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SENATE BILL 288
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Short Title: Unsolicited Comm. Elec. Bulk Mail.

(Public)

Sponsors:

Referred to:

March 8, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND NORTH CAROLINA'S "LONG ARM
3 JURISDICTION" STATUTE TO INCLUDE SENDERS OF UNSOLICITED
4 ELECTRONIC BULK COMMERCIAL MAIL AND TO MAKE THE SENDING OF
5 UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL UNLAWFUL IN
6 THIS STATE.

7 The General Assembly of North Carolina enacts:

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

9 **"§ 1-75.4. Personal jurisdiction, grounds for generally.**

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

- 13 ...
14 (4) Local Injury; Foreign Act. – In any action for wrongful death occurring
15 within this State or in any action claiming injury to person or property
16 within this State arising out of an act or omission outside this State by

1 the defendant, provided in addition that at or about the time of the injury
2 either:

- 3 a. Solicitation or services activities were carried on within this State
4 by or on behalf of the defendant; ~~or~~
- 5 b. Products, materials or thing processed, serviced or manufactured
6 by the defendant were used or consumed, within this State in the
7 ordinary course of ~~trade-~~trade; or
- 8 c. Unsolicited bulk commercial electronic mail was sent into or
9 within this State by the defendant using a computer, computer
10 network, or the computer services of an electronic mail service
11 provider in contravention of the authority granted by or in
12 violation of the policies set by the electronic mail service
13 provider. Transmission of commercial electronic mail from an
14 organization to its members shall not be deemed to be unsolicited
15 bulk commercial electronic mail."

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

17 **"§ 14-453. Definitions.**

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

- 20 (1) "Access"means to instruct, communicate with, cause input, cause
21 output, cause data processing, or otherwise make use of any resources of
22 a computer, computer system, or computer network.
- 23 (1a) "Authorization"means having the consent or permission of the owner, or
24 of the person licensed or authorized by the owner to grant consent or
25 permission to access a computer, computer system, or computer
26 network in a manner not exceeding the consent or permission.
- 27 (1b) "Commercial electronic mail"means messages sent and received
28 electronically consisting of commercial advertising material, the
29 principal purpose of which is to promote the for-profit sale or lease of
30 goods or services to the recipient.
- 31 (2) "Computer"means an internally programmed, automatic device that
32 performs data processing or telephone switching.
- 33 (3) "Computer network"means the interconnection of communication
34 systems with a computer through remote terminals, or a complex
35 consisting of two or more interconnected computers or telephone
36 switching equipment.
- 37 (4) "Computer program"means an ordered set of data that are coded
38 instructions or statements that when executed by a computer cause the
39 computer to process data.
- 40 (4a) "Computer services"means computer time or services, including data
41 processing services, Internet services, electronic mail services,
42 electronic message services, or information or data stored in connection
43 with any of these services.

- 1 (5) "Computer software" means a set of computer programs, procedures and
2 associated documentation concerned with the operation of a computer,
3 computer system, or computer network.
- 4 (6) "Computer system" means at least one computer together with a set of
5 related, connected, or unconnected peripheral devices.
- 6 (6a) "Data" means a representation of information, facts, knowledge,
7 concepts, or instructions prepared in a formalized or other manner and
8 intended for use in a computer, computer system, or computer network.
9 Data may be embodied in any form including, but not limited to,
10 computer printouts, magnetic storage media, and punch cards, or may be
11 stored internally in the memory of a computer.
- 12 (6b) "Electronic mail service provider" means any person who (i) is an
13 intermediary in sending or receiving electronic mail and (ii) provides to
14 end users of electronic mail services the ability to send or receive
15 electronic mail.
- 16 (7) "Financial instrument" includes any check, draft, money order,
17 certificate of deposit, letter of credit, bill of exchange, credit card or
18 marketable security, or any electronic data processing representation
19 thereof.
- 20 (8) "Property" includes financial instruments, information, including
21 electronically processed or produced data, and computer software and
22 computer programs in either machine or human readable form, and any
23 other tangible or intangible item of value.
- 24 (8a) "Resource" includes peripheral devices, computer software, computer
25 programs, and data, and means to be a part of a computer, computer
26 system, or computer network.
- 27 (9) "Services" includes computer time, data processing and storage
28 functions.
- 29 (10) "Unsolicited" means not addressed to a recipient with whom the initiator
30 has an existing business or personal relationship and not sent at the
31 request of, or with the express consent of, the recipient."

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

34 **"§ 14-458. Computer trespass; penalty.**

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

- 37 (1) Temporarily or permanently remove, halt, or otherwise disable any
38 computer data, computer programs, or computer software from a
39 computer or computer network.
- 40 (2) Cause a computer to malfunction, regardless of how long the
41 malfunction persists.
- 42 (3) Alter or erase any computer data, computer programs, or computer
43 software.

- 1 (4) Cause physical injury to the property of another.
2 (5) Make or cause to be made an unauthorized copy, in any form, including,
3 but not limited to, any printed or electronic form of computer data,
4 computer programs, or computer software residing in, communicated
5 by, or produced by a computer or computer network.
6 (6) Falsely identify with the intent to deceive or defraud the recipient or
7 forge commercial electronic mail transmission information or other
8 routing information in any manner in connection with the transmission
9 of unsolicited bulk commercial electronic mail through or into the
10 computer network of an electronic mail service provider or its
11 subscribers.

12 For purposes of this subsection, a person is "without authority" when (i) the person
13 has no right or permission of the owner to use a computer, or the person uses a computer
14 in a manner exceeding the right or permission, or (ii) the person uses a computer or
15 computer network, or the computer services of an electronic mail service provider to
16 transmit unsolicited bulk commercial electronic mail in contravention of the authority
17 granted by or in violation of the policies set by the electronic mail service provider.

18 (b) Any person who violates this section shall be guilty of computer trespass,
19 which offense shall be punishable as a Class 3 misdemeanor. If there is damage to the
20 property of another and the damage is valued at less than two thousand five hundred
21 dollars (\$2,500) caused by the person's act in violation of this section, the offense shall be
22 punished as a Class 1 misdemeanor. If there is damage to the property of another valued
23 at two thousand five hundred dollars (\$2,500) or more caused by the person's act in
24 violation of this section, the offense shall be punished as a Class I felony.

25 (c) Any person whose property or person is injured by reason of a violation of this
26 section may sue for and recover any damages sustained and the costs of the suit pursuant
27 to G.S. 1-539.2A."

28 Section 4. Article 43 of Chapter 1 of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 1-539.2A. Damages for computer trespass.**

31 (a) Any person whose property or person is injured by reason of a violation of
32 G.S. 14-458 may sue for and recover any damages sustained and the costs of the suit.
33 Without limiting the general of the term, "damages" shall include loss of profits. If the
34 injury arises from the transmission of unsolicited bulk commercial electronic mail, the
35 injured person, other than an electronic mail service provider, may also recover attorneys'
36 fees and may elect, in lieu of actual damages, to recover the lesser of ten dollars (\$10.00)
37 for each and every unsolicited bulk commercial electronic mail message transmitted in
38 violation of this section, or twenty-five thousand dollars (\$25,000) per day. The injured
39 person shall not have a cause of action against the electronic mail service provider which
40 merely transmits the unsolicited bulk commercial electronic mail over its computer
41 network. If the injury arises from the transmission of unsolicited bulk commercial
42 electronic mail, an injured electronic mail service provider may also recover attorneys'
43 fees and costs and may elect, in lieu of actual damages, to recover the greater of ten

1 dollars (\$10.00) for each and every unsolicited bulk commercial electronic mail message
2 transmitted in violation of this section, or twenty-five thousand dollars (\$25,000) per day.

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

7 Section 5. This act becomes effective December 1, 1999. Section 3 of this act
8 applies to offenses occurring on or after December 1, 1999. Section 4 of this act applies
9 to violations of G.S. 14-458 occurring on or after December 1, 1999.