

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 288

Information Technology Committee Substitute Adopted 4/22/99

Short Title: Unsolicited Comm. Elec. Bulk Mail.

(Public)

Sponsors:

Referred to:

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 COMMERCIAL MAIL AND TO MAKE THE SENDING OF UNSOLICITED ELECTRONIC BULK COMMERCIAL 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:

- (4) Local Injury; Foreign Act. - In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury either:

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

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

15 **"§ 14-453. Definitions.**

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

- 18 (1) "Access"means to instruct, communicate with, cause input, cause
19 output, cause data processing, or otherwise make use of any resources of
20 a computer, computer system, or computer network.
21 (1a) "Authorization"means having the consent or permission of the owner, or
22 of the person licensed or authorized by the owner to grant consent or
23 permission to access a computer, computer system, or computer
24 network in a manner not exceeding the consent or permission.
25 (2) "Computer"means an internally programmed, automatic device that
26 performs data processing or telephone switching.
27 (3) "Computer network"means the interconnection of communication
28 systems with a computer through remote terminals, or a complex
29 consisting of two or more interconnected computers or telephone
30 switching equipment.
31 (4) "Computer program"means an ordered set of data that are coded
32 instructions or statements that when executed by a computer cause the
33 computer to process data.
34 (4a) "Computer services"means computer time or services, including data
35 processing services, Internet services, electronic mail services,
36 electronic message services, or information or data stored in connection
37 with any of these services.
38 (5) "Computer software"means a set of computer programs, procedures and
39 associated documentation concerned with the operation of a computer,
40 computer system, or computer network.
41 (6) "Computer system"means at least one computer together with a set of
42 related, connected, or unconnected peripheral devices.

- 1 (6a) "Data" means a representation of information, facts, knowledge,
2 concepts, or instructions prepared in a formalized or other manner and
3 intended for use in a computer, computer system, or computer network.
4 Data may be embodied in any form including, but not limited to,
5 computer printouts, magnetic storage media, and punch cards, or may be
6 stored internally in the memory of a computer.
- 7 (6b) "Electronic mail service provider" means any person who (i) is an
8 intermediary in sending or receiving electronic mail and (ii) provides to
9 end-users of electronic mail services the ability to send or receive
10 electronic mail.
- 11 (7) "Financial instrument" includes any check, draft, money order,
12 certificate of deposit, letter of credit, bill of exchange, credit card or
13 marketable security, or any electronic data processing representation
14 thereof.
- 15 (8) "Property" includes financial instruments, information, including
16 electronically processed or produced data, and computer software and
17 computer programs in either machine or human readable form, and any
18 other tangible or intangible item of value.
- 19 (8a) "Resource" includes peripheral devices, computer software, computer
20 programs, and data, and means to be a part of a computer, computer
21 system, or computer network.
- 22 (9) "Services" includes computer time, data processing and storage
23 functions.
- 24 (10) "Spam" includes unsolicited bulk commercial electronic mail, sent by a
25 person using a computer, computer network, or the computer services of
26 an electronic mail service provider in contravention of the authority
27 granted by or in violation of the policies set by the electronic mail
28 service provider. Transmission of commercial electronic mail from an
29 organization to its members shall not be deemed to be unsolicited bulk
30 commercial electronic mail."

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

33 **"§ 14-458. Computer trespass; penalty; damages.**

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

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

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

5 (6) Falsify or forge commercial electronic mail transmission information or
6 other routing information in any manner in connection with the
7 transmission of unsolicited bulk commercial electronic mail through or
8 into the computer network of an electronic mail service provider or its
9 subscribers.

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

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

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

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

42 Section 4. This act becomes effective October 1, 1999. Section 3 of the act
43 applies to offenses occurring on or after October 1, 1999.