

**SUBJECT:** Restricting unsolicited electronic transmission of advertising materials

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 9 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Solomons, Woolley  
0 nays

**WITNESSES:** For — Luther G. Jones, III  
Against — None

**BACKGROUND:** In 1991, Congress enacted the Telephone Consumer Protection Act, which allows citizens to take civil action against advertisers who transmit unwanted interstate advertising via telephone facsimile (fax) machines and automated telephone dialing systems. However, the act does not apply to intrastate transmissions, and each state must decide whether to permit its citizens to bring civil actions for violations of the act.

Currently, sending an unsolicited fax transmission in Texas is a Class C misdemeanor, punishable by a maximum fine of \$500, and requires a county or district attorney to investigate complaints and file charges if necessary.

**DIGEST:** CSHB 23 would amend the Business and Commerce Code to allow an individual to bring a civil cause of action against a person who made continued unsolicited transmissions from a mobile telephone, fax, or other telecopier for the purpose of a solicitation or sale. The recipient could seek an injunction ordering the solicitor to stop sending unwanted material or could seek damages, or both.

Recoverable damages could not exceed the greater of \$500 for each violation or the person's actual damages. If a court found that a solicitor knowingly or intentionally violated federal law restricting the use of telephone equipment, a regulation adopted under that law, or provisions in this bill, the court could increase the award not to exceed the greater of \$1,500 for each violation or three times the person's actual damages. CSHB 23 also would apply to certain calls using an automated dialing system.

CSHB 23 would require a person who makes or causes to be made a transmission to a facsimile recording device for the purpose of solicitation or sale to include, in 12-point type or larger, information about a toll-free number that the recipient could call to notify the solicitor that the recipient did not wish to receive any more fax solicitations. The solicitor would have to send a written confirmation of having received the notification and could send the confirmation by fax. Thereafter, the solicitor would be prohibited from sending additional faxes to the telephone numbers specified by the recipient.

CSHB 23 also would prohibit a solicitor from sending a fax transmission between 11 p.m. and 7 a.m. County and district attorneys would have to investigate complaints, and offenses would be a Class C misdemeanor.

The bill would take effect September 1, 1999, and would apply only to communications made on or after that date.

**SUPPORTERS  
SAY:**

“Cold call” fax solicitations have become the electronic equivalent of junk mail. CSHB 23 would offer protection to Texas consumers who want to avoid unwanted intrastate fax transmissions. Unsolicited fax advertisements tie up telephone lines, waste paper, and are a nuisance.

CSHB 23 would not place overly burdensome restrictions on the ability of people to offer their products for sale in the consumer marketplace. It simply would require that they stop faxing unsolicited documents to consumers who do not want them and would prohibit faxes from being sent during evening hours.

Requiring a solicitor to send written confirmation to a consumer that the solicitor had received a “notification to cease faxing” would provide documented protection for both parties. The consumer’s wish not to be bothered would be unmistakable, and the solicitor would have a defense against prosecution.

Consumers could bring civil causes of action for violations of either the state or federal law in a justice court (small claims court) and could appear without an attorney.

**OPPONENTS  
SAY:**

No apparent opposition.

NOTES:

The committee substitute added the provisions that would prohibit a solicitor from sending a fax between 11 p.m. and 7 a.m. and would require the solicitor to include a toll-free telephone number so that a recipient could notify the solicitor not to send additional faxes. The substitute also would require the solicitor to send written acknowledgment of the receipt of the request and would allow the confirmation to be sent by fax. It also added the provision allowing the court to increase the amount of damages in certain cases.