

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1744

Short Title: Stop SPAM.

(Public)

Sponsors: Representatives Goodwin; Adams, Alexander, Fox, Hurley, Jarrell, Jeffus, Mosley, Shubert, and Warwick.

Referred to: Rules, Calendar and Operations of the House.

June 1, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPOSE LIABILITY ON THOSE WHO TRANSMIT UNSOLICITED
3 ITEMS OF ELECTRONIC MAIL THAT INCLUDE ADVERTISEMENTS (SPAM).
4 The General Assembly of North Carolina enacts:

5 Section 1. There are a large number of computer systems in State government
6 with Internet E-mail access, some of them serving agencies and State employees, and
7 some of them serving students in The University of North Carolina System, community
8 colleges, and public schools. SPAM requires more network resources, telephone line
9 charges, online time, diversion of productive time of employees and students, and other
10 needless expense in the State budget for fiscal year 1998-99, which can be reduced by
11 eliminating SPAM.

12 Section 2. Subchapter XIV of Chapter 1 of the General Statutes is amended by
13 adding a new Article to read:

14 "ARTICLE 43E.

15 "Unsolicited Electronic Mail Advertisements.

16 "**§ 1-539.25. Definitions.**

17 As used in this Article, the following definitions apply:

18 (1) "Advertisement" means material that:

- 1 a. Advertises for commercial purposes the availability or the quality
2 of real property, goods, or services; or
3 b. Is otherwise designed or intended to solicit a person to purchase
4 real property, goods, or services.

5 (2) "Electronic mail" means a message, a file or other information that is
6 transmitted through a local, regional, or global network, regardless of
7 whether the message, file or other information is:

- 8 a. Viewed;
9 b. Stored for retrieval at a later time;
10 c. Printed onto paper or other similar material; or
11 d. Filtered or screened by a computer program that is designed or
12 intended to filter or screen items of electronic mail.

13 (3) "Network" means a connection comprised of one or more computers
14 that may be accessed by a modem, electronic or optical technology, or
15 other similar means.

16 (4) "Recipient" means a person who receives an item of electronic mail.

17 **"§ 1-539.26. Action for damages; exceptions; injunctive relief.**

18 (a) Except as otherwise provided in G.S. 1-539.27, if a person transmits or causes
19 to be transmitted to a recipient an item of electronic mail that includes an advertisement,
20 the person is liable to the recipient for civil damages unless:

- 21 (1) The person has a preexisting business or personal relationship with the
22 recipient;
23 (2) The recipient has expressly consented to receive the item of electronic
24 mail from the person; or
25 (3) The advertisement is readily identifiable as promotional, or contains a
26 statement providing that it is an advertisement, and clearly and
27 conspicuously provides:
28 a. The legal name, complete street address and electronic mail
29 address of the person transmitting the electronic mail; and
30 b. A notice that the recipient may decline to receive additional
31 electronic mail that includes an advertisement from the person
32 transmitting the electronic mail and the procedures for declining
33 such electronic mail.

34 (b) If a person is liable to a recipient pursuant to subsection (a) of this section, the
35 recipient may recover from the person:

- 36 (1) Actual damages or damages of ten dollars (\$10) per item of electronic
37 mail received, whichever is greater; and
38 (2) Attorneys' fees and costs.

39 (c) In addition to any other remedy that is allowed pursuant to law, the recipient
40 may apply to the district or superior court of the county in which the recipient resides for
41 an order enjoining the person from transmitting to the recipient any other item of
42 electronic mail that includes an advertisement.

1 **"§ 1-539.27. Immunity for persons who provide users with access to network;**
2 **applicability to items of electronic mail obtained voluntarily.**

3 (a) If a person provides users with access to a network and, as part of that service,
4 transmits items of electronic mail on behalf of those users, the person is immune from
5 liability for civil damages under this Article, unless the person transmits an item of
6 electronic mail that includes an advertisement he prepared or caused to be prepared.

7 (b) The provisions of this Article, inclusive, do not apply to an item of electronic
8 mail that is obtained by a recipient voluntarily. This subsection includes, but is not
9 limited to, an item of electronic mail that is obtained by a recipient voluntarily from an
10 electronic bulletin board."

11 Section 3. This act becomes effective October 1, 1998.