



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB1043

Introduced 02/11/09, 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.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

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 (0.5) "Established business relationship" means a prior or
11 existing relationship formed by a voluntary 2-way
12 communication between a person or entity, including
13 associations, and a business or residential subscriber with or
14 without an exchange of consideration, on the basis of an
15 inquiry, application, purchase, or transaction by the business
16 or residential subscriber regarding products, services, or
17 information offered by such person or entity, which
18 relationship has not been previously terminated by either
19 party.

20 (1) "Facsimile machine" means equipment which has the
21 capacity:

22 (A) to transcribe text or images, or both, from paper
23 into an electronic signal and to transmit that signal over

1 a regular telephone line, or

2 (B) to transcribe text or images, or both, from an
3 electronic signal received over a regular telephone line
4 onto paper ~~a device which is capable of sending or~~
5 ~~receiving facsimiles of documents through connection with~~
6 ~~a telecommunications network.~~

7 (2) "Person" means an individual, public or private
8 corporation, unit of government, partnership or unincorporated
9 association, except that for the purposes of subsection (d) of
10 this Section, "person" means any natural person and any
11 corporate or other entity.

12 (3) "Unsolicited advertising" has the same meaning as in 47
13 U.S.C. 227.

14 (b) No person shall knowingly use a facsimile machine to
15 send or cause to be sent to another person a facsimile of a
16 document containing unsolicited advertising or fund-raising
17 material, except to a person which the sender knows or under
18 all of the circumstances reasonably believes has given the
19 sender permission, either on a case by case or continuing
20 basis, for the sending of such material.

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

24 (d) Civil remedies. A person who uses or causes the use of
25 a facsimile machine to send unsolicited advertising is liable
26 in a civil action to the recipient, or other person who

1 suffered damages as a result of the violation. The recipient or
2 other person suffering damages may:

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

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

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

10 (e) Nothing in this amendatory Act of the 96th General
11 Assembly affects the availability of relief under State or
12 federal law for facsimiles sent prior to the effective date of
13 this amendatory Act.

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

16 (g) Nothing in this Section prohibits the use of a
17 facsimile machine to send unsolicited advertising or
18 fund-raising material if the sender has an established business
19 relationship with the recipient of the facsimile transmission
20 and the recipient is provided a toll-free number to call or
21 email address to contact to be excluded from receiving
22 facsimile transmissions by the sender. However, if the sender
23 continues to send unsolicited advertising or fund-raising
24 material to the recipient after the recipient calls the
25 toll-free number or emails the address provided and requests
26 not to be sent the unsolicited advertising or fund-raising

1 material by the sender and the recipient can document such a
2 request (including method of contact, date, time, person spoken
3 to and promised outcome), the provisions of subsections (b),
4 (c), and (d) of this Section apply. If a business contracts
5 with a national facsimile transmission service to send
6 unsolicited advertising or fund-raising material, the national
7 facsimile transmission service must prove that the sender
8 contracted for such service in order for the sender to be
9 liable for the criminal and civil penalties provided in this
10 Section.

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

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.