



Colorado
Legislative
Council
Staff

ISSUE BRIEF

Number 04-4

A Legislative Council Publication

June 29, 2004

UNSOLICITED FAXES

by Elizabeth Burger

Like other forms of unsolicited advertisement, such as telemarketing and spam e-mail, junk faxes have raised the ire of consumers around the country in recent years. Recipients of unwanted faxes complain of the paper and toner costs associated with printing the unsolicited advertisements and of lost time and productivity spent sorting through seemingly endless junk faxes. In some cases, a consumer's fax machine may be tied up for hours, causing the recipient to miss other important faxes. Many consumers are unaware that faxing unsolicited advertisements has been illegal under federal law since 1991. In recent years, the federal government and states, including Colorado, have taken steps to enforce existing federal law and to enact new provisions to reduce the number of unsolicited faxes.

Regulation of Unsolicited Faxes

At the federal level, the Federal Communications Commission (FCC) regulates unsolicited faxes pursuant to the federal Telephone Consumer Protection Act of 1991 (TCPA). Specifically, the TCPA:

- prohibits the transmission of unsolicited advertisements to fax machines unless an established relationship exists between the sender and recipient of the fax. A relationship between a fax sender and a fax recipient can be established in a number of different ways, anywhere from specifically asking for information to be sent by fax to filling out a sweepstakes entry card; and
- requires the sender of the fax to identify his or her name and telephone number and the date and time the fax is sent.

Beginning January 1, 2005, fax advertisers will no longer be able to send faxes to individuals or companies with whom they have established a prior business relationship. New FCC rules in effect after that date require the sender of a fax to receive the prior written permission of the recipient before sending an unsolicited faxed advertisement.

Violators of the TCPA may be fined by the FCC up to \$11,000 for each offense. The TCPA applies to both businesses and residences.

In the 2004 legislative session, the Colorado General Assembly passed House Bill 04-1125. This bill makes it a deceptive trade practice for a person to violate any provision of the TCPA that pertains to unsolicited faxes. Violators are subject to penalties such as fines and temporary restraining orders under the Colorado Consumer Protection Act.

What Can You Do About Unsolicited Faxes?

Although stopping unsolicited faxed advertisements may seem impossible to some consumers, both federal and state law offer individuals who have received unsolicited faxes the opportunity to seek redress in a number of different ways.

FCC complaints. If a consumer suspects that a company is in violation of the TCPA, he or she may file a complaint with the FCC. Individuals may need to provide certain documentation along with the complaint, such as copies of the faxes received. An on-line complaint form is available at www.fcc.gov/cgb/complaints.html. Consumers may also call the FCC to register a complaint by dialing 1-888-CALL-FCC.

Small claims court. Federal law grants consumers a private right of action in state courts to enjoin advertisers from faxing unsolicited advertisements. Individuals may also sue to recover the actual monetary loss of the violation or \$500 in damages for each violation, whichever is greater. If the advertiser is found by the court to have knowingly and willfully violated FCC rules, the court can award up to three times the amount of damages actually sustained by the consumer.

Colorado Attorney General complaints. A consumer who believes that he or she is receiving unsolicited faxes in violation of the TCPA may file a complaint with the Colorado Attorney General's Office through the Colorado Consumer Line. The Colorado Consumer Line is a joint venture by the Colorado Attorney General's Office and Colorado Better Business Bureaus. When a complaint is filed with the Colorado Consumer Line, the Better Business Bureau investigates the complaint and shares information with the Colorado Attorney General's Office. Before the Better Business Bureau will accept a complaint regarding a business, the Bureau suggests that the complainant attempt to notify the business of the violation. The Colorado Consumer Line can be reached at 1-800-222-4444 or at <http://www.ago.state.co.us/consline/consline.htm>.

If the Attorney General finds that a specific company is persistently violating the TCPA, he or she may bring a civil action against the violator to recover actual losses or damages in U.S. district court and to enjoin the violator from sending unsolicited faxes.

No-Call list. The Colorado No-Call list provides consumers protection from unsolicited faxes. Consumers can register residential phone numbers, cell phone numbers, and residential fax numbers with the No-Call list. Businesses may not register with the No-Call list.

Once the phone or fax number has been registered, advertisers have three months to remove the number from the list of phone numbers they use to advertise. Some telemarketing phone calls and faxes, such as charitable and political solicitations, are exempt from the provisions of the No-Call list.

Consumers who continue to receive telephone or fax solicitations from advertisers after the three month time period may file complaints with the No-Call list. Telemarketers who continue to contact individuals registered on the list may face fines or other action by the Colorado Attorney General.

Individuals can register for the Colorado No-Call list and file complaints against violators of the list by calling 1-888-249-9097 or by visiting www.coloradonocall.com.