

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 180
Finance

(Senators Frosh and Ruben)

Consumer Protection - Unsolicited Facsimiles - Private Cause of Action

This bill authorizes a recipient of an unsolicited commercial solicitation sent to a facsimile (fax) device, in addition to any action by the Attorney General, to bring an action to recover: (1) the greater of \$250 or actual damages; and (2) reasonable attorney's fees. The court may award three times the authorized amount of damages if it finds that the defendant willfully or knowingly violated the prohibition against sending an unsolicited commercial fax.

Fiscal Summary

State Effect: Authorizing a private cause of action for the transmission of an unsolicited commercial fax is not expected to materially affect the workload of the Judiciary.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: A person may not intentionally transmit a fax for the purpose of commercial solicitation. The Attorney General may initiate a civil action against a person who violates the prohibition to recover for the State a penalty of up to \$1,000 for each violation.

Background: The federal Telephone Consumer Protection Act prohibits a person from using a fax machine, computer, or other device to send an unsolicited advertisement to a

fax machine. The Act permits a person or entity, if otherwise permitted by the laws or court rules of a state, to bring an action in state court: (1) to enjoin a violation of this prohibition; and/or (2) to recover the greater of \$500 or actual monetary damages. In *R.A. Ponte Architects, Ltd. V. Investors' Alert, Inc.*, 382 Md. 689 (2004), the Maryland Court of Appeals held that Maryland courts have jurisdiction to try a private cause of action brought under this federal prohibition.

The federal Act does not preempt state laws that prohibit the use of fax machines or other electronic devices to send unsolicited advertisements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

Fiscal Note History: First Reader - January 31, 2005
ncs/jr

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