

## 2007 SESSION

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### SENATE BILL NO. 292

Offered January 11, 2006

Prefiled January 10, 2006

A *BILL to amend the Code of Virginia by adding a section numbered 18.2-152.3:2, relating to electronic mail; sexually explicit material; penalty.*

Patrons—Cuccinelli, O'Brien and Ticer; Delegates: Amundson, Callahan, Hull, Moran, Rust, Sickles and Watts

Referred to Committee for Courts of Justice

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

**1. That the Code of Virginia is amended by adding a section numbered 18.2-152.3:2 as follows:**

*§ 18.2-152.3:2. Failure to warn that commercial electronic mail contains sexually explicit visual material; penalty.*

*A. No person may use a computer or computer network to transmit commercial electronic mail that includes sexually explicit visual material if that person:*

*1. Fails to include in the subject heading for the electronic mail the words SEXUALLY- EXPLICIT in capital letters as the first and only characters at the beginning of the subject line; and*

*2. Fails to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only:*

*a. The phrase SEXUALLY-EXPLICIT in capital letters in a clear and conspicuous manner;*

*b. Clear and conspicuous identification that the message is an advertisement or solicitation; and*

*c. A clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the e-mail message without following instructions on how to access the material; and*

*d. Instructions on how to access, or a mechanism to access, the sexually explicit visual material.*

*B. This section shall not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.*

*C. Sexually explicit visual material shall be as defined in § 18.2-374.1.*

*D. A violation of this section is a Class 6 felony.*

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

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