

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 288
RATIFIED BILL

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

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

"§ 14-453. Definitions.

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

- (1) "Access" means to instruct, communicate with, cause input, cause output, cause data processing, or otherwise make use of any resources of a computer, computer system, or computer network.
- (1a) "Authorization" means having the consent or permission of the owner, or of the person licensed or authorized by the owner to grant consent or permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.
- (1b) " Commercial electronic mail" means messages sent and received electronically consisting of commercial advertising material, the principal purpose of which is to promote the for-profit sale or lease of goods or services to the recipient.

- (2) " Computer" means an internally programmed, automatic device that performs data processing or telephone switching.
- (3) " Computer network" means the interconnection of communication systems with a computer through remote terminals, or a complex consisting of two or more interconnected computers or telephone switching equipment.
- (4) " Computer program" means an ordered set of data that are coded instructions or statements that when executed by a computer cause the computer to process data.
- (4a) " Computer services" means computer time or services, including data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection with any of these services.
- (5) " Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer, computer system, or computer network.
- (6) " Computer system" means at least one computer together with a set of related, connected, or unconnected peripheral devices.
- (6a) " Data" means a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer, computer system, or computer network. Data may be embodied in any form including, but not limited to, computer printouts, magnetic storage media, and punch cards, or may be stored internally in the memory of a computer.
- (6b) " Electronic mail service provider" means any person who (i) is an intermediary in sending or receiving electronic mail and (ii) provides to end users of electronic mail services the ability to send or receive electronic mail.
- (7) " Financial instrument" includes any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security, or any electronic data processing representation thereof.
- (8) " Property" includes financial instruments, information, including electronically processed or produced data, and computer software and computer programs in either machine or human readable form, and any other tangible or intangible item of value.
- (8a) " Resource" includes peripheral devices, computer software, computer programs, and data, and means to be a part of a computer, computer system, or computer network.
- (9) " Services" includes computer time, data processing and storage functions.
- (10) " Unsolicited" means not addressed to a recipient with whom the initiator has an existing business or personal relationship and not sent at the request of, or with the express consent of, the recipient."

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

"§ 14-458. Computer trespass; penalty.

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

- (1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.
- (2) Cause a computer to malfunction, regardless of how long the malfunction persists.

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

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 15th day of June, 1999.

Dennis A. Wicker
President of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 19