



**House  
Legislative  
Analysis  
Section**

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House Bill 4432 as enrolled  
Second Analysis (4-9-90)

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Sponsor: Rep. Terry London  
House Committee: Consumers  
Senate Committee: Judiciary

Mich. State Law Library

### **THE APPARENT PROBLEM:**

The growing popularity of fax machines (machines which electronically transmit facsimiles of documents through connection with a telephone network) has been a boon to companies and individuals at times when business needs involve the rapid receipt or transmission of certain information. As the popularity of these machines has grown, however, some claim that "junk fax mail" has become a problem, not only because owners of fax machines receive advertisements and other information for which they have no use, but because of the cost involved in the time it takes to accept messages and the relatively high cost of paper used on these machines. Those who own fax machines have no choice but to accept messages that are transmitted to them, and some feel limits should be placed on the use of these machines for advertising purposes.

### **THE CONTENT OF THE BILL:**

The bill would create an act to prohibit the transmission of unsolicited advertising messages by means of a facsimile machine unless prior permission was obtained — by means other than by a facsimile machine — from the person who would receive the advertisement. Under the bill, the consent could be given by telephone to a particular vendor. Consent could also be given by general notification to marketing or industry trade associations. Consent to have one's facsimile machine telephone number published in a directory, or disseminated in any other manner, however, could not be construed as consent to receive an advertisement. Under the bill, prosecuting attorneys and law enforcement officers would be required to report suspected violations of the bill, in writing, to the attorney general. A person suspected of a violation would be notified by the Department of the Attorney General and would be provided the opportunity to confer with the attorney general in person, by counsel, or by other representative. An assurance that the violation would be discontinued could be filed with the department and, if accepted, would not constitute an admission nor be introduced in any other proceeding. However, the attorney general could — by temporary or permanent injunction — bring an action against a person who violated an assurance of discontinuance, either to restrain the person from engaging in the violation, or to enforce the terms of the assurance of discontinuance. Violations of an injunction, order, decree, or judgment would incur a civil fine of up to \$500 each. Persons receiving unsolicited advertisements could file a civil suit to recover actual damages or \$250, whichever was greater, if any of the following occurred prior to receipt of the advertisement:

- The attorney general had issued a cease and desist notice to the person who sent the advertisement.

- The person who sent the advertisement had entered into an assurance of discontinuance.
- The person had notified the sender in writing that the sender did not have the person's consent to send an advertisement.

### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, the bill would have no fiscal implications for the state. (4-10-90)

### **ARGUMENTS:**

#### **For:**

The sending of unsolicited fax messages constitutes an invasion of privacy. Those who use fax machines to advertise their products utilize the same mailing lists as direct mail advertisers. The recipients of direct mail advertising, however, are not forced to bear the cost of receiving their messages and have the option of throwing away mail they have no use for. (They can also notify direct mail marketing associations through their post office if they want their name removed from certain mailing lists.) The bill would correct the inequity by allowing businesses and individuals to choose which messages they wished to receive.

#### **Against:**

Advertising through fax machines has been beneficial for small businesses seeking new markets. Those who operate their businesses out of their homes, for example, may not be able to afford to belong to a direct mail service or to mail out samples to potential customers. While some regulation is needed to avoid the problems of "junk fax mail," the bill goes too far. Rather than ban all unsolicited advertising messages, a law such as the one recently enacted in the State of New York would make more sense: messages may be transmitted, whether solicited or not, in cases where a prior business relationship exists between the two businesses or individuals; advertising messages may also be sent at times other than normal business hours, e.g. between 9.00 p.m. and 6.00 a.m. Customers have the option of notifying the advertiser indicating whether they wanted to receive additional information or whether they are not interested.

**Response:** Allowing the transmission of unsolicited fax messages during non-business hours would still incur a cost to recipients of these messages. In addition, businesses could face a backlog of messages each morning.

#### **Against:**

The bill could act as an impediment in the exploration of new options in fax technology. Proposed advances in fax machines include the use of regular stationery; further, it is predicted that in the future machines will have various options, such as access codes, which would give customers control over who could contact them, and the ability to store and list messages, which would allow recipients to choose which ones they wished to receive.