



Rep. Karen May

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LRB095 15233 RLC 48721 a

1 AMENDMENT TO HOUSE BILL 4999

2 AMENDMENT NO. _____. Amend House Bill 4999 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing Section 26-3 as follows:

6 (720 ILCS 5/26-3) (from Ch. 38, par. 26-3)

7 Sec. 26-3. Use of a facsimile machine in unsolicited
8 advertising or fund-raising.

9 (a) Definitions. In this Section:

10 (0.5) "Established business relationship" means a prior or
11 existing relationship formed by a voluntary 2-way
12 communication between a person or entity, including
13 associations, and a business or residential subscriber with or
14 without an exchange of consideration, on the basis of an
15 inquiry, application, purchase, or transaction by the business
16 or residential subscriber regarding products, services, or

1 information offered by such person or entity, which
2 relationship has not been previously terminated by either
3 party.

4 (1) "Facsimile machine" means equipment which has the
5 capacity:

6 (A) to transcribe text or images, or both, from paper
7 into an electronic signal and to transmit that signal over
8 a regular telephone line, or

9 (B) to transcribe text or images, or both, from an
10 electronic signal received over a regular telephone line
11 onto paper ~~a device which is capable of sending or~~
12 ~~receiving facsimiles of documents through connection with~~
13 ~~a telecommunications network.~~

14 (2) "Person" means an individual, public or private
15 corporation, unit of government, partnership or unincorporated
16 association, except that for the purposes of subsection (d) of
17 this Section, "person" means any natural person and any
18 corporate or other entity.

19 (3) "Unsolicited advertising" has the same meaning as in 47
20 U.S.C. 227.

21 (b) No person shall knowingly use a facsimile machine to
22 send or cause to be sent to another person a facsimile of a
23 document containing unsolicited advertising or fund-raising
24 material, except to a person which the sender knows or under
25 all of the circumstances reasonably believes has given the
26 sender permission, either on a case by case or continuing

1 basis, for the sending of such material.

2 (c) Sentence. Any person who violates subsection (b) is
3 guilty of a petty offense and shall be fined an amount not to
4 exceed \$500.

5 (d) Civil remedies. A person who uses or causes the use of
6 a facsimile machine to send unsolicited advertising is liable
7 in a civil action to the recipient, or other person who
8 suffered damages as a result of the violation. The recipient or
9 other person suffering damages may:

10 (1) bring an action to enjoin such violation;

11 (2) bring an action to recover actual damages from such
12 a violation or to receive \$1,000 in damages for each such
13 violation, whichever is greater; and

14 (3) in either event (1) or (2) of this subsection (d),
15 recover court costs, attorney's fees, or any other relief
16 the court deems proper.

17 (e) Nothing in this amendatory Act of the 95th General
18 Assembly affects the availability of relief under State or
19 federal law for facsimiles sent prior to the effective date of
20 this amendatory Act.

21 (f) A criminal prosecution or conviction is not a condition
22 of a civil action under this Section.

23 (g) Nothing in this Section prohibits the use of a
24 facsimile machine to send unsolicited advertising or
25 fund-raising material if the sender has an established business
26 relationship with the recipient of the facsimile transmission

1 and the recipient is provided a toll-free number to call or
2 email address to contact to be excluded from receiving
3 facsimile transmissions by the sender. However, if the sender
4 continues to send unsolicited advertising or fund-raising
5 material to the recipient after the recipient calls the
6 toll-free number or emails the address provided and requests
7 not to be sent the unsolicited advertising or fund-raising
8 material by the sender and the recipient can document such a
9 request (including method of contact, date, time, person spoken
10 to and promised outcome), the provisions of subsections (b),
11 (c), and (d) of this Section apply. If a business contracts
12 with a national facsimile transmission service to send
13 unsolicited advertising or fund-raising material, the national
14 facsimile transmission service must prove that the sender
15 contracted for such service in order for the sender to be
16 liable for the criminal and civil penalties provided in this
17 Section.

18 (Source: P.A. 86-555.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law."