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SENATE BILL NO. 1294

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 18.2-152.2 and 18.2-152.4 of the Code of Virginia, relating to computer trespass.

Patron—Mims

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-152.2 and 18.2-152.4 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 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" 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.

"Government computer" means any computer or computer network of which the Commonwealth, a department or agency of the Commonwealth or any political subdivision thereof is the owner, lessee or exclusive user.

"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;
2. Computers and computer networks;
3. Financial instruments, computer data, computer programs, computer software and all other

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59 personal property regardless of whether they are:

- 60 a. Tangible or intangible;
- 61 b. In a format readable by humans or by a computer;
- 62 c. In transit between computers or within a computer network or between any devices which
- 63 comprise a computer; or
- 64 d. Located on any paper or in any device on which it is stored by a computer or by a human; and
- 65 4. Computer services.

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

- 67 1. Attempts to cause or causes a computer or computer network to perform or to stop performing
- 68 computer operations;
- 69 2. Attempts to cause or causes the withholding or denial of the use of a computer, computer
- 70 network, computer program, computer data or computer software to another user; or
- 71 3. Attempts to cause or causes another person to put false information into a computer.

72 A person is "without authority" when (i) he has no right or permission of the owner to use a

73 computer or he uses a computer in a manner exceeding such right or permission or (ii) he uses a

74 computer, a computer network, or the computer services of an electronic mail service provider to

75 transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of

76 the policies set by the electronic mail service provider. Transmission of electronic mail from an

77 organization to its members shall not be deemed to be unsolicited bulk electronic mail.

78 § 18.2-152.4. Computer trespass; penalty.

79 A. It shall be unlawful for any person to use a computer or computer network without authority and

80 with the intent to:

- 81 1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer
- 82 programs, or computer software from a computer or computer network;
- 83 2. Cause a computer to malfunction, regardless of how long the malfunction persists;
- 84 3. Alter or erase any computer data, computer programs, or computer software;
- 85 4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;
- 86 5. Cause physical injury to the property of another;
- 87 6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any
- 88 printed or electronic form of computer data, computer programs, or computer software residing in,
- 89 communicated by, or produced by a computer or computer network; or

90 7. Falsify or forge electronic mail transmission information or other routing information in any

91 manner in connection with the transmission of unsolicited bulk electronic mail through or into the

92 computer network of an electronic mail service provider or its subscribers.

93 B. It shall be unlawful for any person knowingly to sell, give or otherwise distribute or possess with

94 the intent to sell, give or distribute software which (i) is primarily designed or produced for the purpose

95 of facilitating or enabling the falsification of electronic mail transmission information or other routing

96 information; (ii) has only limited commercially significant purpose or use other than to facilitate or

97 enable the falsification of electronic mail transmission information or other routing information; or (iii)

98 is marketed by that person or another acting in concert with that person with that person's knowledge

99 for use in facilitating or enabling the falsification of electronic mail transmission information or other

100 routing information.

101 C. Any person who violates this section shall be guilty of computer trespass, which ~~offense~~ shall be

102 ~~punishable~~ *punished* as a Class 3 misdemeanor. If there is damage to the property of another valued at

103 \$2,500 or more caused by such person's reckless disregard for the consequences of his act ~~in violation~~

104 ~~of this section~~, the offense shall be punished as a Class 1 misdemeanor. If there is damage to the

105 property of another valued at \$2,500 or more caused by such person's malicious act ~~in violation of this~~

106 ~~section~~, the offense shall be ~~punishable~~ *punished* as a Class 6 felony. *If the trespass involves a*

107 *government computer and (i) is caused by such person's reckless disregard for the consequences of his*

108 *act, the offense shall be punished as a Class 1 misdemeanor, or (ii) is caused by such person's*

109 *malicious act, the offense shall be punished as a Class 6 felony.*

110 D. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a

111 contract or license related to computers, computer data, computer networks, computer operations,

112 computer programs, computer services, or computer software or to create any liability by reason of

113 terms or conditions adopted by, or technical measures implemented by, a Virginia-based electronic mail

114 service provider to prevent the transmission of unsolicited electronic mail in violation of this article.

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

116 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**

117 **cannot be determined.**