

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 81.2-152.2 and 18.2-152.3:1 of the Code of Virginia, relating to the
2 transmission of unsolicited bulk electronic messages (spam); penalty.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That § 18.2-152.2 of the Code of Virginia is amended and reenacted as follows:**

5 § 18.2-152.2. Definitions.

6 For purposes of this article:

7 "Computer" means a device that accepts information in digital or similar form and manipulates it
8 for a result based on a sequence of instructions, including, but not limited to, wireless communication
9 devices capable of sending and receiving electronic messages. Such term does not include simple
10 calculators, automated typewriters, facsimile machines, or any other specialized computing devices that
11 are preprogrammed to perform a narrow range of functions with minimal end-user or operator
12 intervention and are dedicated to a specific task.

13 "Computer data" means any representation of information, knowledge, facts, concepts, or
14 instructions which is being prepared or has been prepared and is intended to be processed, is being
15 processed, or has been processed in a computer or computer network. "Computer data" may be in any
16 form, whether readable only by a computer or only by a human or by either, including, but not limited
17 to, computer printouts, magnetic storage media, punched cards, or stored internally in the memory of the
18 computer.

19 "Computer network" means two or more computers connected by a network.

20 "Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and
21 any combination thereof, and includes, but is not limited to, communication with, storage of data to, or
22 retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A
23 "computer operation" for a particular computer may also be any function for which that computer was
24 generally designed.

25 "Computer program" means an ordered set of data representing coded instructions or statements
26 that, when executed by a computer, causes the computer to perform one or more computer operations.

27 "Computer services" means computer time or services, including data processing services,
28 Internet services, electronic mail services, electronic message services, or information or data stored in
29 connection therewith.

30 "Computer software" means a set of computer programs, procedures and associated
31 documentation concerned with computer data or with the operation of a computer, computer program, or
32 computer network.

33 "Electronic ~~mail-message~~ service provider" (EMSP) means any person who (i) is an intermediary
34 in sending or receiving electronic ~~mail-messages~~ and (ii) provides to end-users of electronic ~~mail~~
35 ~~message~~ services the ability to send or receive electronic ~~mail-messages~~.

36 "Electronic message" means any text or image transmitted to a computer, the primary purpose of
37 which is the commercial advertisement or promotion of a commercial product or service.

38 "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order,
39 note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction
40 authorization mechanism, marketable security, or any computerized representation thereof.

41 "Network" means any combination of digital transmission facilities and packet switches, routers,
42 and similar equipment interconnected to enable the exchange of computer data.

43 "Owner" means an owner or lessee of a computer or a computer network or an owner, lessee, or
44 licensee of computer data, computer programs or computer software.

45 "Person" shall include any individual, partnership, association, corporation or joint venture.

46 "Property" shall include:

- 47 1. Real property;
- 48 2. Computers and computer networks;
- 49 3. Financial instruments, computer data, computer programs, computer software and all other
50 personal property regardless of whether they are:
 - 51 a. Tangible or intangible;

- 52 b. In a format readable by humans or by a computer;
- 53 c. In transit between computers or within a computer network or between any devices which
- 54 comprise a computer; or
- 55 d. Located on any paper or in any device on which it is stored by a computer or by a human; and
- 56 4. Computer services.

57 A person "uses" a computer or computer network when he attempts to cause or causes a
 58 computer or computer network to perform or to stop performing computer operations.

59 A person is "without authority" when he knows or reasonably should know that he has no right
 60 or permission or knowingly acts in a manner exceeding such right or permission.

61 § 18.2-152.3:1. Transmission of unsolicited bulk electronic ~~mail (spam)~~ messages (UBEM);
 62 penalty.

63 A. Any person who:

64 1. Uses a computer or computer network with the intent to falsify or forge electronic ~~mail~~
 65 message transmission information or other routing information in any manner in connection with the
 66 transmission of unsolicited bulk electronic ~~mail~~ messages through or into the computer network of an
 67 electronic ~~mail~~ message service provider or its subscribers; or

68 2. Knowingly sells, gives, or otherwise distributes or possesses with the intent to sell, give, or
 69 distribute software that (i) is primarily designed or produced for the purpose of facilitating or enabling
 70 the falsification of electronic ~~mail~~ message transmission information or other routing information; (ii)
 71 has only limited commercially significant purpose or use other than to facilitate or enable the
 72 falsification of electronic ~~mail~~ message transmission information or other routing information; or (iii) is
 73 marketed by that person acting alone or with another for use in facilitating or enabling the falsification
 74 of electronic ~~mail~~ message transmission information or other routing information is guilty of a Class 1
 75 misdemeanor.

76 B. A person is guilty of a Class 6 felony if he commits a violation of subsection A and:

77 1. The volume of unsolicited bulk electronic messages (UBEM) transmitted exceed~~ed~~ ~~10,000~~
 78 2,500 attempted recipients in any 24-hour period, ~~100,000~~ 25,000 attempted recipients in any 30-day
 79 time period, or ~~one million~~ 250,000 attempted recipients in any one-year time period; ~~or~~

80 2. The revenue generated from a specific UBEM transmission exceed~~ed~~ \$1,000 or the total
 81 revenue generated from all UBEM transmitted to any EMSP exceed~~ed~~s \$50,000; ~~or~~

82 3. A single recipient incurs damages in excess of \$500 during any one-year time period.

83 C. A person is guilty of a Class 6 felony if he knowingly hires, employs, uses, or permits any
 84 minor to assist in the transmission of UBEM in violation of subdivisions s B 1 ~~subdivision~~, B 2, or B 3.

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