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## HOUSE BILL NO. 1207

Offered January 13, 2010

A BILL to amend and reenact §§ 18.2-152.4 and 18.2-152.12 of the Code of Virginia, relating to computer trespass; penalty.

Patron—Albo

Referred to Committee on Science and Technology

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

**1. That §§ 18.2-152.4 and 18.2-152.12 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-152.4. Computer trespass; penalty.

A. It shall be unlawful for any person, with malicious intent, to:

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

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

3. Alter, disable, or erase any computer data, computer programs or computer software;

4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;

5. Use a computer or computer network to cause physical injury to the property of another;

6. Use a computer or computer network to 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 or computer software residing in, communicated by, or produced by a computer or computer network;

7. [Repealed.]

8. Install or cause to be installed, or collect information through, computer hardware or software that records all or a majority of the keystrokes made on the computer of another without the computer owner's authorization screenshots in the form of digital images or video or the keystrokes made on the computer of another without the computer owner's authorization. This subdivision shall not apply to: (i) the monitoring of, or interaction with, an owner's or an operator's Internet or other network connection, service, or computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information services or interactive computer services for network or computer security purposes, diagnostics, technical support, maintenance, repair, network management, authorized updates of computer software or system firmware, or authorized remote system management; or (ii) the detection or prevention of the unauthorized use of, or fraudulent or other illegal activities in connection with, a network, service, or computer software, including scanning for and removing computer software prescribed under this chapter; or

9. Install or cause to be installed on the computer of another, computer software for the purpose of (i) taking control of that computer so that it can cause damage to another computer or (ii) disabling or disrupting the ability of the computer to share or transmit instructions or data to other computers or to any related computer equipment or devices, including but not limited to printers, scanners, or fax machines.

B. Any person who violates this section is guilty of computer trespass, which shall be a Class 1 misdemeanor. If there is damage to the property of another valued at \$1,000 or more caused by such person's act in violation of this section, the offense shall be a Class 6 felony. If a person installs or causes to be installed computer software in violation of this section on more than five computers of another, the offense shall be a Class 6 felony. If a person violates subdivision A 8, the offense shall be a Class 6 felony.

C. 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, 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.

§ 18.2-152.12. Civil relief; damages.

A. Any person whose property or person is injured by reason of a violation of any provision of this article or by any act of computer trespass set forth in subdivisions A 1 through A 6 subsection A of § 18.2-152.4, regardless of whether such act is committed with malicious intent, may sue therefor and

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59 recover for any damages sustained and the costs of suit. Without limiting the generality of the term,  
60 "damages" shall include loss of profits.

61 B. If the injury under this article arises from the transmission of unsolicited bulk electronic mail in  
62 contravention of the authority granted by or in violation of the policies set by the electronic mail service  
63 provider where the defendant has knowledge of the authority or policies of the EMSP or where the  
64 authority or policies of the EMSP are available on the electronic mail service provider's website, the  
65 injured person, other than an electronic mail service provider, may also recover attorneys' fees and costs,  
66 and may elect, in lieu of actual damages, to recover the lesser of \$10 for each and every unsolicited  
67 bulk electronic mail message transmitted in violation of this article, or \$25,000 per day. The injured  
68 person shall not have a cause of action against the electronic mail service provider that merely transmits  
69 the unsolicited bulk electronic mail over its computer network. Transmission of electronic mail from an  
70 organization to its members shall not be deemed to be unsolicited bulk electronic mail.

71 C. If the injury under this article arises from the transmission of unsolicited bulk electronic mail in  
72 contravention of the authority granted by or in violation of the policies set by the electronic mail service  
73 provider where the defendant has knowledge of the authority or policies of the EMSP or where the  
74 authority or policies of the EMSP are available on the electronic mail service provider's website, an  
75 injured electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu  
76 of actual damages, to recover \$1 for each and every intended recipient of an unsolicited bulk electronic  
77 mail message where the intended recipient is an end user of the EMSP or \$25,000 for each day an  
78 attempt is made to transmit an unsolicited bulk electronic mail message to an end user of the EMSP. In  
79 calculating the statutory damages under this provision, the court may adjust the amount awarded as  
80 necessary, but in doing so shall take into account the number of complaints to the EMSP generated by  
81 the defendant's messages, the defendant's degree of culpability, the defendant's prior history of such  
82 conduct, and the extent of economic gain resulting from the conduct. Transmission of electronic mail  
83 from an organization to its members shall not be deemed to be unsolicited bulk electronic mail.

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

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

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

95 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
96 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
97 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**  
98 **781 of the Acts of Assembly of 2009 requires the Virginia Criminal Sentencing Commission to**  
99 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**  
100 **necessary appropriation is \$0 for periods of commitment to the custody of the Department of**  
101 **Juvenile Justice.**