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SENATE BILL NO. 1163

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact §§ 18.2-152.2 through 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 sections numbered 18.2-152.5:1 and 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—Stolle, Howell and Norment; Delegates: Albo, Kilgore, McDonnell and Moran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-152.2 through 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 sections numbered 18.2-152.5:1 and 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:

§ 18.2-152.2. 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 a device whose predominate purpose is not the storage and manipulation of user-inputted computer information, such as automated typewriters, simple handheld calculators, digital cameras, facsimile machines or pagers.*

"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

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59 mechanism, marketable security, *financial asset as that term is defined in § 8.8A-102*, or any
60 computerized representation thereof.

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

63 "Owner" means *The term "owner" includes an owner or lessee of a computer or a computer network*
64 *or an owner, lessee, or licensee of computer data information, computer programs services, or computer*
65 *software.*

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

68 "Property" shall include:

69 1. Real property;

70 2. Computers and computer networks;

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

73 a. Tangible or intangible;

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

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

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

78 4. *Computer means anything of value, and includes any interest therein, including any benefit,*
79 *privilege, claim, or right with respect to anything of value, whether real or personal, tangible or*
80 *intangible. "Property" includes, but is not limited to, computers, financial instruments, computer*
81 *information, computer software, and computer services.*

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

83 1. A computer or computer network to perform or to stop performing computer operations;

84 2. The withholding or denial of the use of a computer, computer network, computer program,
85 computer data or computer software to another user; or

86 3. A person to put false information into a computer.

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

90 § 18.2-152.3. Computer fraud; penalty.

91 Any person who, *through the use of a computer uses a computer or computer network without*
92 *authority and with the intent to:*

93 1. ~~Obtain~~ *Obtains* property or services by false pretenses;

94 2. ~~Embezzle~~ *Embezzles* or ~~commit~~ *commits* larceny; or

95 3. ~~Convert~~ *Converts* the property of another

96 is guilty of the crime of computer fraud.

97 If the value of the property or services obtained is \$200 or more, the crime of computer fraud shall
98 be punishable as a Class 5 felony. Where the value of the property or services obtained is less than
99 \$200, the crime of computer fraud shall be punishable as a Class 1 misdemeanor.

100 § 18.2-152.3:1. Transmission of unsolicited bulk electronic mail (spam); penalty.

101 A. Any person who:

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

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

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

114 1. The volume of UBE transmitted exceeded 10,000 attempted recipients in any 24-hour period,
115 100,000 attempted recipients in any 30-day time period, or one million attempted recipients in any
116 one-year time period; or

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

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

§ 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 malicious intent, to:

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

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

3. Alter, damage, destroy, disable, or erase any computer data, computer programs, information 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 information, or computer software residing in, communicated by, or produced by a computer or computer network;

7. [Repealed].

8. Install computer software on the computer of another, without the authorization of the owner; or

9. Disable or disrupt the ability of a computer to share or transmit its computer information to other computers or to any related computer equipment or devices, including, but not limited to, printers, scanners, or fax machines, through the direct or indirect use of a computer.

B. It shall be unlawful for any person to maliciously obtain any computer information, without authority, through the direct use of a computer.

C. 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 \$1,000 or more caused by such person's malicious act in violation of this section, the offense shall be punishable as a Class 6 felony.

D. 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 information, 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.

§ 18.2-152.5. Computer invasion of privacy; penalties.

A. A person is guilty of the crime of computer invasion of privacy when he uses a computer or computer network and intentionally examines without authority any employment, salary, credit or any other, financial or personal identifying information, as defined in clauses (iii) through (xiii) of subsection C of § 18.2-186.3, relating to any other person. "Examination" under this section requires the offender to review the information relating to any other person after the time at which the offender knows or should know that he is without authority to view the information displayed.

B. The crime of computer invasion of privacy shall be punishable as a Class 1 misdemeanor.

C. 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.

D. Any person who violates this section and sells or distributes such information to another is guilty of a Class 6 felony.

E. Any person who violates this section and uses such information in the commission of another crime is guilty of a Class 6 felony.

F. This section shall not apply to any person collecting information that is reasonably needed to (i) protect the security of a computer, computer service, or computer business, or to facilitate diagnostics or repair in connection with such computer, computer service, or computer business or (ii) determine whether the computer user is licensed or authorized to use specific computer software or a specific computer service.

§ 18.2-152.5:1. Using a computer to gather identifying information; penalties.

A. It is unlawful for any person, other than a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, to use a computer to fraudulently obtain, fraudulently access, or fraudulently record identifying information, as defined in clauses (iii) through (xiii) of subsection C of § 18.2-186.3. Any person who violates this section is guilty of a Class 6 felony.

B. Any person who violates this section and sells or distributes such information to another is guilty of a Class 5 felony.

C. Any person who violates this section and uses such information in the commission of another crime is guilty of a Class 5 felony.

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

Any person who willfully uses a computer or computer network, with intent to obtain 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.

§ 18.2-152.7.1. Harassment by computer; penalty.

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

§ 18.2-152.8. Property capable of embezzlement.

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

1. Computers and computer networks;

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

a. Tangible or intangible;

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

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

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

3. Computer services.

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

C. If the injury under this article arises from 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, an injured electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover \$1 for each and every intended recipient of an unsolicited bulk electronic mail message where the intended recipient is an end user of the EMSP or \$25,000 for each day an attempt is made to transmit an unsolicited bulk electronic mail message to an end user of the EMSP. In calculating the statutory damages under this provision, the court may adjust the amount awarded as necessary, but in doing so shall take into account the number of complaints to the EMSP generated by the defendant's messages, the defendant's degree of culpability, the defendant's prior history of such conduct, and the extent of economic gain resulting from the conduct. Transmission of electronic mail from an organization to its members shall not be deemed to be unsolicited bulk electronic mail.

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

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

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

§ 18.2-152.14. Computer as instrument of forgery.

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

§ 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.

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

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

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

317 § 19.2-249.2. *Venue for prosecution of computer crimes.*

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

- 320 1. *In which any act was performed in furtherance of any course of conduct that violated this article;*
- 321 2. *In which the owner has his principal place of business in the Commonwealth;*
- 322 3. *In which any offender had control or possession of any proceeds of the violation or of any books,*
323 *records, documents, property, financial instrument, computer software, computer program, computer*
324 *data, or other material or objects that were used in furtherance of the violation;*
- 325 4. *From which, to which, or through which any access to a computer or computer network was*
326 *made whether by wires, electromagnetic waves, microwaves, or any other means of communication;*
- 327 5. *In which the offender resides; or*
- 328 6. *In which any computer that is an object or an instrument of the violation is located at the time of*
329 *the alleged offense.*

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

331 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
332 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
333 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
334 **periods of commitment to the custody of the Department of Juvenile Justice.**