

UNSOLICITED ADVERTISING FAXES: INCREASE PENALTY

**House Bill 4972 as introduced
First Analysis (10-16-97)**

**Sponsor: Rep. Penny Crissman
Committee: Consumer Protection**

THE APPARENT PROBLEM:

Public Act 48 of 1990 prohibits sending advertisements to another person by fax without the recipient's prior consent. Along with allowing the attorney general to pursue actions against violators, the act allows a person who receives an unsolicited faxed advertisement to file a civil suit against the sender. The recipient of the unsolicited fax may recover either actual damages or \$250, whichever is greater, as well as reasonable attorney fees, provided that the faxed advertisement was received after any of the following had occurred: a) the attorney general issued a notice to the sender to stop sending faxed advertisements without consent, b) the sender gave an assurance to the attorney general indicating that he or she would stop violating the act, or c) the sender was notified in writing by the recipient that he or she does not consent to being faxed the advertisement. Unfortunately, some marketers continue to use facsimile machines to transmit advertisements to people without their consent. It has been suggested that increasing the amount of damages that may be owed to a person who received a faxed advertisement in violation of the act could serve to encourage those marketers who use this method of advertising to refrain from violating the act.

THE CONTENT OF THE BILL:

House Bill 4972 would amend Public Act 48 of 1990 (MCL 445.1771 - 445.1776) to increase the penalty for violations of the act. The penalty would be increased from the greater of actual damages or \$250, plus reasonable attorney fees to allow a person who filed a successful civil suit to recover the greater of his or her actual damages or \$1,000, plus reasonable attorney fees.

MCL 445.1776

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact upon state or local government. (10-14-97)

ARGUMENTS:

For:

Some owners of fax machines continue to be barraged by faxed advertisements without their consent. This type of advertising is not only very annoying because it ties up the recipient's fax line while the advertisement is being received and printed, but it is also costly for the recipient since the advertisement is printed onto the recipient's paper. Each unwanted fax costs the owner of the fax machine both in time and added expenses. Granted, a single sheet of paper may not be a particularly grievous expense, but some advertisements are longer than a page and sometimes the seller may send the same advertisement several times. These costs add up. Furthermore, important and more urgently wanted faxes can be delayed or even lost or missed while an unwanted advertisement is being printed out.

Against:

The amount of the proposed fine -- \$1,000 for a single violation -- seems a bit excessive. It is unlikely that the receipt of an unwanted faxed advertisement is so offensive as to warrant such a punishment.

Response:

The penalty cannot be applied for a single violation; more must occur than simply one unwanted advertisement sent to a person's fax machine. The penalty can only be given for those violations that occur after the sender has been warned by the attorney general to stop, after the sender has assured the attorney general that he or she would stop, or the recipient has written the sender asking them not to send an advertisement. If one of those events has not occurred before the instance in question the penalty cannot be applied.

POSITIONS:

The Michigan Consumer Federation supports the bill. (10-15-97)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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