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HOUSE BILL NO. 1796

Offered January 14, 2009

Prefiled January 9, 2009

A BILL to amend and reenact § 18.2-152.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-152.3:2, relating to unsolicited commercial electronic mail (spam); penalty.

Patrons—Loupassi and O'Bannon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-152.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-152.3:2 as follows:

§ 18.2-152.2. Definitions.

For purposes of this article:

"Commercial electronic mail" means electronic mail, the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose). Electronic mail that would otherwise be commercial shall not be considered commercial simply because an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the sender has agreed to such an arrangement.

"Computer" means 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;

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59 2. Computers and computer networks;
60 3. Financial instruments, computer data, computer programs, computer software and all other
61 personal property regardless of whether they are:
62 a. Tangible or intangible;
63 b. In a format readable by humans or by a computer;
64 c. In transit between computers or within a computer network or between any devices which
65 comprise a computer; or
66 d. Located on any paper or in any device on which it is stored by a computer or by a human; and
67 4. Computer services.
68 *"Spam" means unsolicited commercial electronic mail.*
69 A person "uses" a computer or computer network when he attempts to cause or causes a computer or
70 computer network to perform or to stop performing computer operations.
71 A person is "without authority" when he knows or reasonably should know that he has no right or
72 permission or knowingly acts in a manner exceeding such right or permission.
73 § 18.2-152.3:2. *Transmission of unsolicited commercial electronic mail (spam); penalty.*
74 A. A person is guilty of a Class 1 misdemeanor if he:
75 1. *Uses a computer or computer network with the intent to falsify or forge electronic mail*
76 *transmission information or other routing information in any manner in connection with the*
77 *transmission of unsolicited commercial electronic mail ("spam") through or into the computer network*
78 *of an electronic mail service provider or its subscribers; or*
79 2. *Knowingly sells, gives, or otherwise distributes or possesses with the intent to sell, give, or*
80 *distribute software that (i) is primarily designed or produced for the purpose of facilitating or enabling*
81 *the falsification of the transmission information or other routing information of spam; (ii) has only*
82 *limited commercially significant purpose or use other than to facilitate or enable the falsification of the*
83 *transmission information or other routing information of spam; or (iii) is marketed by that person acting*
84 *alone or with another for use in facilitating or enabling the falsification of the transmission information*
85 *or other routing information of spam.*
86 B. A person is guilty of a Class 6 felony if he commits a violation of subsection A and:
87 1. *The volume of spam transmitted exceeded 10,000 attempted recipients in any 24-hour time period,*
88 *100,000 attempted recipients in any 30-day time period, or one million attempted recipients in any*
89 *one-year time period; or*
90 2. *The revenue generated from a specific transmission of spam exceeded \$1,000 or the total revenue*
91 *generated from all spam transmitted to any EMSP exceeded \$50,000.*
92 C. A person is guilty of a Class 6 felony if he knowingly hires, employs, uses, or permits any minor
93 to assist in the transmission of spam in violation of subdivision B 1 or B 2.
94 2. That the provisions of this act may result in a net increase in periods of imprisonment or
95 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
96 be determined for periods of imprisonment in state adult correctional facilities and is \$0 for
97 periods of commitment to the custody of the Department of Juvenile Justice.