

1 AN ACT concerning fax solicitation.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the  
5 Restricted Fax Registry Act.

6 Section 5. Definitions. As used in this Act:

7 (a) "Fax" means a communication sent to a telephone  
8 facsimile machine.

9 (b) "Telephone facsimile machine" has the meaning  
10 ascribed to that term in 47 U.S.C. 227.

11 (c) "Subscriber" means a person or entity that has  
12 subscribed to either telephone service from a local exchange  
13 company or public mobile services, as defined by Section  
14 13-214 of the Public Utilities Act.

15 (d) "Established business relationship" means the  
16 existence of an oral or written transaction, agreement,  
17 contract, or other legal state of affairs involving a person  
18 or entity and an existing customer under which both parties  
19 have a course of conduct or established pattern of activity  
20 for commercial or mercantile purposes and for the benefit or  
21 profit of both parties. A pattern of activity does not  
22 necessarily mean multiple previous contacts. The established  
23 business relationship must exist between the existing  
24 customer and the person or entity directly, and does not  
25 extend to any related business entity or other business  
26 organization of the person or entity or related to the person  
27 or entity or the person or entity's agent including but not  
28 limited to a parent corporation, subsidiary partnership,  
29 company or other corporation or affiliate.

30 (e) "Existing customer" means a person or entity that  
31 has either:

1           (1) entered into a transaction, agreement,  
2 contract, or other legal state of affairs with person or  
3 entity under which the payment or exchange of  
4 consideration for any goods or services has taken place  
5 within the preceding 18 months or has been arranged to  
6 take place at a future time; or

7           (2) opened or maintained a debit account, credit  
8 card account, or other credit or discount program offered  
9 by another person or entity and has not requested the  
10 other person or entity to close the account or terminate  
11 such program.

12           (f) "Registry" means the Restricted Fax Registry  
13 established under this Act.

14           (g) "Fax solicitation" means a fax sent for the purpose  
15 of encouraging the purchase or rental of, or investment in,  
16 property, goods, or services or for the purpose of soliciting  
17 charitable contributions but does not include communications:

18           (1) to any subscriber with that subscriber's prior  
19 express invitation or permission. A fax solicitation is  
20 presumed not to be made at the express request of a  
21 subscriber if one of the following occurs, as applicable:

22           (A) the fax solicitation is made more than 30  
23 business days after the last date on which the  
24 subscriber contacted a business with the purpose of  
25 inquiring about the potential purchase of goods or  
26 services;

27           (B) the fax solicitation is made more than 30  
28 business days after the last date on which the  
29 subscriber consented to be contacted;

30           (C) The fax solicitation is made more than 30  
31 business days after a product or service becomes  
32 available where the subscriber has made a request to  
33 the business for that product or service that is not  
34 then available, and requests a fax when the product

1 or service becomes available;

2 (2) by or on behalf of any person or entity with  
3 whom a subscriber has an established business  
4 relationship that has not been terminated in writing by  
5 either party and which is related to the nature of the  
6 established business relationship;

7 (3) by or on behalf of any person or entity with  
8 whom a subscriber is an existing customer, unless the  
9 customer has stated to the person or entity or the person  
10 or entity's agent that he or she no longer wishes to  
11 receive fax solicitations from the person or entity, or  
12 unless the nature of the fax is unrelated to the  
13 established business relationship with the existing  
14 customer.

15 Section 10. Fax solicitation prohibited. Beginning July  
16 1, 2004, no person or entity may make or cause to be made any  
17 fax solicitation to any subscriber more than 45 days after  
18 the subscriber's telephone number or numbers first appear on  
19 the Registry.

20 Section 15. Complaints. The Illinois Commerce Commission  
21 shall receive fax solicitation complaints from subscribers to  
22 object to such fax solicitations. Complaints shall be taken  
23 by any means deemed appropriate by the Illinois Commerce  
24 Commission.

25 Section 20. Registry; establishment and maintenance.

26 (a) The Illinois Commerce Commission shall establish and  
27 provide for the operation of a Restricted Fax Registry, which  
28 shall contain a list of the telephone numbers of subscribers  
29 who do not wish to receive fax solicitations. The Illinois  
30 Commerce Commission may contract with a private vendor to  
31 establish and maintain the Registry if the contract requires

1 the vendor to provide the Registry in a printed hard copy  
2 format, in an electronic format, and in any other format  
3 prescribed by the Illinois Commerce Commission. Any person or  
4 entity conducting fax solicitations within the State of  
5 Illinois shall purchase the Restricted Fax Registry and  
6 updates exclusively from the Illinois Commerce Commission.  
7 Failure to do so prior to conducting fax solicitations is a  
8 violation subject to the penalties in Section 35 of this Act.

9 (b) No later than January 1, 2004, the Illinois Commerce  
10 Commission shall adopt rules consistent with this Act that  
11 the Illinois Commerce Commission deems necessary and  
12 appropriate to fully implement this Act. The rules shall  
13 include, at a minimum, methods by which any person or entity  
14 desiring to make fax solicitations may obtain access to the  
15 Registry to avoid directing fax solicitations to the  
16 telephone numbers of subscribers included in the Registry.

17 (c) The fee for obtaining the Registry and updates shall  
18 be set forth in rules adopted by the Illinois Commerce  
19 Commission. The fee may not exceed \$1,000 annually and may  
20 not exceed the costs incurred by the Commission in the  
21 preparation, maintenance, production, and distribution of the  
22 Registry. All copies requested in a printed hard copy format  
23 shall be assessed a per page fee to be determined by rules  
24 adopted by the Illinois Commerce Commission.

25 (d) The Illinois Commerce Commission shall update the  
26 Registry and make information in the Registry available on a  
27 quarterly basis in an electronic format that can be sorted by  
28 individual fields and, if deemed appropriate by the Illinois  
29 Commerce Commission, in one or more other formats.

30 (e) Information in the Registry is confidential and  
31 shall be afforded reasonable privacy protection except as  
32 necessary for compliance with Sections 10 and 25 and this  
33 Section or in a proceeding or action under Section 35 or 40.  
34 The information is not a public record under the Freedom of

1 Information Act.

2 (f) A person or entity that obtains the Registry shall  
3 not use the Registry for any purpose other than to comply  
4 with this Act. These unlawful purposes include, but are not  
5 limited to, causing a subscriber to participate in and be  
6 included in the Registry without the subscriber's knowledge  
7 or consent, selling or leasing the Registry to a person other  
8 than a fax solicitor, selling or leasing by a fax solicitor  
9 of the Registry, and a fax solicitor, either directly or  
10 indirectly, persuading a subscriber with whom it has an  
11 established business relationship to place his or her  
12 telephone number in the Registry, if the solicitation has the  
13 effect of preventing competitors from contacting that  
14 solicitor's customers.

15 (g) No person or entity that sells, leases, exchanges,  
16 or rents fax solicitation lists, except for directory  
17 assistance and directories sold by telephone companies or  
18 their affiliates, shall include in those lists the telephone  
19 numbers that appear in the current Registry.

20 Section 25. Enrollment.

21 (a) The Illinois Commerce Commission shall provide  
22 notice to subscribers of the establishment of the Registry.

23 (b) The Illinois Commerce Commission shall establish any  
24 method deemed appropriate for a subscriber to notify the  
25 Illinois Commerce Commission that the subscriber wishes to  
26 have its telephone number included in or remain on the  
27 Registry.

28 (c) The Commission may, by rule, set an initial fee  
29 which shall not exceed \$5 per subscriber for inclusion on the  
30 Restricted Fax Registry. The Commission shall review the  
31 revenues and expenditures of the Restricted Fax Registry on a  
32 biennial basis and shall, by rule, reduce the fee accordingly  
33 if revenues exceed expenditures. The Commission may adopt

1 rules and procedures governing the acceptance of payment by  
2 credit card and may enter into such agreements as necessary  
3 to accept payment by credit card.

4 (d) A subscriber's telephone number shall be deleted  
5 from the Registry upon the subscriber's written request.

6 (e) Enrollment in the Registry is effective from the  
7 start of the quarter following the date of enrollment for a  
8 term of 5 years or until the subscriber disconnects or  
9 changes his or her telephone number, unless the subscriber  
10 complies with the notice provision contained in this Section,  
11 whichever occurs first. The subscriber shall be permitted to  
12 extend enrollment for additional 5 year periods and shall not  
13 be subject to any fee for this extension. The subscriber is  
14 responsible for notifying the Illinois Commerce Commission of  
15 any changes of telephone number. The Illinois Commerce  
16 Commission shall use its best efforts to notify enrolled  
17 subscribers before the end of the 5-year enrollment term of  
18 the option to extend their enrollment. Subscribers who do not  
19 indicate their desire to extend their enrollment before the  
20 end of the 5-year term shall be given a 3-month grace period  
21 before being removed from the Registry.

22 Section 30. Public notification. The Illinois Commerce  
23 Commission shall work with local exchange telecommunications  
24 companies to disseminate to their customers information about  
25 the availability of and instructions for requesting  
26 educational literature from the Illinois Commerce Commission.  
27 The Illinois Commerce Commission may enter into agreements  
28 with those companies for the dissemination of the educational  
29 literature. Telecommunications companies shall disseminate  
30 the educational literature at least once per year in a  
31 message contained in customers' bills or a notice in the  
32 information section of all telephone directories distributed  
33 to customers and shall include on their website a link to the

1 ICC's web page for the Registry. The Illinois Commerce  
2 Commission shall include, on its Internet web site,  
3 information to customers regarding their right to be included  
4 in the Registry and the various methods, including notice to  
5 the Illinois Commerce Commission, of being included in the  
6 Registry. The Illinois Commerce Commission shall have this  
7 literature developed for dissemination to the public no later  
8 than March 1, 2004.

9 Section 35. Violation; relief.

10 (a) The Illinois Commerce Commission may initiate  
11 administrative proceedings in accordance with rules adopted  
12 under this Act relating to a knowing and willful violation of  
13 this Act.

14 (b) If it is determined after a hearing that a person  
15 has knowingly and willfully violated Section 10, the Illinois  
16 Commerce Commission may assess a fine not to exceed \$1,000  
17 for the first violation and not to exceed \$2,500 for a second  
18 or subsequent violation. If it is determined after a hearing  
19 that a person has knowingly and willfully violated subsection  
20 (f) or (g) of Section 20, the Illinois Commerce Commission  
21 may assess a fine not to exceed \$5,000 for the first  
22 violation and not to exceed \$10,000 for a second or  
23 subsequent violation. Each individual violation of this Act  
24 constitutes a separate and distinct offense. In imposing a  
25 penalty, the Commission shall, at a minimum, consider the  
26 following factors:

- 27 (1) whether the offense was knowing or willful;  
28 (2) whether the entity committing the offense has a  
29 prior history of non-compliance with this Act;  
30 (3) the offender's relative ability to pay a  
31 penalty;  
32 (4) whether the offender has or has not cooperated  
33 with the Commission in pursuing the investigation; and

1           (5) such other special, mitigating or aggravating  
2 circumstances as the Commission may find to exist.

3           (c) Any proceeding conducted under this Section is  
4 subject to the Illinois Administrative Procedure Act.

5           (d) Nothing in this Section may be construed to restrict  
6 any right that any person may have under any other law or at  
7 common law.

8           (e) No action or proceeding may be brought under this  
9 Section:

10           (1) more than one year after the person bringing  
11 the action knew or should have known of the occurrence of  
12 the alleged violation; or

13           (2) more than one year after the termination of any  
14 proceeding or action arising out of the same violation or  
15 violations by the State of Illinois, whichever is later.

16           (f) The remedies, duties, prohibitions, and penalties in  
17 this Act are not exclusive and are in addition to all other  
18 causes of action, remedies, and penalties provided by law.

19           (g) There is created in the State Treasury a special  
20 fund to be known as the Restricted Fax Registry Fund. All  
21 fees and fines collected in the administration and  
22 enforcement of this Act shall be deposited into the Fund.  
23 Moneys in the Fund shall, subject to appropriation, be used  
24 by the Illinois Commerce Commission for implementation,  
25 administration, and enforcement of this Act.

26           Section 40. Exemption.

27           (a) A person or entity may not be held liable for  
28 violating this Act if:

29           (1) the person or entity has obtained copies of the  
30 Registry and each updated Registry from the Illinois  
31 Commerce Commission and has established and implemented  
32 written policies and procedures related to the  
33 requirements of this Act;



1           (2) the person or entity has trained its personnel  
2 in the requirements of this Act;

3           (3) the person or entity maintains records  
4 demonstrating compliance with subdivisions (1) and (2) of  
5 this subsection (a) and the requirements of this Act; and

6           (4) any subsequent fax solicitation is the result  
7 of unintentional error.

8           (b) A person or entity that has entered into a contract  
9 with another person or entity to make fax solicitations on  
10 its behalf is not liable for a violation of this Act by the  
11 person or entity making fax solicitations under the contract  
12 if the person or entity on whose behalf the fax solicitations  
13 were made has provided written notification to the person or  
14 entity making fax solicitations under the contract that it is  
15 necessary to comply with the provisions of this Act when  
16 making fax solicitations.

17           Section 90. The State Finance Act is amended by adding  
18 Section 5.595 as follows:

19           (30 ILCS 105/5.595 new)

20           Sec. 5.595. The Restricted Fax Registry Fund.