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HOUSE BILL NO. 1793

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 18.2-152.2, 18.2-152.3, 18.2-152.7, 18.2-152.7:1, and 18.2-152.8 of the Code of Virginia, relating to using an electronic device to commit computer crimes.

 Patron—Miller

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-152.2, 18.2-152.3, 18.2-152.7, 18.2-152.7:1, and 18.2-152.8 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-152.2. Definitions; computer crimes.

For purposes of this article:

"Commercial electronic mail" means electronic mail, the primary purpose of which is the advertisement or promotion of a commercial product or service.

"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 device" means an electronic or electrical device that may be used to do any one or more of the following: conduct oral, written, or visual communication; place or receive a telephone call; send or read an electronic mail message or text message; look at pictures; read a book or other written material; play a game; navigate the Internet; navigate the physical world; play, view, or listen to a video; play, view, or listen to a television broadcast; play or listen to a radio broadcast other than a radio broadcast by a railroad; play or listen to music; or execute a computational function.

"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:

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- 59 1. Real property;
60 2. Computers and computer networks;
61 3. Financial instruments, computer data, computer programs, computer software and all other
62 personal property regardless of whether they are:
63 a. Tangible or intangible;
64 b. In a format readable by humans or by a computer;
65 c. In transit between computers or within a computer network or between any devices which
66 comprise a computer; or
67 d. Located on any paper or in any device on which it is stored by a computer or by a human; and
68 4. Computer services.

69 "Spam" means unsolicited commercial electronic mail. Spam shall not include commercial electronic
70 mail transmitted to a recipient with whom the sender has an existing business or personal relationship.

71 A person "uses" a computer or computer network when he attempts to cause or causes a computer or
72 computer network to perform or to stop performing computer operations.

73 A person is "without authority" when he knows or reasonably should know that he has no right,
74 agreement, or permission or acts in a manner knowingly exceeding such right, agreement, or permission.

75 **§ 18.2-152.3. Computer fraud; penalty.**

76 Any person who uses a computer ~~or~~, a computer network, or an electronic device, without authority
77 and:

- 78 1. Obtains property ~~or~~, services, or electronic data by false pretenses;
79 2. Embezzles or commits larceny; or
80 3. Converts the property of another;
81 is guilty of the crime of computer fraud.

82 If the value of the property, electronic data, or services obtained is \$200 or more, the crime of
83 computer fraud ~~shall be~~ is punishable as a Class 5 felony. Where the value of the property, electronic
84 data, or services obtained is less than \$200, the crime of computer fraud ~~shall be~~ is punishable as a
85 Class 1 misdemeanor.

86 **§ 18.2-152.7. Personal trespass by computer; penalty.**

87 A. A person is guilty of the crime of personal trespass by computer when he uses a computer ~~or~~, a
88 computer network, or an electronic device to cause physical injury to an individual.

89 B. If committed maliciously, the crime of personal trespass by computer ~~shall be~~ is punishable as a
90 Class 3 felony. If such act is done unlawfully but not maliciously, the crime of personal trespass by
91 computer ~~shall be~~ is punishable as a Class 6 felony.

92 **§ 18.2-152.7:1. Harassment by computer; penalty.**

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

97 **§ 18.2-152.8. Property capable of embezzlement.**

98 For purposes of §§ 18.2-95, 18.2-96, 18.2-108, and 18.2-111, personal property subject to
99 embezzlement, larceny, or receiving stolen goods shall include:

- 100 1. Computers and computer networks;
101 2. Financial instruments, computer data, computer programs, computer software and all other
102 personal property regardless of whether they are:
103 a. Tangible or intangible;
104 b. In a format readable by humans or by a computer or an electronic device;
105 c. In transit between computers, electronic devices, or within a computer network or between any
106 devices which comprise a computer; or
107 d. Located on any paper, in an electronic device, or in any device on which it is stored by a
108 computer or by a human; and
109 3. Computer services.

110 2. That the provisions of this act may result in a net increase in periods of imprisonment or
111 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
112 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter
113 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing
114 Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated
115 amount of the necessary appropriation cannot be determined for periods of commitment to the
116 custody of the Department of Juvenile Justice.