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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

IS 6/22/07

P.L. 2005, CHAPTER 114, *approved June 29, 2005*  
Assembly, No. 669 (*Fourth Reprint*)

1 AN ACT concerning the transmission of certain unsolicited  
2 advertisements over telephone lines and supplementing <sup>4</sup>[chapter  
3 17 of Title 48 of the Revised Statutes] P.L. 1960, c. 39 (C. 56:8-1  
4 et seq.)<sup>4</sup>.

5  
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*

8  
9 1. As used in this act:

10 <sup>2</sup>"Existing business relationship" means a relationship formed by a  
11 voluntary two-way communication between a person or entity and a  
12 residential or business subscriber with or without an exchange of  
13 consideration, on the basis of an inquiry, application, purchase,  
14 membership or transaction by the residential or business subscriber  
15 regarding products or services offered by such person or entity.

16 "Nonprofit organization" means a nonprofit organization that is  
17 exempt from federal taxation pursuant to Section 501(c)(3) of the  
18 federal Internal Revenue Code (26 U.S.C. s. 501(c)(3)) or section  
19 501(c)(6) of the federal Internal Revenue Code (26 U.S.C.  
20 s.501(c)(6)).<sup>2</sup>

21 "Telephone facsimile machine" means equipment which has the  
22 capacity to transcribe text or images, or both, from paper into an  
23 electronic signal and to transmit that signal over a regular telephone  
24 line or to transcribe text or images, or both, from an electronic signal  
25 received over a regular telephone line onto paper.

26 "Unsolicited advertisement" means any material advertising the  
27 commercial availability or quality of any property, goods, or services  
28 which is transmitted to any person without that person's prior express  
29 invitation or permission.

30  
31 2. <sup>2</sup>a.<sup>2</sup> A person within this State shall not use any telephone  
32 facsimile machine, computer or other device to send an unsolicited  
33 advertisement to a telephone facsimile machine within this State.

34 <sup>1</sup>This <sup>2</sup>[section] subsection<sup>2</sup> shall not be construed to cover the  
35 actions of an internet service provider or telecommunications service  
36 provider in the transmission, routing, relaying, handling, or storing of

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ACE committee amendments adopted September 23, 2004.

<sup>2</sup> Assembly floor amendments adopted November 15, 2004.

<sup>3</sup> Assembly floor amendments adopted December 13, 2004.

<sup>4</sup> Senate SCM committee amendments adopted March 7, 2005.

1 the <sup>2</sup>[fax] facsimile<sup>2</sup> through an automatic technical process.<sup>1</sup>

2 <sup>2</sup>b. Subsection a. of this section shall not apply where there is an  
3 existing business relationship between the sender of the unsolicited  
4 advertisement and the residential or business subscriber. Such  
5 unsolicited advertisement shall provide clear and conspicuous notice  
6 on the first page of the unsolicited advertisement. Such notice shall  
7 include:

8 (1) disclosure to the recipient that the recipient may request the  
9 sender of the unsolicited advertisement not to send any future  
10 unsolicited advertisements to the recipient's telephone facsimile  
11 machine; and

12 (2) the domestic <sup>3</sup>[telephone] address <sup>3</sup>and facsimile machine  
13 number for the recipient to transmit such a request to the sender.

14 c. A request not to send future unsolicited advertisements to a  
15 telephone facsimile machine <sup>4</sup>[must] shall<sup>4</sup> :

16 (1) identify the telephone number of the telephone facsimile  
17 machine to which the request relates; <sup>3</sup>[and]<sup>3</sup>

18 (2) be made to the <sup>3</sup>[telephone number] sender's domestic  
19 address<sup>3</sup> or the facsimile <sup>3</sup>machine<sup>3</sup> number of the sender provided in  
20 the notice <sup>3</sup> to the recipient; and

21 (3) be sent in written form to the sender's domestic address or sent  
22 by return facsimile transmission to the sender's facsimile machine  
23 number, in order to be effective <sup>3</sup>.

24 Such request is effective unless subsequently the person making the  
25 request provides express invitation or permission to the sender, <sup>4</sup>[in]<sup>4</sup>  
26 <sup>3</sup>[writing or otherwise] in written form or by facsimile transmission<sup>3</sup>  
27 , to send future unsolicited advertisements to such person at such  
28 telephone facsimile machine.

29 d. Failure to honor a valid <sup>3</sup>[oral or written]<sup>3</sup> request <sup>3</sup>, in written  
30 form or by facsimile transmission,<sup>3</sup> not to send future unsolicited  
31 advertisements pursuant to <sup>3</sup>[subsection c.] subsections c. through  
32 g.<sup>3</sup> of this section <sup>3</sup>, as applicable,<sup>3</sup> shall constitute a violation of this  
33 act.

34 e. Nonprofit organizations, including but not limited to,  
35 professional or trade associations, shall be exempt from subsection a.  
36 of this section and shall be allowed to send unsolicited advertisements  
37 to their new and existing members in furtherance of the organization's  
38 purpose, without penalty, provided that <sup>3</sup>[on and after July 1, 2005 or  
39 the date of membership renewal, whichever is earlier, any unsolicited  
40 advertisements to a member's telephone facsimile machine shall  
41 provide clear and conspicuous notice on the first page of the  
42 unsolicited advertisement. Such notice shall include:

43 (1) disclosure to the member that the member may request the  
44 organization not to send any future unsolicited advertisements to a  
45 member's telephone facsimile machine; and

1       (2) the domestic telephone and facsimile machine number for the  
2 member to transmit such a request to the organization.] the  
3 organization provides to each of its prospective new members at the  
4 time of membership application or to each of its existing members at  
5 the time of membership renewal, as the case may be, clear and  
6 conspicuous notice of:

7       (1) the member's right to request the organization not to send any  
8 future unsolicited advertisements to the member's telephone facsimile  
9 machine;

10       (2) the organization's domestic address and facsimile machine  
11 number to which its members may transmit such a request to the  
12 organization; and

13       (3) the requirement that any such request to the organization shall  
14 be sent in written form to the organization's domestic address or sent  
15 by return facsimile transmission to the organization's facsimile number,  
16 in order to be effective.<sup>3</sup>

17       A request by a member to a nonprofit organization not to send  
18 future unsolicited advertisements to a member's telephone facsimile  
19 machine shall comply with<sup>3</sup>the requirements of this subsection and  
20 with<sup>3</sup>the requirements of subsection c. of this section<sup>3</sup>, as applicable<sup>3</sup>  
21 . Failure of a nonprofit organization to honor a valid<sup>3</sup>[oral or  
22 written]<sup>3</sup> request<sup>3</sup>, in written form or by facsimile transmission,<sup>3</sup> from  
23 a member not to send future unsolicited advertisements pursuant to  
24 the requirements of this subsection and the requirements of  
25 subsection c. of this section<sup>3</sup>, as applicable,<sup>3</sup> shall constitute a  
26 violation of this act.<sup>2</sup>

27       <sup>3</sup>f. Members of nonprofit organizations, including but not limited  
28 to, professional or trade associations, who send unsolicited  
29 advertisements to the telephone facsimile machines of other members  
30 of the same organization shall be exempt from subsection a. of this  
31 section and shall be allowed to send such unsolicited advertisements  
32 to other members of the same organization, without penalty, provided  
33 that the organization provides to each of its prospective new members  
34 at the time of membership application or to each of its existing  
35 members at the time of membership renewal, as the case may be, clear  
36 and conspicuous notice of:

37       (1) the member's right to request that other members of the same  
38 organization not send any future unsolicited advertisements to the  
39 member's telephone facsimile machine;

40       (2) the organization's domestic address and facsimile machine  
41 number to which its members may transmit such a request to the  
42 organization; and

43       (3) the requirement that any such request to the organization shall  
44 be sent in written form to the organization's domestic address or sent  
45 by return facsimile transmission to the organization's facsimile number,  
46 in order to be effective.

1 A request by a member to a nonprofit organization that other  
2 members of the same organization not send future unsolicited  
3 advertisements to a member's telephone facsimile machine shall comply  
4 with the requirements of this subsection and with the requirements of  
5 subsection c. of this section, as applicable. Failure of a member of a  
6 nonprofit organization to honor a valid request, in written form or by  
7 facsimile transmission, from another member of the same organization  
8 not to send future unsolicited advertisements pursuant to the  
9 requirements of this subsection and the requirements of subsection c.  
10 of this section, as applicable, shall constitute a violation of this act.

11 g. Nonprofit organizations, including but not limited to,  
12 professional or trade associations, shall be exempt from subsection a.  
13 of this section and shall be allowed to send unsolicited advertisements  
14 to the telephone facsimile machine of any person, other than a new or  
15 existing member of the sending organization, within this State, without  
16 penalty, provided that such advertisements are intended to give the  
17 person notice of an event that is in furtherance of the organization's  
18 purpose, and further provided that, any such unsolicited  
19 advertisements to the person's telephone facsimile machine shall  
20 provide clear and conspicuous notice on the first page of the  
21 unsolicited advertisement. Such notice shall include:

22 (1) disclosure to the person that the person may request the  
23 organization not to send any such future unsolicited advertisements to  
24 the person's telephone facsimile machine; and

25 (2) the domestic address and facsimile machine number for the  
26 person to transmit such a request to the organization; and

27 (3) the requirement that any such request to the organization shall  
28 be sent in written form to the organization's domestic address or sent  
29 by return facsimile transmission to the organization's facsimile number,  
30 in order to be effective.

31 A request by a person to a nonprofit organization that the  
32 organization not send future unsolicited advertisements to the person's  
33 telephone facsimile machine shall comply with the requirements of this  
34 subsection and with the requirements of subsection c. of this section,  
35 as applicable. Failure of a nonprofit organization to honor a valid  
36 request, in written form or by facsimile transmission, from a person  
37 not to send future unsolicited advertisements pursuant to the  
38 requirements of this subsection and the requirements of subsection c.  
39 of this section, as applicable, shall constitute a violation of this act.<sup>3</sup>

40

41 3. a. Any person aggrieved by a violation of this act may bring an  
42 action in the Superior Court in the county where the transmission was  
43 sent or was received, or in which the plaintiff resides, for damages or  
44 to enjoin further violations of this act.

45 b. The court shall proceed in a summary manner and shall, in the  
46 event the plaintiff establishes a violation of this act, enter a

1 <sup>3</sup>[judgement] judgment<sup>3</sup> for the actual damages sustained, or \$500 for  
2 each violation, whichever amount is greater, together with costs of suit  
3 and reasonable attorney's fees.

4 c. If the plaintiff establishes that the sender was notified by return  
5 facsimile or <sup>3</sup>[other reasonable] written<sup>3</sup> means of communication to  
6 cease and desist transmission of such unsolicited advertisements, the  
7 court shall enter a judgment, on account of each subsequent  
8 transmission, for actual damages or \$1,000 for each transmission,  
9 whichever amount is greater, together with costs of suit and  
10 reasonable attorney's fees, not to exceed \$1,000.

11

12 <sup>4</sup>4. A violation of this act shall constitute an unlawful practice  
13 pursuant to P.L. 1960, c. 39 (C.56:8-1 et seq.) and shall be subject to  
14 all remedies and penalties available pursuant to P.L. 1960, c. 39 (C.  
15 56:8-1 et seq.), in addition to the remedies provided to an aggrieved  
16 person by section 3 of this act.<sup>4</sup>

17

18 <sup>4</sup>[4.] 5.<sup>4</sup> This act shall take effect on the first day of the <sup>3</sup>[third]  
19 sixth<sup>3</sup> month following enactment.

20

21

22

23

24 Prohibits transmission of certain unsolicited fax advertisements over  
25 telephone lines.

# ASSEMBLY, No. 669

## STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**

**Assemblyman JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

**Assemblyman MICHAEL PATRICK CARROLL**

**District 25 (Morris)**

**Assemblyman LOUIS MANZO**

**District 31 (Hudson)**

**Assemblyman ROBERT GORDON**

**District 38 (Bergen)**

**Co-Sponsored by:**

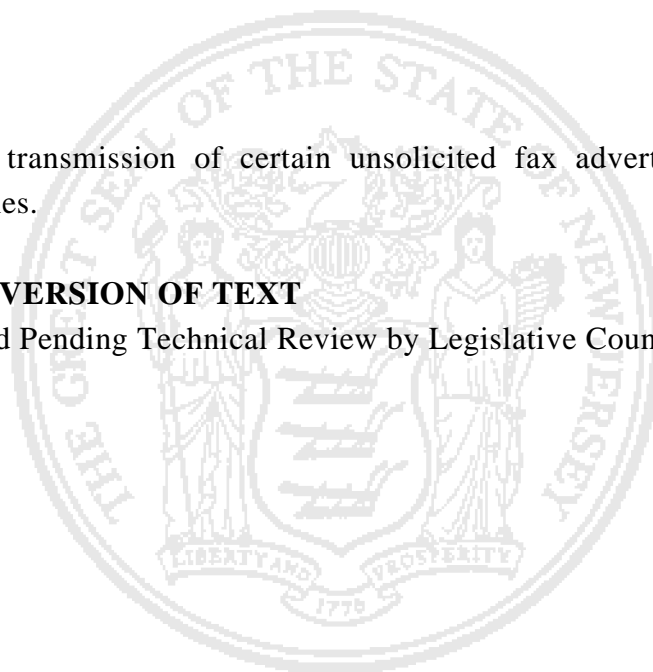
**Assemblymen Diegnan, Eagler, Gusciora, Assemblywoman Stender,  
Assemblyman Corodemus, Assemblywoman Greenstein, Assemblymen  
Chiappone and Munoz**

**SYNOPSIS**

Prohibits transmission of certain unsolicited fax advertisements over telephone lines.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 9/28/2004)**



1 AN ACT concerning the transmission of certain unsolicited  
2 advertisements over telephone lines and supplementing chapter 17  
3 of Title 48 of the Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. As used in this act:

9 "Telephone facsimile machine" means equipment which has the  
10 capacity to transcribe text or images, or both, from paper into an  
11 electronic signal and to transmit that signal over a regular telephone  
12 line or to transcribe text or images, or both, from an electronic signal  
13 received over a regular telephone line onto paper.

14 "Unsolicited advertisement" means any material advertising the  
15 commercial availability or quality of any property, goods, or services  
16 which is transmitted to any person without that person's prior express  
17 invitation or permission.

18

19 2. A person within this State shall not use any telephone facsimile  
20 machine, computer or other device to send an unsolicited  
21 advertisement to a telephone facsimile machine within this State.

22

23 3. a. Any person aggrieved by a violation of this act may bring an  
24 action in the Superior Court in the county where the transmission was  
25 sent or was received, or in which the plaintiff resides, for damages or  
26 to enjoin further violations of this act.

27 b. The court shall proceed in a summary manner and shall, in the  
28 event the plaintiff establishes a violation of this act, enter a judgement  
29 for the actual damages sustained, or \$500 for each violation,  
30 whichever amount is greater, together with costs of suit and  
31 reasonable attorney's fees.

32 c. If the plaintiff establishes that the sender was notified by return  
33 facsimile or other reasonable means of communication to cease and  
34 desist transmission of such unsolicited advertisements, the court shall  
35 enter a judgment, on account of each subsequent transmission, for  
36 actual damages or \$1,000 for each transmission, whichever amount is  
37 greater, together with costs of suit and reasonable attorney's fees, not  
38 to exceed \$1,000.

39

40 4. This act shall take effect on the first day of the third month  
41 following enactment.

42

43

STATEMENT

44

45 This bill would prohibit a person within this State from using a  
46 telephone facsimile ("fax") machine, computer or other device to send

1 an unsolicited advertisement to another telephone fax machine within  
2 this State.

3 The bill defines an unsolicited advertisement as any material  
4 advertising the commercial availability or quality of any property,  
5 goods, or services which is transmitted to any person without that  
6 person's prior express invitation or permission.

7 A person violating the provisions of this bill would be subject to a  
8 penalty of not more than \$500 per occurrence or the actual damages  
9 caused by the violation, whichever is greater for sending an unsolicited  
10 advertisement to a telephone fax machine.

11 In addition, a person who has been notified to cease and desist from  
12 sending such faxes and continues to do so would be subject to a fine  
13 of no more than \$1,000 for each occurrence.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 669**

with committee amendments

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 23, 2004

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 669.

This bill would prohibit a person within this State from using a telephone facsimile ("fax") machine, computer or other device to send an unsolicited advertisement to another telephone fax machine within this State.

The bill defines an unsolicited advertisement as any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

A person violating the provisions of this bill would be subject to a penalty of not more than \$500 per occurrence or the actual damages caused by the violation, whichever is greater for sending an unsolicited advertisement to a telephone fax machine.

In addition, a person who has been notified to cease and desist from sending such faxes and continues to do so would be subject to a fine of no more than \$1,000 for each occurrence.

The committee amended the bill to clarify that the prohibition against sending an unsolicited advertisement shall not apply to the actions of an internet service provider or telecommunications service provider in the transmission, routing, relaying, handling or storing of the fax through an automatic technical process.

This bill was prefiled for introduction in the 2004 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

[Third Reprint]

## **ASSEMBLY, No. 669**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 7, 2005

The Senate Commerce Committee reports Assembly Bill No. 669 (3R) favorably and with committee amendments.

This bill prohibits the transmission of unsolicited fax advertisements. However, the prohibition against sending an unsolicited advertisement shall not apply to the actions of an Internet service provider or telecommunications service provider in the transmission, routing, relaying, handling or storing of the fax through an automatic technical process.

As amended, this bill also allows the transmission of an unsolicited fax advertisement under certain circumstances; however, this bill requires the sender to include on the first page of any unsolicited faxed advertisement a clear and conspicuous notice that the recipient may request the sender to stop faxing unsolicited advertisements and the domestic address and fax machine number to which the recipient can send such requests. To be effective, recipients must include in any request their fax number to which the request relates. Failure of a sender to honor a valid request shall constitute a violation of the bill.

The amended bill allows an unsolicited fax advertisement to be sent to a residential or business subscriber where there is an existing business relationship between the sender of the unsolicited fax advertisement and the residential or business subscriber, provided that the first page of the unsolicited advertisement discloses to the recipient the notice described above. "Existing business relationship" is defined as a relationship formed by a voluntary two-way communication between a person or entity and a residential or business subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase, membership or transaction by the residential or business subscriber, regarding products or services offered by such person or entity.

The bill also permits a nonprofit organization to send unsolicited advertisements to new or existing members or, under certain circumstances, persons who are nonmembers in furtherance of the organization's purpose, without penalty, provided that the organization

gives appropriate notice to such persons of their right to request that no unsolicited fax advertisements be sent to them in the future. "Nonprofit organization" means a nonprofit organization that is exempt from federal taxation pursuant to Section 501(c)(3) or section 501(c)(6) of the federal Internal Revenue Code.

The bill also permits members of a nonprofit organization to send unsolicited fax advertisements to other members of the same organization, without penalty, provided that appropriate notice is given to new and existing members, at the time of membership application or membership renewal, allowing them to request that no further such advertisements be sent to them.

A person aggrieved by a violation of the bill may commence a summary court proceeding. If the plaintiff establishes a violation of the bill's provisions, the court shall enter a judgement for: (1) actual damages or \$500 for each violation, whichever is greater; and (2) the costs of suit and reasonable attorney's fees. The bill also provides that if the plaintiff receives subsequent transmissions of unsolicited fax advertisements, after notifying the sender to cease and desist sending the advertisements, the court shall enter a judgement for: (1) actual damages or \$1,000 for each such transmission, whichever is greater; and (2) the costs of suit and reasonable attorney's fees, not to exceed \$1,000.

In addition, a violation of the bill is an unlawful practice subject to the remedies and penalties under the consumer fraud act.

The committee amended the bill to make a violation of the bill an "unlawful practice" subject to the remedies and penalties of the consumer fraud act, in addition to the remedy provided by the bill as introduced. Other amendments are technical in nature.

STATEMENT TO  
[Second Reprint]  
**ASSEMBLY, No. 669**

with Assembly Floor Amendments  
(Proposed By Assemblyman VAN DREW)

ADOPTED: DECEMBER 13, 2004

These amendments require the recipient of an unsolicited facsimile advertisement to notify the sender that the recipient does not wish to receive future unsolicited facsimile advertisements, with the notice either in written form to the sender's domestic address or by return facsimile transmission to the sender's facsimile machine number, in order for the notice to be effective.

The amendments permit a nonprofit organization to send unsolicited advertisements to their new or existing members in furtherance of the organization's purpose, without penalty, provided that the organization sends the required notice to new or existing members at the time of membership application or membership renewal, as the case may be, of their right to request that no unsolicited facsimile advertisements be sent to them by the nonprofit organization.

The amendments also permit members of a nonprofit organization to send unsolicited facsimile advertisements to other members of the same organization, without penalty, provided that appropriate notice is given to new and existing members, at the time of membership application or membership renewal, allowing them to request that no further such advertisements be sent to them.

The amendments also permit nonprofit organizations to send unsolicited facsimile advertisements to persons within this State who are nonmembers of the sending organization, without penalty, if the purpose of the advertisements is to notify persons of an event which is in furtherance of the sending organization's purpose and if the advertisement gives appropriate notice to such persons of their right to request that no such advertisements be sent to them in the future.

The amendments also change the effective of the bill from three months to six months following enactment of the bill and make other technical changes to clarify the requirements of the bill.

**SENATE, No. 342**

**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**

**Senator PAUL SARLO**

**District 36 (Bergen, Essex and Passaic)**

**Senator JOSEPH CONIGLIO**

**District 38 (Bergen)**

**SYNOPSIS**

Prohibits transmission of certain unsolicited fax advertisements over telephone lines.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the transmission of certain unsolicited  
2 advertisements over telephone lines and supplementing chapter 17  
3 of Title 48 of the Revised Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in this act:

9 "Telephone facsimile machine" means equipment which has the  
10 capacity to transcribe text or images, or both, from paper into an  
11 electronic signal and to transmit that signal over a regular telephone  
12 line or to transcribe text or images, or both, from an electronic signal  
13 received over a regular telephone line onto paper.

14 "Unsolicited advertisement" means any material advertising the  
15 commercial availability or quality of any property, goods, or services  
16 which is transmitted to any person without that person's prior express  
17 invitation or permission.

18

19 2. A person within this State shall not use any telephone facsimile  
20 machine, computer or other device to send an unsolicited  
21 advertisement to a telephone facsimile machine within this State.

22

23 3. a. Any person aggrieved by a violation of this act may bring an  
24 action in the Superior Court in the county where the transmission was  
25 sent or was received, or in which the plaintiff resides, for damages or  
26 to enjoin further violations of this act.

27 b. The court shall proceed in a summary manner and shall, in the  
28 event the plaintiff establishes a violation of this act, enter a judgement  
29 for the actual damages sustained, or \$500 for each violation,  
30 whichever amount is greater, together with costs of suit and  
31 reasonable attorney's fees.

32 c. If the plaintiff establishes that the sender was notified by return  
33 facsimile or other reasonable means of communication to cease and  
34 desist transmission of such unsolicited advertisements, the court shall  
35 enter a judgment, on account of each subsequent transmission, for  
36 actual damages or \$1,000 for each transmission, whichever amount is  
37 greater, together with costs of suit and reasonable attorney's fees, not  
38 to exceed \$1,000.

39

40 4. This act shall take effect on the first day of the third month  
41 following enactment.

42

43

STATEMENT

44

45 This bill prohibits a person within this State from using a telephone  
46 facsimile ("fax") machine, computer or other device to send an



1 unsolicited advertisement to another telephone fax machine within this  
2 State.

3 The bill defines an unsolicited advertisement as any material  
4 advertising the commercial availability or quality of any property,  
5 goods, or services which is transmitted to any person without that  
6 person's prior express invitation or permission.

7 The bill provides if the plaintiff establishes a violation of the bill's  
8 provisions, the court shall enter a judgement for: (1) actual damages  
9 or \$500 for each violation, whichever is greater; and (2) the costs of  
10 suit and reasonable attorney's fees.

11 The bill also provides that in the event that the plaintiff receives  
12 subsequent transmissions of unsolicited fax advertisements, after  
13 notifying the sender to cease and desist sending such advertisements,  
14 the court shall enter a judgement for: (1) actual damages or \$1,000 for  
15 each such transmission, whichever is greater; and (2) the costs of suit  
16 and reasonable attorney's fees, not to exceed \$1,000.

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

### **SENATE, No. 342**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 7, 2005

The Senate Commerce Committee reports Senate Bill No. 342 favorably and with committee amendments.

This bill prohibits the transmission of unsolicited fax advertisements. However, as amended, the prohibition against sending an unsolicited advertisement shall not apply to the actions of an internet service provider or telecommunications service provider in the transmission, routing, relaying, handling or storing of the fax through an automatic technical process.

As amended, this bill also allows the transmission of an unsolicited fax advertisement under certain circumstances; however, this bill requires the sender to include on the first page of any unsolicited faxed advertisement a clear and conspicuous notice that the recipient may request the sender to stop faxing unsolicited advertisements and the domestic address and fax machine number to which the recipient can send such requests. To be effective, recipients must include in any request their fax number to which the request relates. Failure of a sender to honor a valid request shall constitute a violation of the bill.

The amended bill allows an unsolicited fax advertisement to be sent to a residential or business subscriber where there is an existing business relationship between the sender of the unsolicited fax advertisement and the residential or business subscriber, provided that the first page of the unsolicited advertisement discloses to the recipient the notice described above. "Existing business relationship" is defined as a relationship formed by a voluntary two-way communication between a person or entity and a residential or business subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase, membership or transaction by the residential or business subscriber, regarding products or services offered by such person or entity.

The bill also permits a nonprofit organization to send unsolicited advertisements to new or existing members or, under certain circumstances, persons who are nonmembers in furtherance of the organization's purpose, without penalty, provided that the organization gives appropriate notice to such persons of their right to request that

no unsolicited fax advertisements be sent to them in the future. "Nonprofit organization" means a nonprofit organization that is exempt from federal taxation pursuant to Section 501(c)(3) or section 501(c)(6) of the federal Internal Revenue Code.

The bill also permits members of a nonprofit organization to send unsolicited fax advertisements to other members of the same organization, without penalty, provided that appropriate notice is given to new and existing members, at the time of membership application or membership renewal, allowing them to request that no further such advertisements be sent to them.

A person aggrieved by a violation of the bill may commence a summary court proceeding. If the plaintiff establishes a violation of the bill's provisions, the court shall enter a judgement for: (1) actual damages or \$500 for each violation, whichever is greater; and (2) the costs of suit and reasonable attorney's fees. The bill also provides that if the plaintiff receives subsequent transmissions of unsolicited fax advertisements, after notifying the sender to cease and desist sending the advertisements, the court shall enter a judgement for: (1) actual damages or \$1,000 for each such transmission, whichever is greater; and (2) the costs of suit and reasonable attorney's fees, not to exceed \$1,000.

In addition, a violation of the bill is an unlawful practice subject to the remedies and penalties under the consumer fraud act.

As introduced, the bill contained none of the above exceptions and qualifications. The committee amended the bill to provide that the bill should not apply to internet or telecommunications service providers. The amendments also allow for the sending of an unsolicited fax advertisement when there has been an existing business relationship and when a nonprofit organization is involved, as discussed above. The provisions concerning a recipient's notification as to receipt of future unsolicited advertisements were also added by amendment.

The committee also amended the bill to make a violation of the bill an "unlawful practice" subject to the remedies and penalties of the consumer fraud act, in addition to the remedy provided by the bill as introduced. Other amendments to the bill change the effective date from three months to six months following enactment and make other technical changes.

This bill was pre-filed for introduction in the 2004-2005 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.