



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2973

(Patron – Bell)

LD#: 07-3253232

Date: 1/8/2007

Topic: Transmission of unsolicited bulk electronic messages (spam)

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends §§ 18.2-152.2, 18.2-152.3:1, and 18.2-152.12 relating to the transmission of unsolicited bulk electronic messages (UBEM, otherwise known as spam). In addition to replacing the term “electronic mail” with “electronic message” throughout the statutes, the proposal expands the definition of “computer” to include wireless communication devices and adds the term “electronic message” to the statute. “Electronic message” is defined as any text, image, or other communication transmitted to a computer.

Under § 18.2-152.3:1, the proposal reduces established limits on the number of attempted recipients of spam that would trigger the enhanced Class 6 felony violation if the offender is also in violation of forging e-mail transmissions. Specifically, the Class 6 felony becomes applicable if the offender forges e-mail transmissions in violation of § 18.2-152.3:1(A) and the volume of spam transmitted exceeds 2,500 attempted recipients in a 24-hour period, 25,000 attempted recipients in any 30-day time period, or 250,000 attempted recipients in any one-year period. Furthermore, the proposal creates a new Class 6 felony if an offender is in violation of forging or falsifying e-mail transmissions under subsection A of § 18.2-152.3:1 and a single recipient of an e-mail or multiple e-mails incurs damages in excess of \$250 during any one-year time period.

Currently under § 18.2-152.3:1, it is a Class 1 misdemeanor 1) to use a computer with the intent to falsify or forge e-mail transmissions in connection with spam through the computer network of an e-mail service provider or its subscribers, or 2) to knowingly sell, etc., software that is designed for, has only limited use for, or is marketed by a person for the purpose of facilitating the falsification of e-mail transmissions. Under the current statute, an offender who forges or falsifies e-mail transmissions in violation of subsection A of § 18.2-152.3:1 is subject to an enhanced Class 6 felony punishment if 1) the volume of the spam transmitted exceeds 10,000 attempted recipients in a 24-hour period, 100,000 attempted recipients in a 30-day time period, or one million attempted recipients in a one-year time period, or 2) the revenue generated from a specific spam transmission exceeds \$1,000 or the total revenue generated from all spam transmitted exceeds \$50,000.

Analysis:

This proposal is based on the CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act). According to the Federal Trade Commission, the act (which became effective on January 1, 2004) establishes requirements for those who send commercial e-mail, spells out penalties for spammers and companies whose products are advertised in spam if they violate the law, and gives consumers the right to ask e-mailers to stop sending spam.

According to a July 20, 2005, U.S. Department of Justice (DOJ) press release, seven cases (these cases may involve multiple defendants) have been filed based on the CAN-SPAM Act. In a press release date August 25, 2005, DOJ reported the first conviction under the Act; it was part of a guilty plea leading to the indictment of three others. Since that time, two additional defendants have plead guilty (March 6, 2006, DOJ press release).

According to the calendar year (CY) 2004 and CY2005 Local Inmate Data System (LIDS) and Pre-Sentence Investigation (PSI) database, there were no misdemeanor or felony convictions under § 18.2-152.3:1 during the two-year time period.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony and by adding a new felony offense to the *Code of Virginia*, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison beds cannot be determined.

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in additional felony offenders with community supervision requirements or offenders on supervision for a longer period of time, the proposal may increase the need for community corrections resources. However, full cost of the impact on adult community corrections cannot be determined.

Virginia's sentencing guidelines. Convictions under the specified statutes are not covered by Virginia's sentencing guidelines as the primary (most serious) offense in a case; however, convictions under one of these provisions may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.