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HOUSE BILL NO. 2471

Offered January 12, 2005

Prefiled January 12, 2005

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 computer trespass; penalties.

Patrons—May and Athey

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-15.2 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 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, are not independently programmable by the user, 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 information" means information in any form that is obtained from or through the use of a computer or that is in a form capable of being processed by a 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 an operation that a computer is designed and built to perform.

"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, the use of a computer, including, but not limited to, computer time, data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection therewith.

"Computer software" or "computer program" 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 statements or instructions to be used directly or indirectly in a computer to bring about a certain result.

"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, financial asset as that term is defined in § 8.8A-102, 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 The term "owner" shall include an owner or lessee of a computer or a computer network or an owner, lessee, or licensee of computer data information, computer programs services, or computer software.

59 "Person" shall include any individual, partnership, association, corporation or joint venture. *The term*
60 *"person" shall have the same meaning as provided in § 1-13.19.*

61 "Property" shall include:

- 62 1. Real property;
- 63 2. Computers and computer networks;
- 64 3. Financial instruments, computer data, computer programs, computer software and all other
65 personal property regardless of whether they are:
 - 66 a. Tangible or intangible;
 - 67 b. In a format readable by humans or by a computer;
 - 68 c. In transit between computers or within a computer network or between any devices which
69 comprise a computer; or
 - 70 d. Located on any paper or in any device on which it is stored by a computer or by a human; and
- 71 4. Computer services. *means anything of value, and includes any interest therein, including any*
72 *benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or*
73 *intangible. "Property" includes, but is not limited to, computers, financial instruments, computer*
74 *information, computer software, and computer services.*

75 A person "uses" a computer or computer network when he attempts to cause or causes:

- 76 1. A computer or computer network to perform or to stop performing computer operations;
- 77 2. The withholding or denial of the use of a computer, computer network, computer program,
78 computer data or computer software to another user; or
- 79 3. A person to put false information into a computer.

80 A person is "without authority" when he *knows or reasonably should know that he* has no right or
81 permission of the owner to use a computer or computer network or he uses a computer or computer
82 network *acts* in a manner exceeding such right or permission.

83 § 18.2-152.4. Computer trespass; penalty.

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

- 86 1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer
87 programs, information or computer software from a computer or computer network;
- 88 2. Cause a computer to malfunction, regardless of how long the malfunction persists;
- 89 3. Alter, *damage, destroy, disable,* or erase any computer data, computer programs, information or
90 computer software;
- 91 4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;
- 92 5. Cause physical injury to the property of another; or
- 93 6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any
94 printed or electronic form of computer data, computer programs, information or computer software
95 residing in, communicated by, or produced by a computer or computer network.;
- 96 7. [Repealed].
- 97 8. *Install computer software on the computer of another, without the authorization of the owner; or*
- 98 9. *Disable or disrupt the ability of a computer to share or transmit its computer information to other*
99 *computers or to any related computer equipment or devices, including, but not limited to, printers,*
100 *scanners, or fax machines*
101 *through the direct or indirect use of a computer.*

102 B. *It shall be unlawful for a person, with malicious intent, to directly use a computer to obtain any*
103 *computer information without authority.*

104 C. Any person who violates this section shall be guilty of computer trespass, which offense shall be
105 punishable as a Class 1 misdemeanor. If there is damage to the property of another valued at \$2,500
106 \$1,000 or more caused by such person's ~~malicious~~ act in violation of this section, the offense shall be
107 punishable as a Class 6 felony.

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

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