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HOUSE BILL NO. 2215

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact §§ 18.2-152.2 and 18.2-152.4 of the Code of Virginia, relating to redefinition and modernization of terms and streamlining the laws governing computer crimes; penalties.

Patrons—Albo, Bell, Kilgore, McDonnell and Moran; Senators: Howell and Stolle

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 *a device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. Such term does not include a device whose predominate purpose is not the storage and manipulation of user-inputted computer information, such as automated typewriters, simple handheld calculators, digital cameras, facsimile machines or pagers.*

"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 information" means information in any form that is obtained from or through the use of a computer or that is in a form capable of being processed by a 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 *an operation that a computer is designed and built to perform.*

"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 *the use of a computer*, including *but not limited to, computer time*, data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection therewith.

"Computer software" or "computer program" 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 *statements or instructions to be used directly or indirectly in a computer to bring about a certain result.*

"Electronic mail service provider" (EMSP) 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, *financial asset as that term is defined in § 8.8A-102*, or any computerized representation thereof.

"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 *The term "owner" includes* an owner or lessee of a computer or a computer network

59 or an owner, lessee, or licensee of computer data *information*, computer programs *services*, or computer
60 software.

61 "~~Person~~" *The term "person" shall include any individual, partnership, association, corporation or joint*
62 *venture have the same meaning as set forth in § 1-13.19.*

63 "~~Property~~" shall include:

64 1. Real property;

65 2. Computers and computer networks;

66 3. Financial instruments, computer data, computer programs, computer software and all other
67 personal property regardless of whether they are:

68 a. Tangible or intangible;

69 b. In a format readable by humans or by a computer;

70 c. In transit between computers or within a computer network or between any devices which
71 comprise a computer; or

72 d. Located on any paper or in any device on which it is stored by a computer or by a human; and

73 4. ~~Computer~~ means anything of value, and includes any interest therein, including any benefit,
74 privilege, claim, or right with respect to anything of value, whether real or personal, tangible or
75 intangible. "~~Property~~" includes, but is not limited to, computers, financial instruments, computer
76 information, computer software, and computer services.

77 A person "uses" a computer or computer network when he attempts to cause or causes:

78 1. A computer or computer network to perform or to stop performing computer operations;

79 2. The withholding or denial of the use of a computer, computer network, computer program,
80 computer data or computer software to another user; or

81 3. A person to put false information into a computer.

82 A person is "without authority" when *he knows or reasonably should know that he has no right or*
83 *permission of the owner to use a computer or computer network or he uses a computer or computer*
84 *network or acts in a manner exceeding such right or permission.*

85 § 18.2-152.4. Computer trespass; penalty.

86 A. It shall be unlawful for any person to use a computer or computer network without authority and,
87 with the *malicious* intent, to:

88 1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer
89 programs, *information* or computer software from a computer or computer network;

90 2. Cause a computer to malfunction, regardless of how long the malfunction persists;

91 3. Alter, *damage, destroy, disable*, or erase any computer data, computer programs, *information* or
92 computer software;

93 4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;

94 5. Cause physical injury to the property of another; or

95 6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any
96 printed or electronic form of computer data, computer programs *information*, or computer software
97 residing in, communicated by, or produced by a computer or computer network;

98 7. [Repealed].

99 8. *Install computer software on the computer of another, without the authorization of the owner; or*

100 9. *Disable or disrupt the ability of a computer to share or transmit its computer information to other*
101 *computers or to any related computer equipment or devices, including, but not limited to, printers,*
102 *scanners, or fax machines, through the direct or indirect use of a computer.*

103 B. *It shall be unlawful for any person to maliciously obtain any computer information, without*
104 *authority, through the direct use of a computer.*

105 C. Any person who violates this section shall be guilty of computer trespass, which offense shall be
106 punishable as a Class 1 misdemeanor. If there is damage to the property of another valued at \$2,500
107 \$1,000 or more caused by such person's ~~malicious~~ act in violation of this section, the offense shall be
108 punishable as a Class 6 felony.

109 ~~CD~~. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a
110 contract or license related to computers, computer data, computer networks *information*, computer
111 operations, computer programs, computer services, or computer software or to create any liability by
112 reason of terms or conditions adopted by, or technical measures implemented by, a Virginia-based
113 electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of
114 this article. Nothing in this section shall be construed to prohibit the monitoring of computer usage of,
115 the otherwise lawful copying of data of, or the denial of computer or Internet access to a minor by a
116 parent or legal guardian of the minor.

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