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## SENATE BILL NO. 275

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend and reenact §§ 18.2-152.4 and 18.2-152.12 of the Code of Virginia, relating to computer crimes; penalty.*

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Patron—Devolites

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-152.4 and 18.2-152.12 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-152.4. Computer trespass; penalty.

A. It shall be unlawful for any person to use a computer or computer network without authority and with the intent to:

1. Temporarily or permanently *add to*, remove, halt, or otherwise disable any computer data, computer programs, or computer software *to or from* a computer or computer network;

2. Cause a computer to malfunction, regardless of how long the malfunction persists;

3. ~~Alter~~ *Add, alter* or erase any computer data, computer programs, or computer software;

4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;

5. Cause physical injury to the property of another; or

6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network

7. [Repealed].

B. Any person who violates this section shall be guilty of computer trespass, which offense shall be punishable as a Class 1 misdemeanor. ~~If there is damage to the property of another valued at \$2,500 or more caused by such person's malicious act in violation of this section any one of the following aggravating factors is found,~~ the offense shall be punishable as a Class 6 felony:

1. *Damage to the property of another valued at \$2,500 or more caused by such person's violation of this section;*

2. *The use involves a computer virus or other such computer program that is capable of spreading to other computers or computers networks; or*

3. *Through the violation the defendant obtains the ability to use three or more computers or computer networks without:*

a. *Notice to or knowledge of, and express or implied permission of, the owners of such computers or computer networks, or*

b. *A prior or existing personal, business or contractual relationship with the owners of such computers or computer networks.*

C. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software or to create any liability by reason of terms or conditions adopted by, or technical measures implemented by, a Virginia-based electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of this article. Nothing in this section shall be construed to prohibit the monitoring of computer usage of, the otherwise lawful copying of data of, or the denial of computer or Internet access to a minor by a parent or legal guardian of the minor.

§ 18.2-152.12. Civil relief; damages.

A. Any person whose property or person is injured by reason of a violation of any provision of this article may sue therefor and recover for any damages sustained and the costs of suit. Without limiting the generality of the term, "damages" shall include loss of profits.

B. If the injury under this article arises ~~from~~ *in connection with* the transmission of unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider where the defendant has knowledge of the authority or policies of the EMSP or where the authority or policies of the EMSP are available on the electronic mail service provider's website, the injured person, other than an electronic mail service provider, may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the lesser of \$10 for each and every unsolicited bulk electronic mail message transmitted in violation of this article, or \$25,000 per

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59 day. The injured person shall not have a cause of action against the electronic mail service provider that  
60 merely transmits the unsolicited bulk electronic mail over its computer network. Transmission of  
61 electronic mail from an organization to its members shall not be deemed to be unsolicited bulk  
62 electronic mail.

63 C. If the injury under this article arises ~~from~~ *in connection with* the transmission of unsolicited bulk  
64 electronic mail in contravention of the authority granted by or in violation of the policies set by the  
65 electronic mail service provider where the defendant has knowledge of the authority or policies of the  
66 EMSP or where the authority or policies of the EMSP are available on the electronic mail service  
67 provider's website, an injured electronic mail service provider may also recover attorneys' fees and costs,  
68 and may elect, in lieu of actual damages, to recover \$1 for each and every intended recipient of an  
69 unsolicited bulk electronic mail message where the intended recipient is an end user of the EMSP or  
70 \$25,000 for each day an attempt is made to transmit an unsolicited bulk electronic mail message to an  
71 end user of the EMSP. In calculating the statutory damages under this provision, the court may adjust  
72 the amount awarded as necessary, but in doing so shall take into account the number of complaints to  
73 the EMSP generated by the defendant's messages, the defendant's degree of culpability, the defendant's  
74 prior history of such conduct, and the extent of economic gain resulting from the conduct. Transmission  
75 of electronic mail from an organization to its members shall not be deemed to be unsolicited bulk  
76 electronic mail.

77 D. At the request of any party to an action brought pursuant to this section, the court may, in its  
78 discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the  
79 computer, computer network, computer data, computer program and computer software involved in order  
80 to prevent possible recurrence of the same or a similar act by another person and to protect any trade  
81 secrets of any party and in such a way as to protect the privacy of nonparties who complain about  
82 violations of this section.

83 E. The provisions of this article shall not be construed to limit any person's right to pursue any  
84 additional civil remedy otherwise allowed by law.

85 F. A civil action under this section ~~must~~ *shall* be commenced before expiration of the time period  
86 prescribed in § 8.01-40.1. In actions alleging injury arising ~~from~~ *in connection with* the transmission of  
87 unsolicited bulk electronic mail, personal jurisdiction may be exercised pursuant to § 8.01-328.1.

88 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
89 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
90 **be determined for periods of imprisonment in state adult correctional facilities and cannot be**  
91 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**