

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 288

Short Title: Unsolicited Electronic Bulk Mail.

(Public)

Sponsors: Senators Reeves; and Martin of Guilford.

Referred to: Judiciary I.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO EXTEND NORTH CAROLINA'S "LONG ARM JURISDICTION" STATUTE TO INCLUDE SENDERS OF UNSOLICITED ELECTRONIC BULK MAIL AND TO MAKE THE SENDING OF UNSOLICITED ELECTRONIC BULK MAIL UNLAWFUL IN THIS STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-75.4 reads as rewritten:

"§ 1-75.4. Personal jurisdiction, grounds for generally.

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

(1) Local Presence or Status. – In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party:

- a. Is a natural person present within this State; or
- b. Is a natural person domiciled within this State; or
- c. Is a domestic corporation; or
- d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.

- 1 (2) Special Jurisdiction Statutes. – In any action which may be brought
2 under statutes of this State that specifically confer grounds for personal
3 jurisdiction.
- 4 (3) Local Act or Omission. – In any action claiming injury to person or
5 property or for wrongful death within or without this State arising out of
6 an act or omission within this State by the defendant.
- 7 (4) Local Injury; Foreign Act. – In any action for wrongful death occurring
8 within this State or in any action claiming injury to person or property
9 within this State arising out of an act or omission outside this State by
10 the defendant, provided in addition that at or about the time of the injury
11 either:
12 a. Solicitation or services activities were carried on within this State
13 by or on behalf of the defendant; or
14 b. Products, materials or thing processed, serviced or manufactured
15 by the defendant were used or consumed, within this State in the
16 ordinary course of trade.
- 17 (5) Local Services, Goods or Contracts. – In any action which:
18 a. Arises out of a promise, made anywhere to the plaintiff or to
19 some third party for the plaintiff's benefit, by the defendant to
20 perform services within this State or to pay for services to be
21 performed in this State by the plaintiff; or
22 b. Arises out of services actually performed for the plaintiff by the
23 defendant within this State, or services actually performed for the
24 defendant by the plaintiff within this State if such performance
25 within this State was authorized or ratified by the defendant; or
26 c. Arises out of a promise, made anywhere to the plaintiff or to
27 some third party for the plaintiff's benefit, by the defendant to
28 deliver or receive within this State, or to ship from this State
29 goods, documents of title, or other things of value; or
30 d. Relates to goods, documents of title, or other things of value
31 shipped from this State by the plaintiff to the defendant on his
32 order or direction; or
33 e. Relates to goods, documents of title, or other things of value
34 actually received by the plaintiff in this State from the defendant
35 through a carrier without regard to where delivery to the carrier
36 occurred.
- 37 (6) Local Property. – In any action which arises out of:
38 a. A promise, made anywhere to the plaintiff or to some third party
39 for the plaintiff's benefit, by the defendant to create in either
40 party an interest in, or protect, acquire, dispose of, use, rent, own,
41 control or possess by either party real property situated in this
42 State; or

- 1 b. A claim to recover for any benefit derived by the defendant
2 through the use, ownership, control or possession by the
3 defendant of tangible property situated within this State either at
4 the time of the first use, ownership, control or possession or at
5 the time the action is commenced; or
6 c. A claim that the defendant return, restore, or account to the
7 plaintiff for any asset or thing of value which was within this
8 State at the time the defendant acquired possession or control
9 over it.
- 10 (7) Deficiency Judgment on Local Foreclosure or Resale. – In any action to
11 recover a deficiency judgment upon an obligation secured by a
12 mortgage, deed of trust, conditional sale, or other security instrument
13 executed by the defendant or his predecessor to whose obligation the
14 defendant has succeeded and the deficiency is claimed either:
15 a. In an action in this State to foreclose such security instrument
16 upon real property, tangible personal property, or an intangible
17 represented by an indispensable instrument, situated in this State;
18 or
19 b. Following sale of real or tangible personal property or an
20 intangible represented by an indispensable instrument in this
21 State under a power of sale contained in any security instrument.
- 22 (8) Director or Officer of a Domestic Corporation. – In any action against a
23 defendant who is or was an officer or director of a domestic corporation
24 where the action arises out of the defendant's conduct as such officer or
25 director or out of the activities of such corporation while the defendant
26 held office as a director or officer.
- 27 (9) Taxes or Assessments. – In any action for the collection of taxes or
28 assessments levied, assessed or otherwise imposed by a taxing authority
29 of this State after the date of ratification of this act.
- 30 (10) Insurance or Insurers. – In any action which arises out of a contract of
31 insurance as defined in G.S. 58-1-10 made anywhere between the
32 plaintiff or some third party and the defendant and in addition either:
33 a. The plaintiff was a resident of this State when the event occurred
34 out of which the claim arose; or
35 b. The event out of which the claim arose occurred within this
36 State, regardless of where the plaintiff resided.
- 37 (11) Personal Representative. – In any action against a personal
38 representative to enforce a claim against the deceased person
39 represented, whether or not the action was commenced during the
40 lifetime of the deceased, where one or more of the grounds stated in
41 subdivisions (2) to (10) of this section would have furnished a basis for
42 jurisdiction over the deceased had he been living.

1 (12) Marital Relationship. – In any action under Chapter 50 that arises out of
2 the marital relationship within this State, notwithstanding subsequent
3 departure from the State, if the other party to the marital relationship
4 continues to reside in this State.

5 (13) Transmitting Unsolicited Bulk Electronic Mail. – Transmitting or
6 causing the transmission of unsolicited bulk electronic mail to or
7 through an electronic mail service provider's computer network located
8 in this State shall constitute an act within the State. For purposes of this
9 subdivision, "computer network" and "electronic mail service
10 provider" shall have the same meanings as those contained in G.S. 14-
11 453."

12 Section 2. G.S. 14-453 reads as rewritten:

13 **"§ 14-453. Definitions.**

14 As used in this Article, unless the context clearly requires otherwise, the following
15 terms have the meanings specified:

16 (1) "Access" means to instruct, communicate with, cause input, cause
17 output, cause data processing, or otherwise make use of any resources of
18 a computer, computer system, or computer network.

19 (1a) "Authorization" means having the consent or permission of the owner, or
20 of the person licensed or authorized by the owner to grant consent or
21 permission to access a computer, computer system, or computer
22 network in a manner not exceeding the consent or permission.

23 (2) "Computer" means an internally programmed, automatic device that
24 performs data processing or telephone switching.

25 (3) "Computer network" means the interconnection of communication
26 systems with a computer through remote terminals, or a complex
27 consisting of two or more interconnected computers or telephone
28 switching equipment.

29 (4) "Computer program" means an ordered set of data that are coded
30 instructions or statements that when executed by a computer cause the
31 computer to process data.

32 (4a) "Computer services" means computer time or services, including data
33 processing services, Internet services, electronic mail services,
34 electronic message services, or information or data stored in connection
35 with any of these services.

36 (5) "Computer software" means a set of computer programs, procedures and
37 associated documentation concerned with the operation of a computer,
38 computer system, or computer network.

39 (6) "Computer system" means at least one computer together with a set of
40 related, connected, or unconnected peripheral devices.

41 (6a) "Data" means a representation of information, facts, knowledge,
42 concepts, or instructions prepared in a formalized or other manner and
43 intended for use in a computer, computer system, or computer network.

1 Data may be embodied in any form including, but not limited to,
2 computer printouts, magnetic storage media, and punch cards, or may be
3 stored internally in the memory of a computer.

4 (6b) "Electronic mail service provider" means any person who (i) is an
5 intermediary in sending or receiving electronic mail and (ii) provides to
6 end-users of electronic mail services the ability to send or receive
7 electronic mail.

8 (7) "Financial instrument" includes any check, draft, money order,
9 certificate of deposit, letter of credit, bill of exchange, credit card or
10 marketable security, or any electronic data processing representation
11 thereof.

12 (8) "Property" includes financial instruments, information, including
13 electronically processed or produced data, and computer software and
14 computer programs in either machine or human readable form, and any
15 other tangible or intangible item of value.

16 (8a) "Resource" includes peripheral devices, computer software, computer
17 programs, and data, and means to be a part of a computer, computer
18 system, or computer network.

19 (9) "Services" includes computer time, data processing and storage
20 functions."

21 Section 3. Article 60 of Chapter 14 of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 14-457. Computer trespass; penalty; damages.**

24 (a) It shall be unlawful for any person to use a computer or computer network
25 without authority and with the intent to do any of the following:

26 (1) Temporarily or permanently remove, halt, or otherwise disable any
27 computer data, computer programs, or computer software from a
28 computer or computer network.

29 (2) Cause a computer to malfunction, regardless of how long the
30 malfunction persists.

31 (3) Alter or erase any computer data, computer programs, or computer
32 software.

33 (4) Cause physical injury to the property of another.

34 (5) Make or cause to be made an unauthorized copy, in any form, including,
35 but not limited to, any printed or electronic form of computer data,
36 computer programs, or computer software residing in, communicated
37 by, or produced by a computer or computer network.

38 (6) Falsify or forge electronic mail transmission information or other
39 routing information in any manner in connection with the transmission
40 of unsolicited bulk electronic mail through or into the computer network
41 of an electronic mail service provider or its subscribers.

42 (b) It shall be unlawful for any person to sell, give, or otherwise distribute or
43 possess with the intent to sell, give, or distribute software which (i) is primarily designed

1 or produced for the purpose of facilitating or enabling the falsification of electronic mail
2 transmission information or other routing information; (ii) has only limited commercially
3 significant purpose or use other than to facilitate or enable the falsification of electronic
4 mail transmission information or other routing information; or (iii) is marketed by that
5 person or another acting in concert with that person with that person's knowledge for use
6 in facilitating or enabling the falsification of electronic mail transmission information or
7 other routing information.

8 (c) Any person who violates this section shall be guilty of computer trespass,
9 which offense shall be punishable as a Class 3 misdemeanor. If there is damage to the
10 property of another valued at two thousand five hundred dollars (\$2,500) or more caused
11 by the person's reckless disregard for the consequences of his act in violation of this
12 section, the offense shall be punished as a Class 1 misdemeanor. If there is damage to the
13 property of another valued at two thousand five hundred dollars (\$2,500) or more, caused
14 by the person's malicious act in violation of this section, the offense shall be punished as
15 a Class G felony.

16 (d) Any person whose property or person is injured by reason of a violation of this
17 section may sue for and recover for any damages sustained and the costs of the suit.
18 Without limiting the general of the term, "damages" shall include loss of profits. If the
19 injury arises from the transmission of unsolicited bulk electronic mail, the injured person,
20 other than an electronic mail service provider, may also recover attorneys' fees, and may
21 elect, in lieu of actual damages, to recover the lesser of ten dollars (\$10.00) for each and
22 every unsolicited bulk electronic mail message transmitted in violation of this section, or
23 twenty-five thousand dollars (\$25,000) per day. The injured person shall not have a
24 cause of action against the electronic mail service provider which merely transmits the
25 unsolicited bulk electronic mail over its computer network. If the injury arises from the
26 transmission of unsolicited bulk electronic mail, an injured electronic mail service
27 provider may also recover attorneys' fees and costs, and may elect, in lieu of actual
28 damages, to recover the greater of ten dollars (\$10.00) for each and every unsolicited
29 bulk electronic mail message transmitted in violation of this section, or twenty-five
30 thousand dollars (\$25,000) per day.

31 (e) A civil action under this section shall be commenced before expiration of the
32 time period prescribed in G.S. 1-54. In actions alleging injury arising from the
33 transmission of unsolicited bulk electronic mail, personal jurisdiction may be exercised
34 pursuant to G.S. 1-75.4(13)."

35 Section 4. This act becomes effective October 1, 1999.