



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4999

by Rep. Karen May

SYNOPSIS AS INTRODUCED:

720 ILCS 5/26-3

from Ch. 38, par. 26-3

Amends the Criminal Code of 1961. Provides that a person who uses or causes the use of a facsimile machine to send unsolicited advertising is liable in a civil action to the recipient, or other person who suffered damages as a result of the violation. Provides that the recipient or other person suffering damages may: (1) bring an action to enjoin such violation; (2) bring an action to recover actual damages from such a violation or to receive \$1,000 in damages for each such violation, whichever is greater; and (3) in either event (1) or (2), recover court costs, attorney's fees, or any other relief the court deems proper. Provides that a criminal prosecution or conviction is not a condition of a civil action under the Statute. Effective immediately.

LRB095 15233 RLC 45806 b

1 AN ACT concerning criminal law.

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

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Section 26-3 as follows:

6 (720 ILCS 5/26-3) (from Ch. 38, par. 26-3)

7 Sec. 26-3. Use of a facsimile machine in unsolicited
8 advertising or fund-raising.

9 (a) Definitions. In this Section: ÷

10 (1) "Facsimile machine" means a device which is capable
11 of sending or receiving facsimiles of documents through
12 connection with a telecommunications network.

13 (2) "Person" means an individual, public or private
14 corporation, unit of government, partnership or
15 unincorporated association, except that for the purposes
16 of subsection (d) of this Section, "person" means any
17 natural person and any corporate or other entity.

18 (3) "Unsolicited advertising" shall have the same
19 meaning as in 47 U.S.C. 227.

20 (b) No person shall knowingly use a facsimile machine to
21 send or cause to be sent to another person a facsimile of a
22 document containing unsolicited advertising or fund-raising
23 material, except to a person which the sender knows or under

1 all of the circumstances reasonably believes has given the
2 sender permission, either on a case by case or continuing
3 basis, for the sending of such material.

4 (c) Sentence. Any person who violates subsection (b) is
5 guilty of a petty offense and shall be fined an amount not to
6 exceed \$500.

7 (d) Civil remedies. A person who uses or causes the use of
8 a facsimile machine to send unsolicited advertising is liable
9 in a civil action to the recipient, or other person who
10 suffered damages as a result of the violation. The recipient or
11 other person suffering damages may:

12 (1) bring an action to enjoin such violation;

13 (2) bring an action to recover actual damages from such
14 a violation or to receive \$1,000 in damages for each such
15 violation, whichever is greater; and

16 (3) in either event (1) or (2) of this subsection (d),
17 recover court costs, attorney's fees, or any other relief
18 the court deems proper.

19 (e) Nothing in this amendatory Act of the 95th General
20 Assembly affects the availability of relief under State or
21 federal law for facsimiles sent prior to the effective date of
22 this amendatory Act.

23 (f) A criminal prosecution or conviction is not a condition
24 of a civil action under this Section.

25 (Source: P.A. 86-555.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.