

LEGISLATIVE UPDATE

INTRODUCTION

Legislative Update is a survey of recent state legislation relating to various aspects of high technology.¹ The survey is comprised of brief summaries of new state laws grouped under appropriate topic headings and listed thereafter alphabetically by jurisdiction. Each summary ends with a citation to the new law.

Although *Legislative Update* includes a broad selection of new technology related legislation, it is not intended to be comprehensive. In addition, the summaries do not mention aspects of the new laws that do not address high technology issues.

I. BIOTECHNOLOGY

California A biotechnology clearinghouse and referral service has been added to the Office of Business Development of the Department of Commerce to provide the public with information on biotechnology research, regulations, product development, and policy issues. The clearinghouse and referral service will end January 1, 1992 unless extended by the legislature. Act of Sept. 17, 1987, ch. 711, 1987 Cal. Leg. Serv. 963 (West) (codified at CAL. GOV'T CODE § 15333 (West Supp. 1987)).

II. HIGH TECHNOLOGY AND CRIME

A. Computer Crime

Arkansas It is now a felony to access a computer to extort or fraudulently obtain money, property, or services. It is a misdemeanor of computer trespass to access, damage, or disrupt a computer, program, or data without authorization. Persons injured by these offenses may recover any damages sustained, including loss of profits. An action under this statute must be brought within three years from the date the alleged violation is discovered or should have been discovered. Act of Apr. 13, 1987, 1987 Ark. Acts 908

© 1988 *High Technology Law Journal*

1. *High Technology Law Journal* wishes to thank Information for Public Affairs of Sacramento, California for providing us with access to their comprehensive computerized database of state legislation.

(codified at ARK. STAT. ANN. §§ 5-41-101 to -107 (Supp. 1987)).

California

It is now a crime for any person to knowingly and wrongfully access a computer network or system, make use of computer data or services, disrupt computer services, or assist in such conduct. A person convicted under these provisions may also be liable for compensatory damages in a civil action. Comprehensive Computer Data Access and Fraud Act, ch. 1499, 1987 Cal. Legis. Serv. 853 (West) (codified as amended at CAL. PENAL CODE § 502 (West 1987) and codified at CAL. WELF. & INST. CODE § 653.1 (West 1987) and codified as amended at CAL. WELF. & INST. CODE § 653.5 (West Supp. 1988)).

Florida

It is now a crime to use communication technology in furtherance of a scheme to defraud. A scheme to defraud includes attempts to obtain property under false pretenses. Communication technology is broadly defined to include transfer by mail, wire, radio, electromagnetic, photo-electronic, or photo-optical systems. Separate judgments and sentences may be imposed for attempts to obtain property and for acts which result in obtaining property. Status as a felony or misdemeanor is based on the value of the property obtained or endeavored to be obtained. Florida Communications Act, ch. 382, 1987 Fla. Sess. Law Serv. 697 (West) (to be codified at FLA. STAT. ANN. § 817.034) (West Supp. 1987) and repealing FLA. STAT. ANN. §§ 817.035, .036 (West 1978)).

Illinois

It is now a misdemeanor to knowingly and without authorization access a computer, program, or data. This offense will be increased to a felony if the person who commits the crime: (1) damages a computer or alters computer programs or data; (2) causes disruption of vital government or public utility services; (3) creates a strong probability of death or great bodily harm; or (4) defrauds any person or entity. Computer Crime Prevention Law, 1987 Ill. Legis. Serv. 319 (West) (to be codified as amended at ILL. ANN. STAT. ch. 38, paras. 16D-1 to D-7 (Smith-Hurd 1987) and repealing ILL. ANN. STAT. ch. 38, para. 16-9 (Smith-Hurd 1961)).

Missouri Three types of computer crime have been established, and they involve tampering with (1) computer data, (2) computer equipment, and (3) computer users. Tampering with computer data is defined as knowingly modifying, destroying, or disclosing computer data, programs, or passwords without authorization. This crime constitutes a misdemeanor. However, if the accused acted with intent to defraud and the property is valued at \$150 or more, the crime is a felony. Tampering with computer equipment is defined as modifying or destroying computer hardware without authorization. This crime also has a graduated system of penalties based on intent to defraud and on the amount of damage. Tampering with computer users is defined as gaining unauthorized access to a computer system or denying access to authorized users. This section provides both civil and criminal remedies including compensatory damages and attorney's fees. Act of July 14, 1987, 1987 Mo. Laws 905 (codified at MO. ANN. STAT. §§ 569.093, .095, .097, .099 (Vernon Supp. 1988) and repealing MO. ANN. STAT. §§ 569.093, .095, .097, .099 (Vernon 1986)).

North Dakota The offenses of computer fraud and computer crime have been redefined as attempting or gaining access to a computer system to use, alter, or destroy the information with intent to defraud. The penalty was reduced from a maximum 10 years and \$10,000 to 5 years and \$5,000. Computer crime has also been redefined to include any acts to gain unauthorized access to computer systems or software. The penalty for this crime was reduced from a felony to a misdemeanor. Act of Jan. 6, 1987, ch. 164, 1987 N.D. Sess. Laws 401 (codified at N.D. CENT. CODE §§ 12.1-06.1-01, 12.1-06.1-08 (1987)).

B. High Technology and Criminal Investigations

Hawaii A computerized fingerprint identification system will be established in the state criminal justice data center. The attorney general will coordinate the system with federal, state, and county law enforcement agencies. The system will increase the speed and accuracy of criminal investigations and enhance cooperative efforts among these law enforcement agencies. Act of July 7, 1987, 1987 Haw. Sess.

Laws 1206 (to be codified at HAW. REV. STAT. § 846 (1987)).

Washington

Automatic fingerprint identification systems used by local law enforcement agencies must now be compatible with the Washington state system. The local agencies must be able to transmit and receive data as well as answer inquiries from the state system. Local agencies that contracted for an automatic fingerprint identification system prior to Jan. 1, 1987 are exempt from this requirement, but the State Patrol may charge fees to process fingerprints from those jurisdictions. Act of May 18, 1987, ch. 450, 1987 Wash. Laws (codified at WASH. REV. CODE §§ 10.98.050, 13.50.050, 26.44.050, 43.43, .735, .740, .742 (1987)).

C. Protection of Trade Secrets

Alabama

It is now an offense to disclose or use trade secrets when discovered by improper means or by a breach of confidence. Liability is imposed when a party knew or should have known that the information was a trade secret. Available remedies include: injunctive or equitable relief, actual damages, reasonable attorney's fees to the prevailing party when a claim is either made or resisted in bad faith, and exemplary damages if the misappropriation was willful and malicious. Recovery is allowed for any profits or benefits attributable to the misappropriation. The plaintiff need only present proof of the misappropriator's gross revenue. This Act is the civil alternative to § 13A.8-10.4 which makes stealing, copying, communicating, or transmitting a trade secret a felony. Alabama Trade Secrets Act, 1987 Ala. Acts 1195 (codified at ALA. CODE §§ 8-27-1 to -6 (Supp. 1987)).

Idaho

The definition of trade secrets protected under the Idaho Trade Secrets Act has been expanded to include computer programs. The purpose of the Act is to protect computer software from pirating. Injunctive relief or damages may be sought for violation of the Act. Act of Mar. 23, 1987, ch. 67, 1987 Idaho Sess. Laws 121 (to be codified as amended at IDAHO CODE §§ 648-801 (1987)).

- Illinois The Illinois Trade Secrets Act provides relief for misappropriation of trade secrets. The remedies available include injunctions against actual or threatened misappropriation as well as damages. Damages can include both actual loss and unjust enrichment. An action for misappropriation must be brought within five years after the misappropriation is or should have been discovered. The Act does not apply to misappropriation occurring prior to its Jan. 1, 1988 effective date. Illinois Trade Secrets Act, 1987 Ill. Legis. Serv. 38 (West) (to be codified at ILL. ANN. STAT. ch. 140, paras. 351 to 359 (Smith-Hurd 1987)).
- Minnesota Courts may now impose injunctions allowing future use of a misappropriated trade secret upon payment of a reasonable royalty. These injunctions may be issued when there is a material and prejudicial change of position by the misappropriating party prior to knowing, or having reason to know, of the misappropriation. The plaintiff is entitled to damages except to the extent the defendant materially changed position before he had reason to know of the misappropriation. Act of Jan. 20, 1987, ch. 1, 1987 Minn. Sess. Law Serv. 1 (West) (codified as amended at MINN. STAT. ANN. §§ 325C.02, .03, .07 (West Supp. 1988)).
- Oregon The Uniform Trade Secrets Act authorizes recovery of damages for misappropriation of trade secrets. Under the Act, actual or threatened misappropriation of trade secrets may be enjoined. In addition, damages can be awarded for both the actual loss and the unjust enrichment caused by misappropriation. An action must be brought within three years after the misappropriation is or should have been discovered. The Act does not apply to misappropriations occurring prior to its Jan. 1, 1988 effective date. Act of Apr. 20, 1987, ch. 537, 1987 Or. Laws 1007 (to be codified at OR. REV. STAT. §§ 646.1 to -.12 (1987)).
- Virginia The Uniform Trade Secrets Act has been adopted to deter the misappropriation of trade secrets. Any actual or threatened misappropriation of a trade secret may be enjoined for the life of the trade secret. Damages can be awarded for both actual loss and unjust enrichment. An action for misappropriation must be brought within three years after the alleged misappropriation is or should have been discovered. Uniform Trade Secrets Act, ch. 210, 1986 Va. Acts 262 (codified at VA. CODE ANN. §§ 59.1-336 to -343 (1986)).

D. Proprietary Rights

Illinois The Software License Enforcement Act is repealed. The Act was designed to protect against the unauthorized use of computer software by providing for binding agreements between purchasers of retail software and software publishers. Act of Sept. 20, 1987, 1987 Ill. Legis. Serv. 19 (West) (repealing (ILL. ANN. STAT. ch. 29, paras. 801-08 (Smith-Hurd 1987))). For a complete summary of the Software License Enforcement Act, see *Legislative Update*, 1 HIGH TECH. L.J. 223-24 (1986).

E. Electronic Surveillance, Databases and Privacy

Georgia Public records containing certain trade secrets and proprietary information will be exempt from inspection. These exemptions do not apply to information that has been publicly released, published, copyrighted, or patented. Act of Apr. 2, 1987, 1987 Ga. Laws 377 (to be codified as amended at GA. CODE ANN. § 50-18-72 (1987)).

Montana Department heads of state agencies must assure adequate security for all information technology resources within their department. Information technology resources have been defined to include all computer hardware, software, and electronically stored data. Act of Apr. 23, 1987, ch. 592, 1987 Mont. Laws 1522 (to be codified as amended at MONT. CODE ANN. § 2-15-102 (1987)).

III. TECHNOLOGY AND DEVELOPMENT

A. Technology Transfer and Intellectual Property

Texas The Commissioner of Higher Education will review the intellectual property policies of Texas colleges and universities. The review will insure that the policies set minimum standards regarding disclosure of developments, licensing guidelines, identification of ownership and licensing responsibilities, royalty participation, and equity and management participation by those who utilize technology created at the institution. A copy of each institution's policies will be filed with the Coordinating Board of the Texas College and University System. If an institution fails to comply, it will not receive any funds from state-run competitive research or advanced technology funding programs. Act of June 19, 1987, ch. 772, 1987 Tex. Sess. Law

Serv. 5504 (Vernon) (codified as amended at TEX. EDUC. CODE ANN. § 51.680 (Vernon 1987)).

Texas An employee of a state college or university who develops intellectual property may now be awarded an equity interest in, or serve as a director of, a private business that is researching, developing, licensing, or exploiting that intellectual property. A state college or university with an ownership interest in intellectual property may appoint an individual to serve on the board of any business entity that has an agreement with the state regarding the exploitation of the intellectual property. Act of June 20, 1987, ch. 845, 1987 Tex. Sess. Law Serv. 5842 (Vernon) (codified as amended at TEX. EDUC. CODE ANN. § 51.912 (Vernon 1987)).

Virginia The State Council of Higher Education for Virginia will develop patent and copyright policy guidelines for state-supported colleges and universities. All employees of state-supported institutions of higher education will be bound by these patent and copyright policies. Act of Apr. 1, 1986, ch. 358, 1986 Va. Acts 590 (codified at VA. CODE ANN. §§ 23-4.3, -4.4, -9.10:4 (Supp. 1987)).

B. Technology and Government Agencies

Louisiana The Louisiana Department of Commerce will establish a clearinghouse for information relating to informal risk capital investment opportunities in new or emerging business ventures. The clearinghouse will compile current information describing opportunities for risk capital investment from fifty thousand to five hundred thousand dollars. This statute is designed to stimulate the growth of small business by improving the transfer of information between potential investors and entrepreneurs. Venture Capital Network Law, 1987 La. Acts 29 (to be codified at LA. REV. STAT. ANN. §§ 51:1141 to :1146 (West 1987)).

Nebraska The Department of Economic Development will set up a venture capital network to act as a clearinghouse for information relating to capital investment opportunities in the range of fifty thousand to five hundred thousand dollars. The Network will disseminate information about potential investors to subscribers for a reasonable fee. This law is designed to attract new small businesses and capital to the

state. Act of May 29, 1987, 1987 Neb. Laws 479 (codified at NEB. REV. STAT. §§ 81-1265 to -1271 (1987)).

New Jersey

The New Jersey Commission on Science and Technology has been allocated more than \$30 million to establish a network of advanced technology centers at colleges and universities. The appropriation will fund construction of advanced technology centers in the fields of biotechnology, medicine, food technology, hazardous and toxic substance management, and industrial productivity. Act of June 5, 1986, ch. 52, 1986 N.J. Sess. Law Serv. 68 (West) (codified at N.J. STAT. ANN. § 18A:64J (West Supp. 1987)).

New York

The authority of the New York State Science and Technology Foundation has been expanded to include the area of automation and robotics. The Foundation is authorized to fund technology centers by matching private funding. The Foundation was originally created to encourage scientific and technological education, promote cooperation between the government and private sector in research and development, and foster development of new products. Act of Aug. 7, 1987, ch. 828, 1987 N.Y. Laws 1574 (codified as amended at N.Y. PUB. AUTH. LAW § 3102-a (McKinney Supp. 1988)).

Oklahoma

The Oklahoma Department of Commerce will assist inventors by providing a full range of services including patent searches, business counseling, and help in obtaining financing. In exchange for its assistance, the Department of Commerce will require a \$100 application fee and will receive a ten year, 7.5% royalty on products sold. The inventor must conduct all stages of business in Oklahoma to the extent feasible. Income from the sale of products shall be exempt from state income tax for the first 7 years of sales. Inventors Assistance Act of 1987, 1987 Okla. Sess. Law Serv. 507 (West) (to be codified at OKLA. STAT. tit. 74, §§ 5061 to 5069 (1987)).

Oregon

The Software Industry Development Council has been established to advise the Economic Development Department and the Economic Development Commission on the software industry in Oregon. This law is designed to promote the growth and success of the software industry by identifying opportunities for growth as well as barriers to success. Act of May 28, 1987, ch. 198, 1987 Or. Laws 326

(to be codified at OR. REV. STAT. §§ 184.001 to .198 (1987)).

Texas

The Texas Center for Superconductivity will be established at the University of Houston to conduct research on superconductivity, including experiments as well as transfer of new technology to the marketplace. The center also will coordinate activities among other research centers, contract with private research entities, act as a resource center, seek funds from private and federal sources, and establish an advisory council. The center will be initially funded from amounts received by the state in the settlement agreement of *In re The Department of Energy Stripper Well Exemption Litigation*, 578 F.Supp. 586 (D. Kan. 1983). Act of June 20, 1987, ch. 95, 1987 Tex. Sess. Law Serv. 6405 (Vernon) (codified at TEX EDUC. CODE ANN. §§ 111.100 to .107 (Vernon 1987)).

C. Technology Incentives

Hawaii

The output from a state subsidized wind energy farm must be made available to the general public through the sale of the energy to the Hawaii Electric Light Company. Act of Apr. 6, 1987, 1987 Haw. Sess. Laws 16 (to be codified as amended at HAW. REV. STAT. §§ 39A-151 to -171 (1987)).

Illinois

Electric utilities are required to enter into long-term contracts to purchase electricity from qualified solid waste energy facilities. These electric utilities will be entitled to tax credits for the amount by which the cost of such electricity exceeds the cost of electricity from traditional sources. This law is designed to conserve energy resources by encouraging the development of alternative energy production facilities for the disposal of solid waste. Act of Sept. 11, 1987, 1987 Ill. Legis. Serv. 22 (West) (to be codified at ILL. ANN. STAT. ch. 111 2/3, paras. 8-403.1, 9-215.1 (Smith-Hurd 1987)).

Texas

A special fund has been created to attract the National Center for Manufacturing Sciences to the state. The fund will consist of appropriations and grants from industry and other sources. Every two years, the legislature may match up to \$2 million of the amount received from private donations. The fund will be available to the Center once it locates in Texas. The legislature concluded that the high technology research and development center would improve the health of the Texas manufacturing sector. Act of

Apr. 29, 1987, ch. 44, 1987 Tex. Sess. Law Serv. 155 (Vernon) (codified as amended at TEX. EDUC. CODE ANN. § 51.701 (Vernon 1987)).

IV TELECOMMUNICATIONS

- Colorado Flexible regulatory treatment for various intrastate telecommunications services has been adopted. All basic service providers must obtain a certificate of public convenience and necessity. The certificate gives the provider an exclusive grant or monopoly, subject to regulation as a public utility by the Commission. Emerging competitive telecommunications services are subject to regulation by the Commission unless the Commission determines that deregulation would be in the public interest. Emerging competitive telecommunications services include: advanced features, private line service, InterLATA toll, and switched access. Exempt from Commission regulation are other products and services such as cable services, cellular telecommunications devices, mobile radio services, radio paging, informational services, and new products and services not necessary to provide basic exchange service. Act of July 2, 1987, ch. 313, 1987 Colo. Sess. Laws 1336 (codified as amended at COLO. REV. STAT. §§ 40-15-1 to -15-4 (1987)).
- Minnesota Regulation of certain telephone services is now determined by the classification of the service. The three possible service categories are: (1) noncompetitive, (2) effective competition, and (3) emerging competition. A telephone company may not discontinue or change the rates of any noncompetitive service without express approval of the State Utilities Commission. The Commission must approve the classification as effective or emerging competition, and the telephone company has the burden of establishing that competition exists. Rates for emerging competition service may be raised only with notice to customers and Commission approval. Rates for effective competition service may be raised simply upon notice to customers. Act of June 1, 1987, ch. 340, 1987 Minn. Sess. Law Serv. 49 (West) (codified at MINN. STAT. §§ 237.51-.66 (1987) repealing MINN. STAT. §§ 237.13, .41, .42, .43; and amending MINN. STAT. §§ 237.01, .081, .11, .12, .16, .17, .22 (1986)).

Missouri Telecommunications companies and their business practices are now regulated by the Missouri Public Service Commission. Act of July 17, 1987, 1987 Mo. Laws 834 (codified at MO. ANN. STAT. §§ 386.020 to 392.530 (Vernon 1988) (repealing MO. ANN. STAT. §§ 386.020 to 392.360 (Vernon 1986))).

V. CONSUMER PROTECTION AND ELECTRONICS

A. Sales Using Electronic Equipment

California This Act exempts computerized data from the Electronic Commercial Services Act, which requires the provider of electronic shopping services to give customers specific information regarding charges and complaints. Act of June 17, 1987, ch. 49, 1987 Cal. Legis. Serv. 27 (West) (amending CAL. CIV. CODE § 1789.2 (West Supp. 1988)).

Georgia A comprehensive regulatory scheme will now govern the use of any device used to automatically dial telephone numbers and disseminate prerecorded messages ("ADAD equipment"). Users of ADAD equipment are required to obtain a permit from the Public Service Commission. Users must meet certain requirements before using ADAD equipment for advertising or offering consumer goods or services, conducting polls or soliciting information. For example, the ADAD equipment user must obtain prior consent from the individual consumer, calls must be made between 8:00 AM and 9:00 PM, random and sequential dialing cannot be used, and the recorded message must state the name and telephone number of the call's initiator. It is unlawful for ADAD equipment to be used by a non-profit organization, or for debt collection. Act of Apr. 16, 1987, 1987 Ga. Laws 1159 (to be codified at GA. CODE ANN. § 46-5-23 (1987)).

B. Sales and Warranties of Electronic Equipment

Hawaii Computer retailers are now required to provide purchasers with written disclosure regarding the removal or replacement of parts from the computer as received from the manufacturer. The disclosure must be printed in eight-point type-size or larger. This law is designed to protect the public from buying inferior equipment and paying for unnecessary repairs. Act of May 29, 1987, 1987 Haw.

Sess. Laws 129 (to be codified at HAW. REV. STAT. § 481B (1987)).

VI. TECHNOLOGY AND GOVERNMENT SERVICES

A. Technology and Education

Nebraska All teacher training programs are now required to instruct participants on the use and benefits of information technologies in the classroom. Technologies include computers, film, videodiscs, and instructional television. Act of Apr. 6, 1987, 1987 Neb. Laws 1440 (codified at NEB. REV. STAT. § 79-12,153 (Supp. 1987)).

B. Technology for State Agencies

California The Office of Emergency Services will establish a State Computer Emergency Data Exchange Program (SCEDEP) for the collection and dissemination of essential data for emergency management. SCEDEP will develop a program for improved communication of emergency information between appropriate statewide entities. Act of Sept. 30, 1987, ch. 1451, 1987 Cal. Legis. Serv. 488 (West) (codified at CAL. GOV'T. CODE §§ 8589.1, .2 (West Supp. 1988)).

Colorado The Commission of Information Management has been created to replace the Division of Automated Data Processing. The Commission will oversee strategic planning and set policy for state information systems. The Commission's responsibilities include preparing a strategic data processing plan, studying data processing needs, setting minimum standards to control purchases and acquisitions of information systems by state entities, and achieving state-wide compatibility of information systems. Act of July 11, 1987, ch. 175, 1987 Colo. Sess. Laws 246 (codified as amended at COLO. REV. STAT. §§ 24-30-1701 to -1704, 2-2-320(2), 24-1-116, 24-30-1603(1)(a), (d), 24-30-1606(1), 24-102-101 (1987) and repealing COLO. REV. STAT. ANN. §§ 24-1-116(2)(d), 24-30.6 (1982)).

New Hampshire An Automated Information Systems Board has been established to advise the Commissioner of Libraries on statewide policies, coordinate local systems, and make long-range plans. Act of May 18, 1987, ch. 224, 6 N.H. Laws

224 (codified as amended at N.H. REV. STAT. ANN. § 201-A:24 (1987)).

Washington

The Information Services Board and the Department of Information Services will replace the Data Processing Authority in order to respond to changing technology and increasing demands for information systems. The Board's primary duties are to set policies, guidelines, and standards for state information services. The Department is the working arm of the Board and its duties include providing information services to state agencies and local governments, establishing rates and fees, developing plans for training and development, and providing support staff for the Board. In addition, a data processing revolving fund has been created for acquiring information system technology. Act of May 19, 1987, 1987 Wash. Laws 504 (to be codified as amended in scattered sections of WASH. REV. CODE ANN. (1987)).

