records, documents, property, financial instrument, computer software, computer program, or other material, property, or objects, knowing the same to have been used in or obtained from a violation of KRS 434.845.

- (2) Misuse of computer information is a Class C felony.

Section 7. KRS 434.860 is amended to read as follows:

For the purpose of venue under the provisions of *Sections 2, 3, 4, 5, or 6 of this Act*~~[KRS 434.845, 434.850 or 434.855]~~, any violation of *Sections 2, 3, 4, 5, or 6 of this Act*~~[KRS 434.845, 434.850 or 434.855]~~ shall be considered to have been committed: in any county in which any act was performed in furtherance of any transaction violating *Sections 2, 3, 4, 5, or 6 of this Act*~~[KRS 434.845, 434.850 or 434.855]~~; in any county in which any violator had control or possession of any proceeds of said violation or of any books, records, documents, property, financial instrument, computer software, computer program or other material, objects or items which were used in furtherance of said violation; and in any county from which, to which or through which any access to a computer, computer system, or computer network was made whether by wires, electromagnetic waves, microwaves or any other means of communication.

Section 8. KRS 520.100 is amended to read as follows:

- (1) A person is guilty of fleeing or evading police in the second degree when:
- (a) *As a pedestrian, and with intent to elude or flee, the person knowingly or wantonly disobeys a direction to stop, given by a person recognized to be a peace officer who has an articulable reasonable suspicion that a crime has been committed by the person fleeing, and in fleeing or eluding the person is the cause of, or creates a substantial risk of, physical injury to any person; or*~~[,]~~
 - (b) While operating a motor vehicle with intent to elude or flee, the person knowingly or wantonly disobeys a recognized direction to stop his vehicle, given by a person recognized to be a peace officer.
- (2) No offense is committed under this section when the conduct involved constitutes a failure to comply with a directive of a traffic control officer.
- (3) Fleeing or evading police in the second degree is a Class A misdemeanor.

Approved April 23, 2002