

NORTH CAROLINA

Sections 1-539.2A and 14-458, and portions of Sections 1-75.4 and 14-453, of the *General Statutes of North Carolina* govern the transmission of unsolicited bulk commercial electronic mail. Those provisions:

- Apply to email sent into or within North Carolina, using the equipment of a North Carolina-based service provider, in violation of the service provider's conditions of use;
- Forbid a sender to falsify the routing information of an email with the intention to defraud;
- Entitle a recipient or service provider harmed by a violation to sue a violator for damages, costs, and attorney's fees; and
- Impose criminal penalties on violators.

N.C. Gen. Stat.

§1-75.4. Jurisdiction of State Courts

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) 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:

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

(2) In any action which may be brought under statutes of this State that specifically confer grounds for personal jurisdiction.

(3) In any action claiming injury to person or property or for wrongful death within or without this State arising out of an act or omission within this State by the defendant.

(4) 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:

- (4)a. Solicitation or services activities were carried on within this State by or on behalf of the defendant; or
- (4)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; or
- (4)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.

(5) In any action which:

(5)a. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this State or to pay for services to be performed in this State by the plaintiff;

or

(5)b. Arises out of services actually performed for the plaintiff by the defendant within this State, or services actually performed for the defendant by the plaintiff within this State if such performance within this State was authorized or ratified by the defendant; or

(5)c. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this State, or to ship from this State goods, documents of title, or other things of value; or

(5)d. Relates to goods, documents of title, or other things of value shipped from this State by the plaintiff to the defendant on his order or direction; or

(5)e. Relates to goods, documents of title, or other things of value actually received by the plaintiff in this State from the defendant through a carrier without regard to where delivery to the carrier occurred.

(6) In any action which arises out of:

(6)a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or

(6)b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

(6)c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this State at the time the defendant acquired possession or control over it.

(6)d. A claim related to a loan made in this State or deemed to have been made in this State under §24-2.1, regardless of the situs of the lender, assignee, or other holder of the loan note and regardless of whether the loan payment or fee is received through a loan servicer, provided that: (i) the loan was made to a borrower who is a resident of this State, (ii) the loan is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust on real property situated in this State upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families.

(7) In any action to recover a deficiency judgment upon an obligation secured by a mortgage, deed of trust, conditional sale, or other security instrument executed by the defendant or his predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

(7)a. In an action in this State to foreclose such security instrument upon real property, tangible personal property, or an intangible represented by an indispensable instrument, situated in this State; or

(7)b. Following sale of real or tangible personal property or an intangible represented by an indispensable instrument in this State under a power of sale

contained in any security instrument.

(8) In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

(9) In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this State after the date of ratification of this act.

(10) In any action which arises out of a contract of insurance as defined in §58-1-10 made anywhere between the plaintiff or some third party and the defendant and in addition either:

(10)a. The plaintiff was a resident of this State when the event occurred out of which the claim arose; or

(10)b. The event out of which the claim arose occurred within this State, regardless of where the plaintiff resided.

(11) In any action against a personal representative to enforce a claim against the deceased person represented, whether or not the action was commenced during the lifetime of the deceased, where one or more of the grounds stated in subdivisions (2) to (10) of this section would have furnished a basis for jurisdiction over the deceased had he been living.

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

Created by Chapter 954, §§2 and 10, Session Laws of 1967. Amended by Chapter 803, §1, Session Laws of 1969; Chapter 815, §4, Session Laws of 1981; Chapter 231, §1, Session Laws of 1983; Chapter 389, §1, Session Laws of 1995; Chapter 212, §1, Session Laws of 1999, effective December 1, 1999; and Chapter 351, §2, Session Laws of 2007, effective August 16, 2007.

§1-539.2A. Remedies Available to Victim of Computer Crime

(a) Any person whose property or person is injured by reason of a violation of §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 \$10 for each and every unsolicited bulk commercial electronic mail message transmitted in violation of this section, or \$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 \$10 for each and every unsolicited bulk commercial electronic mail message transmitted in violation of this section, or \$25,000 per day.

(b) A civil action under this section shall be commenced before expiration of the time period

prescribed in §1-54. In actions alleging injury arising from the transmission of unsolicited bulk commercial electronic mail, personal jurisdiction may be exercised pursuant to §1-75.4. *Created by Chapter 212, §4, Session Laws of 1999, effective December 1, 1999. Amended by Chapter 456, §8, Session Laws of 1999, effective December 1, 1999.*

§14-453. Definitions Pertaining to Computer Crimes

As used in this Article [§§14-453 - 14-458], 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 computer printouts, magnetic storage media, optical storage media, and punch cards, or may be stored internally in the memory of a computer.

(6b) "Electronic mail" means the same as the term is defined in §14-196.3(a)(2).

(6c) "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.

(7a) "Government computer" means any computer, computer program, computer system, computer network, or any part thereof, that is owned, operated, or used by any State or local governmental entity.

(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.

Created by Chapter 831, §1, Session Laws of 1979. Amended by Chapter 764, §1, Session Laws of 1994; Chapter 212, §2, Session Laws of 1999, effective December 1, 1999; Chapter 125, §3, Session Laws of 2000, effective December 1, 2000; and Chapter 157, §1, Session Laws of 2002, effective December 1, 2002.

§14-458. Offenses Involving Computers

(a) Except as otherwise made unlawful by this Article, 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:

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

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

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

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

(a)(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.

(a)(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 \$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 \$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 §1-539.2A.

Created by Chapter 212, §3, Session Laws of 1999, effective December 1, 1999. Amended by Chapter 125, §7, Session Laws of 2000, effective December 1, 2000.