

055517204

## HOUSE BILL NO. 2215

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations  
on February 3, 2005)

(Patron Prior to Substitute—Delegate Albo)

A BILL to amend and reenact §§ 18.2-152.2 and 18.2-152.4 of the Code of Virginia, relating to computer crimes; definitions and trespass; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-152.2 and 18.2-152.4 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-152.2. Definitions.

For purposes of this article:

"Computer" means an electronic, magnetic, optical, hydraulic or organic device or group of devices which, pursuant to a computer program, to human instruction, or to permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or to a person. The term "computer" includes any connected or directly related device, equipment, or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device a device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. Such term does not include simple calculators, automated typewriters, facsimile machines, or any other specialized computing devices that are preprogrammed to perform a narrow range of functions with minimal end-user or operator intervention and are dedicated to a specific task.

"Computer data" means any representation of information, knowledge, facts, concepts, or instructions which is being prepared or has been prepared and is intended to be processed, is being processed, or has been processed in a computer or computer network. "Computer data" may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched cards, or stored internally in the memory of the computer.

"Computer network" means two or more computers connected by a network.

"Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any combination thereof, and includes, but is not limited to, communication with, storage of data to, or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A "computer operation" for a particular computer may also be any function for which that computer was generally designed.

"Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, causes the computer to perform one or more computer operations.

"Computer services" means computer time or services, including data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection therewith.

"Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program, or computer network.

"Electronic mail service provider" (EMSP) means any person who (i) is an intermediary in sending or receiving electronic mail and (ii) provides to end-users of electronic mail services the ability to send or receive electronic mail.

"Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security, or any computerized representation thereof.

"Network" means any combination of digital transmission facilities and packet switches, routers, and similar equipment interconnected to enable the exchange of computer data.

"Owner" means an owner or lessee of a computer or a computer network or an owner, lessee, or licensee of computer data, computer programs, or computer software.

"Person" shall include any individual, partnership, association, corporation or joint venture.

"Property" shall include:

1. Real property;

2. Computers and computer networks;

3. Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

a. Tangible or intangible;

60 b. In a format readable by humans or by a computer;  
61 c. In transit between computers or within a computer network or between any devices which  
62 comprise a computer; or  
63 d. Located on any paper or in any device on which it is stored by a computer or by a human; and  
64 4. Computer services.  
65 A person "uses" a computer or computer network when he attempts to cause or causes:  
66 1. A a computer or computer network to perform or to stop performing computer operations;  
67 2. The withholding or denial of the use of a computer, computer network, computer program,  
68 computer data or computer software to another user; or  
69 3. A person to put false information into a computer.  
70 A person is "without authority" when *he knows or reasonably should know that he has no right or*  
71 *permission[MT1] of the owner to use a computer or computer network or he uses a computer or*  
72 *computer network or acts in a manner exceeding such right or permission.*  
73 § 18.2-152.4. Computer trespass; penalty.  
74 A. It shall be unlawful for any person to use a computer or computer network without authority and,  
75 with the *malicious* intent, to:  
76 1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer  
77 programs, or computer software from a computer or computer network;  
78 2. Cause a computer to malfunction, regardless of how long the malfunction persists;  
79 3. Alter, *disable*, or erase any computer data, computer programs, or computer software;  
80 4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;  
81 5. *Cause Use a computer or computer network to cause* physical injury to the property of another; or  
82 6. *Make Use a computer or computer network to make* or cause to be made an unauthorized copy, in  
83 any form, including, but not limited to, any printed or electronic form of computer data, computer  
84 programs, or computer software residing in, communicated by, or produced by a computer or computer  
85 network.  
86 7. [Repealed].  
87 B. Any person who violates this section shall be guilty of computer trespass, which offense shall be  
88 punishable as a Class 1 misdemeanor. If there is damage to the property of another valued at \$2,500  
89 \$1,000 or more caused by such person's *malicious* act in violation of this section, the offense shall be  
90 punishable as a Class 6 felony.  
91 C. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a  
92 contract or license related to computers, computer data, computer networks, computer operations,  
93 computer programs, computer services, or computer software or to create any liability by reason of  
94 terms or conditions adopted by, or technical measures implemented by, a Virginia-based electronic mail  
95 service provider to prevent the transmission of unsolicited electronic mail in violation of this article.  
96 Nothing in this section shall be construed to prohibit the monitoring of computer usage of, the otherwise  
97 lawful copying of data of, or the denial of computer or Internet access to a minor by a parent or legal  
98 guardian of the minor.  
99 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
100 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot  
101 be determined for periods of imprisonment in state adult correctional facilities and cannot be  
102 determined for periods of commitment to the custody of the Department of Juvenile Justice.