

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1347
Committee Substitute Favorable 9/3/98

Short Title: Prohibit Internet Taxation.

(Public)

Sponsors:

Referred to:

May 20, 1998

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT THE STATE SHALL NOT TAX INTERNET
2 ACCESS CHARGES, SHALL ENFORCE SALES TAXES ON INTERNET
3 COMMERCE ONLY TO THE SAME EXTENT IT ENFORCES SALES TAX ON
4 MAIL-ORDER COMMERCE, AND SHALL IMPOSE NO NEW TAXES ON THE
5 INTERNET OR INTERNET COMMERCE, AND TO IMPOSE LIABILITY ON
6 THOSE WHO TRANSMIT UNSOLICITED ITEMS OF ELECTRONIC MAIL
7 THAT INCLUDE ADVERTISEMENTS (SPAM).

8
9 The General Assembly of North Carolina enacts:

10 Section 1. It is the intent of the General Assembly that no new taxes shall be
11 authorized on Internet access charges, the Internet, or Internet commerce.

12 Section 2. The Department of Revenue shall enforce the sales and use tax
13 laws with respect to Internet commerce only to the same extent it enforces the sales and
14 use tax laws with respect to mail-order commerce.

15 Section 3. (a) There are a large number of computer systems in State government
16 with Internet E-mail access, some of them serving agencies and State employees, and
17 some of them serving students in The University of North Carolina System, community
18 colleges, and public schools. SPAM requires more network resources, telephone line
19 charges, online time, diversion of productive time of employees and students, and other
20 needless expense in the State budget for fiscal year 1998-99, which can be reduced by
21 eliminating SPAM.

22 (b) Subchapter XIV of Chapter 1 of the General Statutes is amended by
23 adding a new Article to read:

1 "ARTICLE 43E.

2 "Unsolicited Electronic Mail Advertisements.

3 "**§ 1-539.25. Definitions.**

4 As used in this Article, the following definitions apply:

- 5 (1) 'Advertisement' means material that:
- 6 a. Advertises for commercial purposes the availability or the
- 7 quality of real property, goods, or services; or
- 8 b. Is otherwise designed or intended to solicit a person to purchase
- 9 real property, goods, or services.
- 10 (2) 'Electronic mail' means a message, a file or other information that is
- 11 transmitted through a local, regional, or global network, regardless of
- 12 whether the message, file or other information is:
- 13 a. Viewed;
- 14 b. Stored for retrieval at a later time;
- 15 c. Printed onto paper or other similar material; or
- 16 d. Filtered or screened by a computer program that is designed or
- 17 intended to filter or screen items of electronic mail.
- 18 (3) 'Network' means a connection comprised of one or more computers
- 19 that may be accessed by a modem, electronic or optical technology, or
- 20 other similar means.
- 21 (4) 'Recipient' means a person who receives an item of electronic mail.

22 "**§ 1-539.26. Action for damages; exceptions; injunctive relief.**

23 (a) Except as otherwise provided in G.S. 1-539.27, if a person transmits or causes

24 to be transmitted to a recipient an item of electronic mail that includes an advertisement,

25 the person is liable to the recipient for civil damages unless:

- 26 (1) The person has a preexisting business or personal relationship with the
- 27 recipient;
- 28 (2) The recipient has expressly consented to receive the item of electronic
- 29 mail from the person; or
- 30 (3) The advertisement is readily identifiable as promotional, or contains a
- 31 statement providing that it is an advertisement, and clearly and
- 32 conspicuously provides:
- 33 a. The legal name, complete street address and electronic mail
- 34 address of the person transmitting the electronic mail; and
- 35 b. A notice that the recipient may decline to receive additional
- 36 electronic mail that includes an advertisement from the person
- 37 transmitting the electronic mail and the procedures for declining
- 38 such electronic mail.

39 (b) If a person is liable to a recipient pursuant to subsection (a) of this section, the

40 recipient may recover from the person:

- 41 (1) Actual damages or damages of ten dollars (\$10.00) per item of
- 42 electronic mail received, whichever is greater; and
- 43 (2) Attorneys' fees and costs.

1 (c) In addition to any other remedy that is allowed pursuant to law, the recipient
2 may apply to the district or superior court of the county in which the recipient resides
3 for an order enjoining the person from transmitting to the recipient any other item of
4 electronic mail that includes an advertisement.

5 **"§ 1-539.27. Immunity for persons who provide users with access to network;**
6 **applicability to items of electronic mail obtained voluntarily.**

7 (a) If a person provides users with access to a network and, as part of that
8 service, transmits items of electronic mail on behalf of those users, the person is
9 immune from liability for civil damages under this Article, unless the person transmits
10 an item of electronic mail that includes an advertisement he prepared or caused to be
11 prepared.

12 (b) The provisions of this Article, inclusive, do not apply to an item of electronic
13 mail that is obtained by a recipient voluntarily. This subsection includes, but is not
14 limited to, an item of electronic mail that is obtained by a recipient voluntarily from an
15 electronic bulletin board."

16 Section 4. Sections 1 and 2 of this act are effective when they become law
17 and apply to transactions occurring on or after April 15, 1998. Section 3 of this act
18 becomes effective December 1, 1998.