

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** House Bill 1744

**SHORT TITLE:** Stop SPAM

**SPONSOR(S):** Representatives Goodwin, et al

**FISCAL IMPACT**

**Yes ( )      No ( )      No Estimate Available (X)**

**FY 1998-99   FY 1999-00   FY 2000-01   FY 2001-02   FY 2002-03**

**State Agencies**

**Public Colleges and Universities**

**No Estimate Available**

**Judicial Department**

**PRINCIPAL DEPARTMENT(S) &**

**PROGRAM(S) AFFECTED:** State Agencies, Public Colleges and Universities, Judicial Department

**EFFECTIVE DATE:** October 1, 1998

**BILL SUMMARY:** *TO IMPOSE LIABILITY ON THOSE WHO TRANSMIT UNSOLICITED ITEMS OF ELECTRONIC MAIL THAT INCLUDE ADVERTISEMENTS.* Adds new Art. 43E to GS Ch. 1 to impose civil liability for transmitting an item of electronic mail that includes an advertisement unless (1) the person transmitting the item has a preexisting business or personal relationship with the recipient; (2) the recipient has expressly consented to receive the item; (3) or the advertisement is readily identifiable as promotional (or states that it is an advertisement) and clearly provides the name and address of the transmitting person, a notice that the recipient may decline to receive additional advertisements, and the procedures for declining such electronic mail. Remedies include actual damages or damages of \$10 per item of electronic mail received, attorneys' fees and costs, and injunctive relief. Provides immunity from liability to persons who provide users with access to a network, unless that person prepares and transmits an advertisement. Does not apply to items of advertisement that a recipient obtains voluntarily.

## **ASSUMPTIONS AND METHODOLOGY:**

### Background

There is no easily identifiable cost to state government due to this bill. There are potential savings in manhours and computer storage space, but little information is available. Unsolicited electronic mail containing advertisements (also known as “SPAM”) has become an increasing problem in recent years. These messages are often transmitted in mass quantities by Internet marketing firms, who can obtain an individual’s electronic address by that person using the Internet for personal reasons. This problem is especially common among users of private Internet service providers, such as America Online. These providers often spend up to \$1 million annually to investigate SPAM abuse and repair any damage to hardware caused by SPAM messages, which can comprise up to 30% of total incoming messages.

### Similar Legislation and Fiscal Analyses in Other States

The National Conference of State Legislatures reported that 17 states had proposed similar legislation restricting unsolicited electronic mail containing advertisements in 1997. Of these 17 states, only Nevada and Washington actually enacted this legislation into law. The Nevada Legislative Counsel Bureau prepared a fiscal note for that state’s bill, but merely indicated possible fiscal impact to the court system since no quantifiable estimates were available on the expected number of civil cases resulting from the bill. The State of Washington did not prepare a fiscal note for its bill, nor did any of the other states that proposed this legislation.

### State Agencies

The Information Services Division (ISD) of the General Assembly indicates that most state employees do not usually receive unsolicited electronic messages that include advertisements. However, specific instances do occur; for example, a legislator and various legislative staff members have received such messages in recent weeks. State employees probably receive these SPAM messages on their personal electronic mail accounts, but employees check their personal accounts on their own time and computers. ISD cannot estimate any cost to the state in lost manhours and computer space due to SPAM messages.

### Public Colleges and Universities

Students attending public colleges and universities are more susceptible to SPAM messages than state employees since students more frequently use electronic mail and the Internet for personal reasons. Officials at North Carolina State University, for example, estimate that 10-20% of the messages coming to campus are SPAM messages. NCSU also received at least 26 complaints about a SPAM message that originated at the university and received by an estimated 300,000 people. However, overall there is little quantitative data on the number of SPAM messages on college computer systems or the cost in handling these messages, and thus the Division cannot estimate the fiscal impact to colleges and universities.

The UNC General Administration has some anecdotal evidence that this is a growing problem within the system's 16 schools. NCSU, in response to many complaints about SPAM messages and the messages' effect on the campus system, had a senior systems administrator spend 80 hours over 6 months repairing damage to the campus system. Estimating this administrator's hourly wage at \$33 an hour, the school spent approximately \$2,640 (\$33 an hour X 80 hours) in salary costs to fix problems caused by these messages. Other individual campuses reported spending many hours of staff time to correct computer problems caused by SPAM messages.

This bill, however, would not automatically stop SPAM messages at universities, but would enable recipients of these messages to pursue civil litigation against the senders. It would be the prerogative of the recipients (most of whom are students) to seek legal action. However, it is not clear how many students would pursue civil litigation and thus the effect that this litigation would have on reducing the number of SPAM messages cannot be estimated.

### Judicial Department

The bill has a potential fiscal impact on the court system by allowing civil cases and/or injunctive relief filed by recipients of unsolicited electronic messages. Because these are new provisions, the Administrative Office of the Courts (AOC) is not able to estimate the fiscal impact of the bill. The AOC is not able to estimate the frequency with which people will file civil actions when they receive SPAM messages. Similarly, the department cannot estimate how often the provision for injunctive relief will be used, but notes that these injunctions would be heard in superior court, which is more costly than district court.

**SOURCES OF DATA:** "TechWeb" technology news Internet site, National Conference of State Legislatures, State of Nevada Legislative Counsel Bureau, Information Services Division, UNC General Administration, Judicial Department

**TECHNICAL CONSIDERATIONS:** None

### **FISCAL RESEARCH DIVISION**

**733-4910**

**PREPARED BY:** Matt Bronson and Jim Mills

**APPROVED BY:** Tom Covington

**DATE:** June 22, 1998



**Signed Copy Located in the NCGA Principal Clerk's Offices**