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1   **SENATE BILL NO. 881**
2   AMENDMENT IN THE NATURE OF A SUBSTITUTE
3   (Proposed by the House Committee on Science and Technology
4   on February 19, 1999)
5   (Patron Prior to Substitute—Senator Mims [SB 920])
6   *A BILL to amend and reenact §§ 8.01-328.1, 18.2-152.2, 18.2-152.4, and 18.2-152.12 of the Code of*
7   *Virginia, relating to personal jurisdiction; Virginia Computer Crimes Act; unsolicited bulk electronic*
8   *mail; penalties.*
9   **Be it enacted by the General Assembly of Virginia:**
10   **1. That §§ 8.01-328.1, 18.2-152.2, 18.2-152.4, and 18.2-152.12 of the Code of Virginia are amended**
11 **and reenacted as follows:**
12   § 8.01-328.1. When personal jurisdiction over person may be exercised.
13   A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a
14 cause of action arising from the person's:
15   1. Transacting any business in this Commonwealth;
16   2. Contracting to supply services or things in this Commonwealth;
17   3. Causing tortious injury by an act or omission in this Commonwealth;
18   4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth
19 if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives
20 substantial revenue from goods used or consumed or services rendered, in this Commonwealth;
21   5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly
22 made in the sale of goods outside this Commonwealth when he might reasonably have expected such
23 person to use, consume, or be affected by the goods in this Commonwealth, provided that he also
24 regularly does or solicits business, or engages in any other persistent course of conduct, or derives
25 substantial revenue from goods used or consumed or services rendered in this Commonwealth;
26   6. Having an interest in, using, or possessing real property in this Commonwealth;
27   7. Contracting to insure any person, property, or risk located within this Commonwealth at the time
28 of contracting;
29   8. Having (i) executed an agreement in this Commonwealth which obligates the person to pay
30 spousal support or child support to a domiciliary of this Commonwealth, or to a person who has
31 satisfied the residency requirements in suits for annulments or divorce for members of the armed forces
32 pursuant to § 20-97 provided proof of service of process on a nonresident party is made by a
33 law-enforcement officer or other person authorized to serve process in the jurisdiction where the
34 nonresident party is located, (ii) been ordered to pay spousal support or child support pursuant to an
35 order entered by any court of competent jurisdiction in this Commonwealth having in personam
36 jurisdiction over such person, or (iii) shown by personal conduct in this Commonwealth, as alleged by
37 affidavit, that the person conceived or fathered a child in this Commonwealth; or
38   9. Having maintained within this Commonwealth a matrimonial domicile at the time of separation of
39 the parties upon which grounds for divorce or separate maintenance is based, or at the time a cause of
40 action arose for divorce or separate maintenance or at the time of commencement of such suit, if the
41 other party to the matrimonial relationship resides herein.
42   Jurisdiction in subdivision 9 of this subsection is valid only upon proof of service of process
43 pursuant to § 8.01-296 on the nonresident party by a person authorized under the provisions of
44 § 8.01-320. Jurisdiction under subdivision 8 (iii) of this subsection is valid only upon proof of personal
45 service on a nonresident pursuant to § 8.01-320.
46   *B. Using a computer or computer network located in the Commonwealth shall constitute an act in*
47 *the Commonwealth. For purposes of this subsection, "use" and "computer network" shall have the same*
48 *meanings as those contained in § 18.2-152.2.*
49   ~~B.~~ *C.* When jurisdiction over a person is based solely upon this section, only a cause of action
50 arising from acts enumerated in this section may be asserted against him; however, nothing contained in
51 this chapter shall limit, restrict or otherwise affect the jurisdiction of any court of this Commonwealth
52 over foreign corporations which are subject to service of process pursuant to the provisions of any other
53 statute.
54   § 18.2-152.2. Definitions.
55   For purposes of this article:
56   "Computer" means an electronic, magnetic, optical, hydraulic or organic device or group of devices
57 which, pursuant to a computer program, to human instruction, or to permanent instructions contained in
58 the device or group of devices, can automatically perform computer operations with or on computer data
59 and can communicate the results to another computer or to a person. The term "computer" includes any

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60   connected or directly related device, equipment, or facility which enables the computer to store, retrieve
61   or communicate computer programs, computer data or the results of computer operations to or from a
62   person, another computer or another device.
63   "Computer data" means any representation of information, knowledge, facts, concepts, or instructions
64   which is being prepared or has been prepared and is intended to be processed, is being processed, or has
65   been processed in a computer or computer network. "Computer data" may be in any form, whether
66   readable only by a computer or only by a human or by either, including, but not limited to, computer
67   printouts, magnetic storage media, punched cards, or stored internally in the memory of the computer.
68   "Computer network" means a set of related, remotely connected devices and any communications
69   facilities including more than one computer with the capability to transmit data among them through the
70   communications facilities.
71   "Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any
72   combination thereof, and includes, but is not limited to, communication with, storage of data to, or
73   retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A
74   "computer operation" for a particular computer may also be any function for which that computer was
75   generally designed.
76   "Computer program" means an ordered set of data representing coded instructions or statements that,
77   when executed by a computer, causes the computer to perform one or more computer operations.
78   "Computer services" ~~includes~~   *means* computer time or services ~~or~~ *, including* data processing
79   services*, Internet services, electronic mail services, electronic message services,* or information or data
80   stored in connection therewith.
81   "Computer software" means a set of computer programs, procedures and associated documentation
82   concerned with computer data or with the operation of a computer, computer program, or computer
83   network.
84   *"Electronic mail service provider" means any person who (i) is an intermediary in sending or*
85   *receiving electronic mail and (ii) provides to end-users of electronic mail services the ability to send or*
86   *receive electronic mail.*
87   "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note,
88   certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization
89   mechanism, marketable security, or any computerized representation thereof.
90   "Owner" means an owner or lessee of a computer or a computer network or an owner, lessee, or
91   licensee of computer data, computer programs, or computer software.
92   "Person" shall include any individual, partnership, association, corporation or joint venture.
93   "Property" shall include:
94   1. Real property;
95   2. Computers and computer networks;
96   3. Financial instruments, computer data, computer programs, computer software and all other
97   personal property regardless of whether they are:
98   a. Tangible or intangible;
99   b. In a format readable by humans or by a computer;
100   c. In transit between computers or within a computer network or between any devices which
101 comprise a computer; or
102   d. Located on any paper or in any device on which it is stored by a computer or by a human; and
103   4. Computer services.
104   A person "uses" a computer or computer network when he:
105   1. Attempts to cause or causes a computer or computer network to perform or to stop performing
106 computer operations;
107   2. Attempts to cause or causes the withholding or denial of the use of a computer, computer
108 network, computer program, computer data or computer software to another user; or
109   3. Attempts to cause or causes another person to put false information into a computer.
110   A person is "without authority" when *(i)* he has no right or permission of the owner to use a
111 computer~~,~~ ~~or,~~ he uses a computer in a manner exceeding such right or permission *or (ii) he uses a*
112 *computer, a computer network, or the computer services of an electronic mail service provider to*
113 *transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of*
114 *the policies set by the electronic mail service provider. Transmission of electronic mail from an*
115 *organization to its members shall not be deemed to be unsolicited bulk electronic mail.*
116   § 18.2-152.4. Computer trespass; penalty.
117   A. A ~~person shall be guilty of the crime of computer trespass if he uses~~ *It shall be unlawful for any*
118 *person to use* a computer or computer network without authority and with the intent to:
119   1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer
120 programs, or computer software from a computer or computer network;
121   2. Cause a computer to malfunction*, regardless of how long the malfunction persists*;

122 3. Alter or erase any computer data, computer programs, or computer software;
123 4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;
124 5. Cause physical injury to the property of another; ~~or~~
125 6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any
126 printed or electronic form of computer data, computer programs, or computer software residing in,
127 communicated by, or produced by a computer or computer network*; or*
128 *7. Falsify or forge electronic mail transmission information or other routing information in any*
129 *manner in connection with the transmission of unsolicited bulk electronic mail through or into the*
130 *computer network of an electronic mail service provider or its subscribers.*
131 *B. It shall be unlawful for any person knowingly to sell, give or otherwise distribute or possess with*
132 *the intent to sell, give or distribute software which (i) is primarily designed or produced for the purpose*
133 *of facilitating or enabling the falsification of electronic mail transmission information or other routing*
134 *information; (ii) has only limited commercially significant purpose or use other than to facilitate or*
135 *enable the falsification of electronic mail transmission information or other routing information; or (iii)*
136 *is marketed by that person or another acting in concert with that person with that person's knowledge*
137 *for use in facilitating or enabling the falsification of electronic mail transmission information or other*
138 *routing information.*
139 ~~Computer~~ ~~trespass~~ *C. Any person who violates this section shall be guilty of computer trespass,*
140 *which offense* shall be punishable as a Class 3 misdemeanor. If there is damage to the property of
141 another valued at $2,500 or more caused by such person's reckless disregard for the consequences of his
142 act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is
143 damage to the property of another valued at $2,500 or more caused by such person's malicious act in
144 violation of this section, the offense shall be punishable as a Class 6 felony.
145 ~~B~~ *D.* Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a
146 contract or license related to computers, computer data, computer networks, computer operations,
147 computer programs, computer services, or computer software *or to create any liability by reason of*
148 *terms or conditions adopted by, or technical measures implemented by, a Virginia-based electronic mail*
149 *service provider to prevent the transmission of unsolicited electronic mail in violation of this article.*
150 § 18.2-152.12. Civil relief; damages.
151 A. Any person whose property or person is injured by reason of a violation of any provision of this
152 article may sue therefor and recover for any damages sustained~~,~~ and the costs of suit. Without limiting
153 the generality of the term, "damages" shall include loss of profits.
154 *B. If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person,*
155 *other than an electronic mail service provider, may also recover attorneys' fees and costs, and may*
156 *elect, in lieu of actual damages, to recover the lesser of ten dollars for each and every unsolicited bulk*
157 *electronic mail message transmitted in violation of this article, or $25,000 per day. The injured person*
158 *shall not have a cause of action against the electronic mail service provider which merely transmits the*
159 *unsolicited bulk electronic mail over its computer network.*
160 *C. If the injury arises from the transmission of unsolicited bulk electronic mail, an injured electronic*
161 *mail service provider may also recover attorneys' fees and costs, and may elect, in lieu of actual*
162 *damages, to recover the greater of ten dollars for each and every unsolicited bulk electronic mail*
163 *message transmitted in violation of this article, or $25,000 per day.*
164 ~~B.~~ *D.* At the request of any party to an action brought pursuant to this section, the court may, in its
165 discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the
166 computer, computer network, computer data, computer program and computer software involved in order
167 to prevent possible recurrence of the same or a similar act by another person and to protect any trade
168 secrets of any party.
169 ~~C.~~ *E.* The provisions of this article shall not be construed to limit any person's right to pursue any
170 additional civil remedy otherwise allowed by law.
171 ~~D.~~ *F.* A civil action under this section must be commenced before expiration of the time period
172 prescribed in § 8.01-40.1. *In actions alleging injury arising from the transmission of unsolicited bulk*
173 *electronic mail, personal jurisdiction may be exercised pursuant to § 8.01-328.1.*

HOUSE SUBSTITUTE

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