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HOUSE BILL NO. 2214

Offered January 12, 2005

Prefiled January 11, 2005

A *BILL to amend and reenact §§ 18.2-152.3:1, 18.2-152.6, 18.2-152.7, 18.2-152.7:1, 18.2-152.8, 18.2-152.12, 18.2-152.14, and 19.2-8 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 18.2-152.6:1, in Article 7.1 of Chapter 5 of Title 18.2 a section numbered 18.2-152.17, and a section numbered 19.2-249.2; and to repeal §§ 18.2-152.9 and 18.2-152.10 of the Code of Virginia, relating to redefinition and modernization of terms and streamlining the laws governing computer crimes; penalties.*

Patrons—Albo, Bell, Kilgore, McDonnell and Moran; Senators: Howell and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-152.3:1, 18.2-152.6, 18.2-152.7, 18.2-152.7:1, 18.2-152.8, 18.2-152.12, 18.2-152.14, and 19.2-8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-152.6:1, in Article 7.1 of Chapter 5 of Title 18.2 a section numbered 18.2-152.17, and a section numbered 19.2-249.2 as follows:

§ 18.2-152.3:1. Transmission of unsolicited bulk electronic mail (spam); penalty.

A. Any person who:

1. Uses a computer ~~or computer network~~ with the intent to falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers; or

2. Knowingly sells, gives, or otherwise distributes or possesses with the intent to sell, give, or distribute software that (i) is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information; (ii) has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or (iii) is marketed by that person acting alone or with another for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information is guilty of a Class 1 misdemeanor.

B. A person is guilty of a Class 6 felony if he commits a violation of subsection A and:

1. The volume of UBE transmitted exceeded 10,000 attempted recipients in any 24-hour period, 100,000 attempted recipients in any 30-day time period, or one million attempted recipients in any one-year time period; or

2. The revenue generated from a specific UBE transmission exceeded \$1,000 or the total revenue generated from all UBE transmitted to any EMSP exceeded \$50,000.

C. A person is guilty of a Class 6 felony if he knowingly hires, employs, uses, or permits any minor to assist in the transmission of UBE in violation of subdivision B 1 or subdivision B 2.

§ 18.2-152.6. Theft of computer services; penalties.

Any person who willfully uses a computer ~~or computer network, with intent to obtain~~ obtains computer services without authority; ~~shall be~~ is guilty of the crime of theft of computer services, ~~which shall be~~ punishable as a Class 1 misdemeanor. If the theft of computer services is valued at \$2,500 or more, he is guilty of a Class 6 felony.

§ 18.2-152.6:1. Use of a computer to circumvent computer security measures; penalties.

A. Any person who uses a computer to circumvent a security measure that controls access to a computer, including but not limited to passwords, firewalls, or access codes, and does so without the authorization of the owner of such computer, is guilty of a Class 1 misdemeanor.

B. Any person who violates this section after having been previously convicted of a violation of this section or any substantially similar laws of any other state or of the United States is guilty of a Class 6 felony.

C. Any person who violates this section in the commission of a felony is guilty of a Class 6 felony.

§ 18.2-152.7. Personal trespass by computer; penalty.

A. A person is guilty of the crime of personal trespass by computer when he uses a computer ~~or computer network without authority and with the intent~~ to cause physical injury to an individual.

B. If committed maliciously, the crime of personal trespass by computer shall be punishable as a Class 3 felony. If such act is done unlawfully but not maliciously, the crime of personal trespass by computer shall be punishable as a Class 6 felony.

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59 § 18.2-152.7:1. Harassment by computer; penalty.

60 If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or
61 computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or
62 make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he shall
63 be guilty of a Class 1 misdemeanor.

64 § 18.2-152.8. Property capable of embezzlement.

65 For purposes of § 18.2-111, personal property subject to embezzlement shall include:

66 1. Computers and computer networks;

67 2. Financial instruments, computer data information, computer programs, computer software and all
68 other personal property regardless of whether they are:

69 a. Tangible or intangible;

70 b. In a format readable by humans or by a computer;

71 c. In transit between computers or within a computer network or between any devices which
72 comprise a computer; or

73 d. Located on any paper or in any device on which it is stored by a computer or by a human; and

74 3. Computer services.

75 § 18.2-152.12. Civil relief; damages.

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

79 B. If the injury under this article arises from the transmission of unsolicited bulk electronic mail in
80 contravention of the authority granted by or in violation of the policies set by the electronic mail service
81 provider where the defendant has knowledge of the authority or policies of the EMSP or where the
82 authority or policies of the EMSP are available on the electronic mail service provider's website, the
83 injured person, other than an electronic mail service provider, may also recover attorneys' fees and costs,
84 and may elect, in lieu of actual damages, to recover the lesser of \$10 for each and every unsolicited
85 bulk electronic mail message transmitted in violation of this article, or \$25,000 per day. The injured
86 person shall not have a cause of action against the electronic mail service provider that merely transmits
87 the unsolicited bulk electronic mail over its computer network. Transmission of electronic mail from an
88 organization to its members shall not be deemed to be unsolicited bulk electronic mail.

89 C. If the injury under this article arises from the transmission of unsolicited bulk electronic mail in
90 contravention of the authority granted by or in violation of the policies set by the electronic mail service
91 provider where the defendant has knowledge of the authority or policies of the EMSP or where the
92 authority or policies of the EMSP are available on the electronic mail service provider's website, an
93 injured electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu
94 of actual damages, to recover \$1 for each and every intended recipient of an unsolicited bulk electronic
95 mail message where the intended recipient is an end user of the EMSP or \$25,000 for each day an
96 attempt is made to transmit an unsolicited bulk electronic mail message to an end user of the EMSP. In
97 calculating the statutory damages under this provision, the court may adjust the amount awarded as
98 necessary, but in doing so shall take into account the number of complaints to the EMSP generated by
99 the defendant's messages, the defendant's degree of culpability, the defendant's prior history of such
100 conduct, and the extent of economic gain resulting from the conduct. Transmission of electronic mail
101 from an organization to its members shall not be deemed to be unsolicited bulk electronic mail.

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

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

110 F. A civil action under this section must be commenced before expiration of the time period
111 prescribed in § 8.01-40.1. In actions alleging injury arising from the transmission of unsolicited bulk
112 electronic mail, personal jurisdiction may be exercised pursuant to § 8.01-328.1.

113 § 18.2-152.14. Computer as instrument of forgery.

114 The creation, alteration, or deletion of any computer data information contained in any computer or
115 computer network, which, if done on a tangible document or instrument, would constitute forgery under
116 Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this Title, will also be deemed to be forgery. The absence
117 of a tangible writing directly created or altered by the offender shall not be a defense to any crime set
118 forth in Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this Title if a creation, alteration, or deletion of
119 computer data information was involved in lieu of a tangible document or instrument.

120 § 18.2-152.17. Additional penalties.

In addition to any other penalties specified by statute, the punishment of any person convicted of a felony under this article shall include a mandatory minimum fine of \$1,000.

§ 19.2-8. Limitation of prosecutions.

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of §§ 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 ~~which~~ *that* involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the owner or by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the discovery of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of §§ 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time or times required by law or regulations shall commence within three years next after the commission of the offense, unless a longer period is otherwise prescribed.

Prosecution of violations of subsection A or B of § 3.1-796.122 shall commence within five years of the commission of the offense, except violations regarding agricultural animals shall commence within one year of the commission of the offense.

A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the commission of the offense.

A prosecution for any violation of the Campaign Finance Disclosure Act (§ 24.2-900 et seq.) shall commence within one year of the discovery of the offense but in no case more than three years after the date of the commission of the offense.

A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.) shall be commenced before the earlier of (i) five years after the commission of the last act in the course of conduct constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged by such violation.

Nothing in this section shall be construed to apply to any person fleeing from justice or concealing himself within or without ~~this~~ *the* Commonwealth to avoid arrest or be construed to limit the time within which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or failure to provide for the support and maintenance of a spouse or child.

§ 19.2-249.2. Venue for prosecution of computer crimes.

For the purpose of venue under the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), any violation of the article shall be considered to have been committed in any county or city:

- 1. In which any act was performed in furtherance of any course of conduct that violated this article;*
- 2. In which the owner has his principal place of business in the Commonwealth;*
- 3. In which any offender had control or possession of any proceeds of the violation or of any books, records, documents, property, financial instruments, computer software, computer programs, computer*

182 *data, or other materials or objects that were used in furtherance of the violation;*

183 *4. From which, to which, or through which any access to a computer or computer network was*
184 *made whether by wires, electromagnetic waves, microwaves, or any other means of communication;*

185 *5. In which the offender resides; or*

186 *6. In which any computer that is an object or an instrument of the violation is located at the time of*
187 *the alleged offense.*

188 **2. That §§ 18.2-152.9 and 18.2-152.10 of the Code of Virginia are repealed.**

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