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Rep. Osienski
Sen. S. McBride; Reps. Morrison, K. Williams

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 147

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO COMPUTER-RELATED OFFENSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subpart K, Subchapter III, Chapter 5, Title 11 of the Delaware Code by making deletions as
2 shown by strike through and insertions as shown by underline as follows:

3 § 942. Computer-related offense; exceptions.

4 A person is not guilty of a crime under §§ 932, 933, 935, or 936 of this title if all of the following apply:

5 (1) The employee's actions were only for the purpose of investigating, exploring, or pursuing a claim by an
6 employee that the employer violated a state or federal employment law protecting the rights of employees.

7 (2) Information obtained by the employee was disclosed only for the purpose of investigating, exploring, or
8 pursuing a claim by an employee that the employer violated a state or federal employment law protecting the rights of
9 employees.

10 Section 2. Amend § 941, Title 11 of the Delaware Code by making deletions as shown by strike through and
11 insertions as shown by underline as follows:

12 § 941. Remedies of aggrieved persons.

13 (h) If a person's actions are not a crime under § 942 of this title, an employer may not use a violation of §§ 932,
14 933, 935, or 936 of this title to bring an action, claim, counterclaim, or crossclaim against a current or former employee
15 under this section.

SYNOPSIS

The existing computer crimes of unauthorized access, theft of computer services, misuse of computer system, and destruction of computer equipment contain elements broad enough to include actions employees may take to investigate or document an employer's violation of state or federal employment laws. In addition to criminal penalties, a civil action for treble damages may be brought against a person who violates these laws. Sometimes, when employees seek to investigate, explore, or pursue employment laws by providing evidence obtained from that employer's computer systems, an employer will threaten to sue the employee because the employee's possession of this evidence could be found to be a violation of these computer crimes. Because the potential damages for violating the computer crimes exceeds the compensation the employee would receive if their claim under the employment law is successful, the employee does not pursue their claim.

This Act creates a narrow exception to these crimes so that a person is not guilty of a crime under §§ 932, 933, 935, or 936 of Title 11, if all of the following apply:

(1) The employee's actions were only for the purpose of investigating, exploring, or pursuing a claim by an employee that the employer violated a state or federal employment law protecting the rights of employees.

(2) Information obtained by the employee was only disclosed for the purpose of investigating, exploring, or pursuing a claim by an employee that the employer violated a state or federal employment law protecting the rights of employees.

This Act also clarifies that if an exemption under § 942 of Title 11 applies, a civil action under § 941 of Title 11 cannot be brought against a person for a violation of §§ 932, 933, 935, or 936 of Title 11.

Author: Senator Sturgeon