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PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

Regulate Transmission of Facsimile Messages

CODE SECTIONS: O.C.G.A. § 46-5-25 (new)
BILL NUMBER: HB 1181
ACT NUMBER: 960
SUMMARY: The Act adds a new section to the Code regulating the transmission of commercial facsimile (fax) messages. It also provides a civil penalty of disconnected telephone service, criminal misdemeanor penalties, and enforcement by the Public Service Commission and local telephone companies.
EFFECTIVE DATE: July 1, 1990

History

The bill was introduced to address growing business concern over the number of unsolicited fax advertisements.¹ The sponsor of the bill learned that some west coast businesses had amassed over 500,000 fax machine numbers and were selling these "mailing lists" to business customers.² These customers would then be able to send commercial messages to fax machines at these numbers.³ The House sponsor introduced the bill to regulate these unsolicited fax messages.⁴

HB 1181

The Act effectively prevents potential abuses by commercial enterprises seeking to use fax machines for advertising their products as has been done with computer telephone dialing machines.⁵ The bill as introduced passed both houses.

The Act adds a new Code section which broadly defines "telefacsimile" as any electronically transmitted signal via a telephone system which

1. Telephone interview with Representative Larry Walker, House District No. 115 (Mar. 19, 1990) [hereinafter Walker Interview]. Representative Walker is assigned to the Agriculture & Consumer Affairs, Appropriations, and Rules Committees.

2. Walker Interview, *supra* note 1.

3. *Id.*

4. *Id.*

5. *Id.*

is convertible into written media.⁶ This section makes it unlawful for a person to transmit, directly or indirectly, for commercial purposes, an unsolicited message that "advertis[es] or offer[s] . . . [for] sale, lease, rental, or gift . . . goods, services, or . . . property [of any kind]."⁷

In addition, the section creates an exception by permitting such fax messages where there has been consent to the receipt of the transmission or where the parties have previous contractual or business dealings.⁸ The recipient has the right to terminate the operation of this exception, by notifying the sender that no further messages are desired.⁹ Violation of these statutory provisions is a misdemeanor and carries a possible fine of up to \$1,000.00.¹⁰ Each separate message constitutes a separate violation.¹¹ The final subsection of the Act charges the Public Service Commission with enforcement of the Act.¹² This subsection also directs local telephone companies to disconnect the telephone service of any violator who fails to comply with the Act within ten days notice of violation.¹³

While the Act appears to sufficiently address the issue of unwanted commercial messages, it may be under-inclusive because it fails to anticipate the role of the fax machine in the residential market place. The message must serve a commercial purpose to constitute a violation.¹⁴ Numerous noncommercial intrusions, which are nonetheless unwanted, are still possible under the Act. For example, fax machines could be used for political purposes, non-commercial information dissemination, and personal purposes, without violating the letter of the law.

The Act fails to address the possibility of erroneous dialing or inadvertent connections. Commercial messages sent inadvertently have the same advertising effectiveness as messages sent deliberately. A potential fax abuser could purposely send a message and claim that it was sent erroneously or inadvertently. Proving this kind of abuse on a small scale would be extremely difficult. This represents a serious problem for businesses that regularly send commercial fax messages to willing recipients.

The Act does not specify what state of mind is required to impose misdemeanor penalties.¹⁵ Other Code sections relating to telephone

6. O.C.G.A. § 46-5-25(a) (Supp. 1990).

7. O.C.G.A. § 46-5-25(b) (Supp. 1990).

8. O.C.G.A. § 46-5-25(c)(1) (Supp. 1990).

9. O.C.G.A. § 46-5-25(c)(2) (Supp. 1990).

10. O.C.G.A. § 46-5-25(d) (Supp. 1990).

11. *Id.*

12. O.C.G.A. § 46-5-25(e) (Supp. 1990). While this Code section does not specify which commission is charged with civil enforcement, the preamble to the HB 1181 designates the Public Service Commission as the body to which this section applies. HB 1181, 1990 Ga. Gen. Assem.

13. *Id.*

14. O.C.G.A. § 46-5-25(b) (Supp. 1990).

15. O.C.G.A. § 46-5-22(d) (Supp. 1990).

service require the defendant to knowingly misuse telephone equipment.¹⁶ While a literal reading of the Act thus appears to create strict criminal liability for inadvertent connections, the proponents of the Act state that, to find a violation, some knowledge or intent is required.¹⁷ The Act is a first step toward controlling potential abuses of telephone fax machines.

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16. O.C.G.A. § 46-5-22(b) (Supp. 1989); O.C.G.A. § 46-5-21(b) (Supp. 1982).

17. Walker Interview, *supra* note 2.