

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1295
Second Edition Engrossed 7/12/06

Short Title: Junk Faxes.

(Public)

Sponsors: Senators Dorsett; Albertson, Allran, Apodaca, Atwater, Berger of Rockingham, Blake, Bland, Clodfelter, Dalton, Dannelly, East, Forrester, Garrou, Garwood, Goodall, Graham, Hagan, Hartsell, Holloman, Hoyle, Jenkins, Lucas, Malone, Nesbitt, Presnell, Purcell, Stevens, Swindell, Tillman, and Weinstein.

Referred to: Rules and Operations of the Senate.

May 11, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE PROTECTIONS FOR CONSUMERS WHO RECEIVE
3 UNSOLICITED FACSIMILES.

4 The General Assembly of North Carolina enacts:

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

7 "Article 5.

8 "Unsolicited Facsimiles.

9 "§ 75-115. The following definitions apply in this Article:

10 (1) Established business relationship. – A relationship between a seller
11 and a consumer based on:

12 a. The consumer's purchase, rental, or lease of the seller's goods or
13 services or a financial transaction between the consumer and the
14 seller or one or more of its affiliates within the 18 months
15 immediately preceding the date of an unsolicited advertisement;
16 or

17 b. The consumer's inquiry or application regarding a product or
18 service offered by the seller within the three months
19 immediately preceding the date of an unsolicited advertisement.

20 (2) Telephone facsimile machine. – Equipment that has the capacity to do
21 either or both of the following:

22 a. Transcribe text or images or both from paper into an electronic
23 signal and to transmit that signal over a regular telephone line.

24 b. Transcribe text or images or both from an electronic signal
25 received over a regular telephone line onto paper.

1 (3) Unsolicited advertisement. – Any material advertising the commercial
2 availability or quality of any property, goods, or services that is
3 transmitted to any person or entity without that person's or entity's
4 prior express invitation or permission. Prior express invitation or
5 permission may be obtained for a specific or unlimited number of
6 advertisements and may be obtained for a specific or unlimited period
7 of time.

8 **"§ 75-116. Prohibition of unsolicited facsimiles; exception.**

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

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

24 **"§ 75-117. Facsimiles to contain identifying material.**

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

28 (1) Initiate any communication using a telephone facsimile machine that
29 does not clearly mark in a margin at the top or bottom of each
30 transmitted page or on the first page of each transmission the date and
31 time sent; an identification of the business, other entity, or person
32 sending the message, and the telephone number of the sending
33 machine or of the business, other entity, or person.

34 (2) Use a computer or other electronic device to send any message via a
35 telephone facsimile machine unless it is clearly marked in a margin at
36 the top or bottom of each transmitted page of the message or on the
37 first page of the transmission the date and time it is sent, the
38 identification of the business, other entity, or person sending the
39 message, and the telephone number of the sending machine or of the
40 business, other entity, or person.

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

1 (1) The member voluntarily provided the association the facsimile number
2 to which the facsimile was sent.

3 (2) The facsimile is not primarily for the purpose of advertising the
4 commercial availability or quality of any property, goods, or services
5 of one or more third parties.

6 (3) The member who is sent the facsimile has not requested that the
7 association stop sending facsimiles.

8 **"§ 75-118. Enforcement.**

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

11 (1) An action to enjoin further violations of this Article by the person or
12 entity who sent the unsolicited advertisement.

13 (2) An action to recover five hundred dollars (\$500.00) for the first
14 violation, one thousand dollars (\$1,000) for the second violation, and
15 five thousand dollars (\$5,000) for the third and any other violation that
16 occurs within two years of the first violation.

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

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

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

27 (e) A violation of this Article is a violation of G.S. 75-1.1."

28 **SECTION 2.** This act is effective when it becomes law.