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HOUSE BILL NO. 1668

Offered January 13, 1999

A BILL to amend the Code of Virginia by adding sections numbered 8.01-40.3 and 8.01-40.4, relating to false, misleading, and unsolicited commercial electronic mail.

Patrons—Plum, Almand, Bennett, Brink, Clement, DeBoer, Diamonstein, Johnson, May, Scott, Shuler and Watts; Senators: Howell, Schrock and Ticer

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 8.01-40.3 and 8.01-40.4 as follows:

§ 8.01-40.3. False or misleading commercial electronic mail.

A. For purposes of this section, unless the context requires a different meaning:

"Advertisement" means material that (i) advertises for commercial purposes the availability or the quality of real property, goods, or services or (ii) is otherwise designed or intended to solicit a person to purchase or lease real property, goods, or services.

"Commercial electronic mail" or "commercial electronic mail message" means an advertisement transmitted through a local, regional, or global network, regardless of whether the advertisement is viewed, stored for retrieval at another time, printed onto paper or other similar material, or filtered or screened by a computer program that is designed or intended to filter or screen items of electronic mail.

"Electronic mail address" means a destination, commonly expressed as a string of characters, to which commercial electronic mail may be sent or delivered.

"Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"Internet domain name" refers to a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

"Network" means a network comprised of one or more computers that may be accessed by a modem, electronic or optical technology, or other similar means.

"Per occurrence" means each time a commercial electronic mail message that violates this section is received by a recipient.

"Recipient" means a person who receives an item of electronic mail.

"Transmit or cause to be transmitted" refers to the action by the original or subsequent sender of the commercial electronic mail message, but does not include or refer to the action of any interactive computer service to the extent the interactive computer service merely carries that transmission over its network.

B. No person shall intentionally transmit or cause to be transmitted a commercial electronic mail message from a computer located in the Commonwealth or to an electronic mail address that the person knows, or has reason to know, is held by a resident of the Commonwealth if the message (i) uses a third party's Internet domain name without permission of the third party or otherwise misrepresents any information in identifying the point of origin or the transmission path of a commercial electronic mail message or (ii) contains false or misleading information in the subject line.

C. For purposes of this section, a person has reason to know that the intended recipient of a commercial electronic mail message is a resident of the Commonwealth if that information is available, upon request, from the registrant of the Internet domain name contained in the recipient's electronic mail address or from an interactive computer service.

D. Any person who receives a commercial electronic mail message in violation of this section may bring an action against the person responsible for transmitting the message or causing the message to be transmitted to enjoin further violations and to recover the greater of (i) actual damages sustained, together with costs and reasonable attorneys' fees, or (ii) \$500 per occurrence, not to exceed one million dollars in the aggregate.

E. Any interactive computer service which receives a commercial electronic mail message in violation of this section may bring an action against the person responsible for transmitting the message or causing the message to be transmitted to enjoin further violations and to recover the greater of (i) actual damages sustained, together with costs and reasonable attorneys' fees, or (ii) \$1,000 per

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60 occurrence, not to exceed two million dollars in the aggregate.

61 F. An action brought pursuant to this section shall be commenced within two years of the receipt of
62 such commercial electronic mail message.

63 G. The remedies provided in this section shall be in addition to any other available remedies.

64 § 8.01-40.4. Unsolicited commercial electronic mail.

65 A. For purposes of this section, unless the context requires a different meaning:

66 "Advertisement" means material that (i) advertises for commercial purposes the availability or the
67 quality of real property, goods, or services or (ii) is otherwise designed or intended to solicit a person
68 to purchase or lease real property, goods, or services.

69 "Commercial electronic mail" or "commercial electronic mail message" means an advertisement
70 transmitted through a local, regional, or global network, regardless of whether the advertisement is
71 viewed, stored for retrieval at another time, printed onto paper or other similar material, or filtered or
72 screened by a computer program that is designed or intended to filter or screen items of electronic mail.

73 "Interactive computer service" means any information service, system, or access software provider
74 that provides or enables computer access by multiple users to a computer server, including specifically
75 a service or system that provides access to the Internet and such systems operated or services offered by
76 libraries or educational institutions.

77 "Network" means a network comprised of one or more computers that may be accessed by a modem,
78 electronic or optical technology, or other similar means.

79 "Per occurrence" means each time a commercial electronic mail message that violates this section is
80 received by a recipient.

81 "Recipient" means a person who receives an item of electronic mail.

82 "Transmit or cause to be transmitted" refers to the action by the original or subsequent sender of the
83 commercial electronic mail message, but does not include or refer to the action of any interactive
84 computer service to the extent the interactive computer service merely carries that transmission over its
85 network.

86 B. Any person who intentionally transmits or causes to be transmitted to a recipient an item of
87 commercial electronic mail that includes an advertisement, will be liable to the recipient for civil
88 damages unless (i) the recipient has expressly consented to receive the item of electronic mail from that
89 person or (ii) the advertisement is readily identifiable as promotional or distinctly indicates that it is an
90 advertisement, and clearly and conspicuously states (a) the legal name, complete street address, working
91 phone number and electronic mail address of the person transmitting the electronic mail or causing the
92 transmission of the electronic mail and (b) a notice that the recipient may decline to receive additional
93 electronic mail that includes an advertisement from the person transmitting or causing the transmission
94 of the electronic mail and the procedures for declining such electronic mail.

95 C. Any person who receives an electronic mail message in violation of this section may bring an
96 action against the person responsible for transmitting the message or causing the message to be
97 transmitted to enjoin further violations and to recover the greater of (i) actual damages sustained,
98 together with costs and reasonable attorneys' fees, or (ii) \$500 per occurrence, not to exceed one
99 million dollars in the aggregate.

100 D. Any person who receives an electronic mail message after declining to receive such electronic
101 mail by following the procedures provided pursuant to subsection B(ii)(b) may bring an action against
102 the person responsible for transmitting or causing the message to be transmitted to enjoin further
103 violations and to recover the greater of (i) actual damages sustained, together with costs and reasonable
104 attorneys' fees, or (ii) \$1,000 per occurrence, not to exceed two million dollars in the aggregate.

105 E. An action brought pursuant to this section shall be commenced within two years of the receipt of
106 such commercial electronic mail message.

107 F. The remedies provided in this section shall be in addition to any other available remedies.