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SENATE BILL NO. 533

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 24, 2018)

(Patron Prior to Substitute—Senator Mason)

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

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-152.4 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-152.4. Computer trespass; penalty.

A. It ~~shall be~~ is unlawful for any person, with malicious intent, *or through intentionally deceptive means and without authority*, 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, disable, 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. Use a computer or computer network to cause physical injury to the property of another;

6. Use a computer or computer network to 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;

7. [Repealed.]

8. Install or cause to be installed, or collect information through, computer software that records all or a majority of the keystrokes made on the computer of another ~~without the computer owner's authorization~~; or

9. Install or cause to be installed on the computer of another, computer software for the purpose of (i) taking control of that computer so that it can cause damage to another computer or (ii) disabling or disrupting the ability of the computer to share or transmit instructions or data to other computers or to any related computer equipment or devices, including but not limited to printers, scanners, or fax machines.

B. Any person who violates this section is guilty of computer trespass, which ~~shall be~~ is a Class 1 misdemeanor. Any person who violates this section for the purposes of affecting a computer that is exclusively for the use of, or exclusively used by or for, (i) the Commonwealth or any local government within the Commonwealth or any department or agency thereof or (ii) a provider of telephone, including wireless or voice over Internet protocol, oil, electric, gas, sewer, wastewater, or water service to the public is guilty of a Class 6 felony. If there is damage to the property of another valued at \$1,000 or more caused by such person's act *done with malicious intent* in violation of this section, the offense ~~shall be~~ is a Class 6 felony. If a person with *malicious intent* installs or causes to be installed computer software in violation of this section on more than five computers of another, the offense ~~shall be~~ is a Class 6 felony. If a person violates subdivision A 8 *with malicious intent*, the offense ~~shall be~~ is a Class 6 felony.

C. 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 electronic mail in violation of this article. Nothing in this section shall be construed to prohibit the monitoring of *the location of a minor or a person with a disability or mental impairment as those terms are defined in § 51.5-40.1* or to prohibit *the monitoring of the computer usage of, the otherwise lawful copying of data of, or the denial of computer or Internet access to a minor by a parent or legal guardian of the minor. Nothing in this section shall be construed to require notice to a computer user of the activities of a computer hardware or software provider, an interactive computer service, or a telecommunications or cable operator that a reasonable computer user should expect may occur in the context of a computer user's transaction or relationship with that entity or that are required or specifically authorized by law.*

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.