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## SENATE BILL NO. 881

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 3, 1999)

(Patron Prior to Substitute—Senator Mims)

A BILL to amend and reenact §§ 18.2-152.2, 18.2-152.4 and 18.2-152.12 of the Code of Virginia, relating to the Virginia Computer Crimes Act; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-152.2, 18.2-152.4 and 18.2-152.12 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-152.2. Definitions.

For purposes of this article:

"Computer" means an electronic, magnetic, optical, hydraulic or organic device or group of devices which, pursuant to a computer program, to human instruction, or to permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or to a person. The term "computer" includes any connected or directly related device, equipment, or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device.

"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 a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities.

"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" ~~includes~~ means computer time or services ~~or, including~~ data processing services, electronic mail or electronic message services of an electronic mail service provider, 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" means any business or organization that provides users of that service the ability to send or receive electronic mail through equipment located in the Commonwealth of Virginia.

"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.

"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;
2. Computers and computer networks;
3. Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:
  - a. Tangible or intangible;
  - b. In a format readable by humans or by a computer;
  - c. In transit between computers or within a computer network or between any devices which comprise a computer; or
  - d. Located on any paper or in any device on which it is stored by a computer or by a human; and

4. Computer services.

A person "uses" a computer or computer network when he:

1. Attempts to cause or causes a computer or computer network to perform or to stop performing computer operations;

2. Attempts to cause or causes the withholding or denial of the use of a computer, computer network, computer program, computer data or computer software to another user; or

3. Attempts to cause or causes another person to put false information into a computer.

A person is "without authority" when (i) he has no right or permission of the owner to use a computer; or, he uses a computer in a manner exceeding such right or permission or (ii) *he uses the computer, computer network or computer services of an electronic mail service provider in contravention of the authority granted by or in violation of the policies set by that electronic mail service provider.*

§ 18.2-152.4. Computer trespass; penalty.

A. ~~A person shall be guilty of the crime of computer trespass if he uses~~ *It shall be unlawful for any person to use* a computer or computer network without authority and with the 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 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. Cause physical injury to the property of another; ~~or~~

6. 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; *or*

7. *Falsify electronic mail transmission information or other routing information in connection with the transmission of unsolicited bulk electronic mail through or into the facilities of an electronic mail service provider or its subscribers.*

B. *It shall be unlawful for any person to sell, give or otherwise distribute or possess with the intent to sell, give or distribute software which facilitates or enables the falsification of electronic mail transmission information or other routing information in connection with the transmission of unsolicited bulk electronic mail through or into the facilities of an electronic mail service provider or its subscribers.*

~~Computer trespass~~ C. Any person who violates this section shall be guilty of computer trespass, which offense shall be punishable as a Class 3 misdemeanor. If there is damage to the property of another valued at \$2,500 or more caused by such person's reckless disregard for the consequences of his act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is damage to the property of another valued at \$2,500 or more caused by such person's malicious act in violation of this section, the offense shall be punishable as a Class 6 felony.

~~B.~~ D. 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 bulk electronic mail in violation of this article.*

§ 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 may sue therefor and recover for any damages sustained, and the costs of suit. *If such injury arises from the transmission of unsolicited bulk electronic mail, an electronic mail service provider may also plead punitive damages, attorneys' fees and costs; and may elect, in lieu of actual damages, to recover \$500 for each and every unsolicited bulk electronic mail message transmitted in violation of this article or \$1,000 for each and every violation of subsection B of § 18.2-152.4.* Without limiting the generality of the term, "damages" shall include loss of profits.

B. At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

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

D. A civil action under this section must be commenced before expiration of the time period prescribed in § 8.01-40.1.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state

122 correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation  
123 is \$0 in FY 2009.