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HOUSE BILL 18-1200

BY REPRESENTATIVE(S) Lundeen and Garnett, Becker K., Bridges, Carver, Covarrubias, Esgar, Ginal, Hamner, Humphrey, Jackson, Lewis, McKean, Sias, Valdez, Van Winkle, Williams D., Wist, Young;
also SENATOR(S) Coram and Fields, Aguilar, Fenberg, Garcia, Hill, Jahn, Kefalas, Kerr, Marble, Martinez Humenik, Priola, Tate, Todd, Williams A.

CONCERNING CYBERCRIME, AND, IN CONNECTION THEREWITH,
CRIMINALIZING USING A COMPUTER TO ENGAGE IN PROSTITUTION OF
A MINOR, CRIMINALIZING SKIMMING PAYMENT CARDS, MAKING
CHANGES TO THE PENALTY STRUCTURE FOR CYBERCRIME, AND
MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-5.5-101, **amend** the introductory portion; and **add** (6.5), (7.5), and (8.5) as follows:

18-5.5-101. Definitions. As used in this ~~article~~ ARTICLE 5.5, unless the context otherwise requires:

(6.5) "ENCODING MACHINE" MEANS AN ELECTRONIC DEVICE THAT IS USED TO ENCODE INFORMATION ONTO A PAYMENT CARD.

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(7.5) "PAYMENT CARD" MEANS A CREDIT CARD, CHARGE CARD, DEBIT CARD, OR ANY OTHER CARD THAT IS ISSUED TO AN AUTHORIZED CARD USER AND THAT ALLOWS THE USER TO OBTAIN, PURCHASE, OR RECEIVE GOODS, SERVICES, MONEY, OR ANYTHING ELSE OF VALUE FROM A MERCHANT.

(8.5) "SCANNING DEVICE" MEANS A SCANNER, READER, WIRELESS ACCESS DEVICE, RADIO-FREQUENCY IDENTIFICATION SCANNER, NEAR-FIELD COMMUNICATIONS TECHNOLOGY, OR ANY OTHER ELECTRONIC DEVICE THAT IS USED TO ACCESS, READ, SCAN, OBTAIN, MEMORIZE, OR STORE, TEMPORARILY OR PERMANENTLY, INFORMATION FROM A PAYMENT CARD.

SECTION 2. In Colorado Revised Statutes, 18-5.5-102, **amend** (1) introductory portion and (3); and **add** (1)(h), (1)(i), (1)(j), and (4) as follows:

18-5.5-102. Cybercrime. (1) A person commits ~~computer crime~~ CYBERCRIME if the person knowingly:

(h) SOLICITS OR OFFERS TO ARRANGE A SITUATION IN WHICH A MINOR MAY ENGAGE IN PROSTITUTION, BY MEANS OF USING A COMPUTER, COMPUTER NETWORK, COMPUTER SYSTEM, OR ANY PART THEREOF; OR

(i) DIRECTLY OR INDIRECTLY USES A SCANNING DEVICE TO ACCESS, READ, OBTAIN, MEMORIZE, OR STORE, TEMPORARILY OR PERMANENTLY, INFORMATION ENCODED ON THE PAYMENT CARD WITHOUT THE PERMISSION OF THE AUTHORIZED USER OF THE PAYMENT CARD, AND WITH THE INTENT TO DEFRAUD THE AUTHORIZED USER, THE ISSUER OF THE AUTHORIZED USER'S PAYMENT CARD, OR A MERCHANT; OR

(j) DIRECTLY OR INDIRECTLY USES AN ENCODING MACHINE TO PLACE INFORMATION ENCODED ON THE PAYMENT CARD ONTO A DIFFERENT PAYMENT CARD WITHOUT THE PERMISSION OF THE AUTHORIZED USER OF THE PAYMENT CARD FROM WHICH THE INFORMATION BEING REENCODED WAS OBTAINED, AND WITH THE INTENT TO DEFRAUD THE AUTHORIZED USER, THE ISSUER OF THE AUTHORIZED USER'S PAYMENT CARD, OR A MERCHANT.

(3) (a) Except as provided in ~~paragraphs (b), and (c) of this subsection (3)~~, SUBSECTIONS (3)(b), (3)(b.5), AND (3)(c) OF THIS SECTION, if the loss, damage, value of services, or thing of value taken, or cost of restoration or repair caused by a violation of this section is:

- (I) ~~Less than fifty dollars, computer crime is a class 1 petty offense;~~
- (II) ~~Fifty dollars or more but~~ Less than three hundred dollars, ~~computer crime~~ CYBERCRIME is a class 3 misdemeanor;
- (III) Three hundred dollars or more but less than seven hundred fifty dollars, ~~computer crime~~ CYBERCRIME is a class 2 misdemeanor;
- (IV) Seven hundred fifty dollars or more but less than two thousand dollars, ~~computer crime~~ CYBERCRIME is a class 1 misdemeanor;
- (V) Two thousand dollars or more but less than five thousand dollars, ~~computer crime~~ CYBERCRIME is a class 6 felony;
- (VI) Five thousand dollars or more but less than twenty thousand dollars, ~~computer crime~~ CYBERCRIME is a class 5 felony;
- (VII) Twenty thousand dollars or more but less than one hundred thousand dollars, ~~computer crime~~ CYBERCRIME is a class 4 felony;
- (VIII) One hundred thousand dollars or more but less than one million dollars, ~~computer crime~~ CYBERCRIME is a class 3 felony; and
- (IX) One million dollars or more, ~~computer crime~~ CYBERCRIME is a class 2 felony.

(b) ~~Computer crime~~ CYBERCRIME committed in violation of ~~paragraph (a) of subsection (1)~~ SUBSECTION (1)(a) of this section is a class 2 misdemeanor; except that, if the person has previously been convicted under this section ~~a previous version of this section, or a statute of another state of similar content and purport,~~ ~~computer crime~~ OR OF ANY CRIMINAL ACT COMMITTED IN ANY JURISDICTION OF THE UNITED STATES WHICH, IF COMMITTED IN THIS STATE, WOULD BE A FELONY UNDER THIS STATUTE, CYBERCRIME committed in violation of ~~paragraph (a) of subsection (1)~~ SUBSECTION (1)(a) of this section is a class 6 felony.

(b.5) CYBERCRIME COMMITTED IN VIOLATION OF SUBSECTION (1)(h), (1)(i), OR (1)(j) OF THIS SECTION IS A CLASS 5 FELONY.

(c) (I) ~~Computer crime~~ CYBERCRIME committed in violation of

~~paragraph (g) of subsection (1)~~ SUBSECTION (1)(g) of this section is a class 1 misdemeanor.

(II) If ~~computer crime~~ CYBERCRIME is committed to obtain event tickets, each ticket purchased shall constitute a separate offense.

(III) ~~Paragraph (g) of subsection (1)~~ SUBSECTION (1)(g) of this section shall not prohibit the resale of tickets in a secondary market by a person other than the event sponsor or promoter.

(d) Consistent with section 18-1-202, a prosecution for a violation of ~~paragraph (g) of subsection (1)~~ SUBSECTION (1)(g) of this section may be tried in the county where the event has been, or will be, held.

(4) NOTHING IN THIS SECTION PRECLUDES PUNISHMENT PURSUANT TO ANY OTHER SECTION OF LAW.

SECTION 3. In Colorado Revised Statutes, 16-5-401, **amend** (4.5)(b) as follows:

16-5-401. Limitation for commencing criminal proceedings and juvenile delinquency proceedings. (4.5) The period within which a prosecution must be commenced begins to run upon discovery of the criminal act or the delinquent act for:

(b) ~~Computer crime~~ CYBERCRIME, pursuant to article 5.5 of title 18; ~~C.R.S.~~;

SECTION 4. In Colorado Revised Statutes, 16-13-303, **amend** (3)(d) as follows:

16-13-303. Class 1 public nuisance. (3) The following shall be deemed class 1 public nuisances and be subject to forfeiture and distributed as provided in section 16-13-311 (3), and no property rights shall exist in them:

(d) All equipment of any kind, including but not limited to computers and any type of computer hardware, software, or other equipment, used in committing sexual exploitation of a child, as described in section 18-6-403, ~~C.R.S.~~, or ~~computer crime~~ CYBERCRIME, as described

in section 18-5.5-102. ~~C.R.S.~~

SECTION 5. In Colorado Revised Statutes, 18-1-202, **amend** (7)(b)(II)(K) as follows:

18-1-202. Place of trial - applicability. (7) (b) (II) The provisions of subsection (7)(b)(I) of this section shall apply to the following offenses:

(K) ~~Computer crime~~ CYBERCRIME, as defined in section 18-5.5-102;

SECTION 6. In Colorado Revised Statutes, 18-17-103, **amend** the introductory portion and (5)(b)(III) as follows:

18-17-103. Definitions. As used in this ~~article~~ ARTICLE 17, unless the context otherwise requires:

(5) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:

(III) Offenses involving ~~computer crime~~ CYBERCRIME, as defined in article 5.5 of this ~~title~~ TITLE 18;

SECTION 7. In Colorado Revised Statutes, 24-33.5-412, **amend** (8)(a), (8)(b), and (8)(c) as follows:

24-33.5-412. Functions of bureau - legislative review - interagency cooperation with reporting functions - processing time for criminal history record checks - computer crime - synthetic cannabinoids enforcement. (8) (a) The bureau has the authority to conduct criminal investigations relating to ~~computer crime~~ CYBERCRIME violations pursuant to section 18-5.5-102, ~~C.R.S.~~, when violations are reported or investigations requested by law enforcement officials or the governor or when violations are discovered by the bureau. All investigations conducted by the bureau must be in cooperation and

coordination with local, state, or federal law enforcement authorities, subject to the provisions of section 24-33.5-410.

(b) The bureau shall develop and collect information with regard to ~~computer crime~~ CYBERCRIME in an effort to identify, charge, and prosecute criminal offenders and enterprises that unlawfully access and exploit computer systems and networks, impact functionality, and access sensitive data and shall report such information to the appropriate law enforcement organizations. The bureau must also provide awareness training and information concerning cyber-security and security risks to the information technology critical infrastructure industry.

(c) The bureau shall prepare reports at least annually concerning any activities of ~~computer crime~~ CYBERCRIME in Colorado for use by local or federal law enforcement officials or the governor. The reports are available for public inspection unless the material in the reports is exempt under article 72 of this ~~title~~ TITLE 24.

SECTION 8. In Colorado Revised Statutes, **add** 17-18-124 as follows:

17-18-124. Appropriation to comply with section 2-2-703 - HB 18-1200 - repeal. (1) PURSUANT TO SECTION 2-2-703, THE FOLLOWING STATUTORY APPROPRIATIONS ARE MADE IN ORDER TO IMPLEMENT HOUSE BILL 18-1200, ENACTED IN 2018:

(a) FOR THE 2019-20 STATE FISCAL YEAR, TWENTY-TWO THOUSAND SEVENTY-TWO DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND;

(b) FOR THE 2020-21 STATE FISCAL YEAR, THIRTY-FOUR THOUSAND SIX HUNDRED SEVENTY-SEVEN DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND;

(c) FOR THE 2021-22 STATE FISCAL YEAR, THIRTY-NINE THOUSAND THREE HUNDRED THIRTY-FOUR DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND; AND

(d) FOR THE 2022-23 STATE FISCAL YEAR, THIRTY-NINE THOUSAND THREE HUNDRED THIRTY-FOUR DOLLARS IS APPROPRIATED TO THE

DEPARTMENT FROM THE GENERAL FUND.

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2023.

SECTION 9. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to offenses committed on or after the applicable effective date of this act.

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO