

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SENATE BILL 1295
RATIFIED BILL**

**AN ACT TO INCREASE PROTECTIONS FOR CONSUMERS WHO RECEIVE
UNSOLICITED FACSIMILES.**

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Unsolicited Facsimiles.

"§ 75-115. The following definitions apply in this Article:

- (1) Established business relationship. –

 - a. A relationship between a seller and a consumer based on:

 1. The consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and the seller or one or more of its affiliates within the 18 months immediately preceding the date of an unsolicited advertisement; or
 2. The consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of an unsolicited advertisement.
 - b. A relationship between a tax-exempt nonprofit organization and a person based on:

 1. The person's association with the tax-exempt nonprofit organization as a member, contributor, or volunteer of the tax-exempt nonprofit organization within the 18 months immediately preceding the date of an unsolicited advertisement;
 2. The person's subscription to or use of the services of the tax-exempt nonprofit organization within the 18 months immediately preceding the date of an unsolicited advertisement; or
 3. The person's inquiry regarding the tax-exempt nonprofit organization within the three months immediately preceding the date of an unsolicited advertisement.
- (2) Telephone facsimile machine. – Equipment that has the capacity to do either or both of the following:

 - a. Transcribe text or images or both from paper into an electronic signal and to transmit that signal over a regular telephone line.
 - b. Transcribe text or images or both from an electronic signal received over a regular telephone line onto paper.
- (3) Unsolicited advertisement. – Any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a specific or unlimited number of

advertisements and may be obtained for a specific or unlimited period of time.

"§ 75-116. Prohibition of unsolicited facsimiles; exception.

(a) No person or entity, if either the person or entity or the recipient is located within the State of North Carolina, shall (i) use any telephone facsimile machine, computer, or other device to send or (ii) cause another person or entity to use a telephone facsimile machine to send an unsolicited advertisement to a telephone facsimile machine.

(b) This section shall not apply to a person or entity that has an established business relationship with the recipient of the facsimile. However, the person or entity who sends an unsolicited advertisement under this subsection shall provide a notice in the unsolicited advertisement that: (i) is clear and conspicuous and on the first page of the unsolicited advertisement; (ii) states that the recipient may make a request to the sender to "do not send" any future unsolicited advertisements to a telephone facsimile machine and that the sender's failure to comply with the request is unlawful; and (iii) includes a toll-free domestic telephone number or facsimile machine number that the recipient may call at any time on any day of the week to transmit a request to "do not send" future facsimiles.

"§ 75-117. Facsimiles to contain identifying material.

(a) It shall be a violation of this Article for any person or entity, if either the person or entity or the recipient is located in the State of North Carolina, to do either of the following:

- (1) Initiate any communication using a telephone facsimile machine that does not clearly mark in a margin at the top or bottom of each transmitted page or on the first page of each transmission the date and time sent; an identification of the business, other entity, or person sending the message, and the telephone number of the sending machine or of the business, other entity, or person.
- (2) Use a computer or other electronic device to send any message via a telephone facsimile machine unless it is clearly marked in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission the date and time it is sent, the identification of the business, other entity, or person sending the message, and the telephone number of the sending machine or of the business, other entity, or person.

(b) This section shall not apply to a facsimile sent by or on behalf of a professional or trade association that is a tax-exempt nonprofit organization and in furtherance of the association's tax-exempt purpose to a member of the association if all of the following conditions are met:

- (1) The member voluntarily provided the association the facsimile number to which the facsimile was sent.
- (2) The facsimile is not primarily for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.
- (3) The member who is sent the facsimile has not requested that the association stop sending facsimiles.

"§ 75-118. Enforcement.

(a) A person or entity who receives an unsolicited advertisement in violation of this Article may bring any of the following actions in civil court:

- (1) An action to enjoin further violations of this Article by the person or entity who sent the unsolicited advertisement.
- (2) An action to recover five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(b) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in the act or practice, and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(c) Actions brought by a person or entity pursuant to this section shall be tried in the county where the plaintiff resides at the time of the commencement of the action.

(d) This section shall not be construed to alter or restrict any remedy a person may have under federal law, including the Junk Fax Prevention Act of 2005, against a person or entity who sends an unsolicited advertisement.

(e) A violation of G.S. 75-116 is a violation of G.S. 75-1.1."

SECTION 2. This act becomes effective September 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2006