

CHAPTER 114

AN ACT concerning the transmission of certain unsolicited advertisements over telephone lines and supplementing P.L. 1960, c. 39 (C. 56:8-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.56:8-157 Definitions relative to certain unsolicited advertisements over telephone lines.

1. As used in this act:

"Existing business relationship" means a relationship formed by a voluntary two-way communication between a person or entity and a residential or business subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase, membership or transaction by the residential or business subscriber regarding products or services offered by such person or entity.

"Nonprofit organization" means a nonprofit organization that is exempt from federal taxation pursuant to Section 501(c)(3) of the federal Internal Revenue Code (26 U.S.C. s. 501(c)(3)) or section 501(c)(6) of the federal Internal Revenue Code (26 U.S.C. s.501(c)(6)).

"Telephone facsimile machine" means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line or to transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.

"Unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

C.56:8-158 Sending unsolicited advertisement to telephone facsimile machine prohibited, exceptions.

2. a. A person within this State shall not use any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine within this State. This subsection shall not be construed to cover the actions of an internet service provider or telecommunications service provider in the transmission, routing, relaying, handling, or storing of the facsimile through an automatic technical process.

b. Subsection a. of this section shall not apply where there is an existing business relationship between the sender of the unsolicited advertisement and the residential or business subscriber. Such unsolicited advertisement shall provide clear and conspicuous notice on the first page of the unsolicited advertisement. Such notice shall include:

(1) disclosure to the recipient that the recipient may request the sender of the unsolicited advertisement not to send any future unsolicited advertisements to the recipient's telephone facsimile machine; and

(2) the domestic address and facsimile machine number for the recipient to transmit such a request to the sender.

c. A request not to send future unsolicited advertisements to a telephone facsimile machine shall:

(1) identify the telephone number of the telephone facsimile machine to which the request relates;

(2) be made to the sender's domestic address or the facsimile machine number of the sender provided in the notice to the recipient; and

(3) be sent in written form to the sender's domestic address or sent by return facsimile transmission to the sender's facsimile machine number, in order to be effective.

Such request is effective unless subsequently the person making the request provides express invitation or permission to the sender, in written form or by facsimile transmission, to send future unsolicited advertisements to such person at such telephone facsimile machine.

d. Failure to honor a valid request, in written form or by facsimile transmission, not to send future unsolicited advertisements pursuant to subsections c. through g. of this section, as applicable, shall constitute a violation of this act.

e. Nonprofit organizations, including but not limited to, professional or trade associations, shall be exempt from subsection a. of this section and shall be allowed to send unsolicited advertisements to their new and existing members in furtherance of the organization's purpose, without penalty, provided that the organization provides to each of its prospective new members

at the time of membership application or to each of its existing members at the time of membership renewal, as the case may be, clear and conspicuous notice of:

(1) the member's right to request the organization not to send any future unsolicited advertisements to the member's telephone facsimile machine;

(2) the organization's domestic address and facsimile machine number to which its members may transmit such a request to the organization; and

(3) the requirement that any such request to the organization shall be sent in written form to the organization's domestic address or sent by return facsimile transmission to the organization's facsimile number, in order to be effective.

A request by a member to a nonprofit organization not to send future unsolicited advertisements to a member's telephone facsimile machine shall comply with the requirements of this subsection and with the requirements of subsection c. of this section, as applicable. Failure of a nonprofit organization to honor a valid request, in written form or by facsimile transmission, from a member not to send future unsolicited advertisements pursuant to the requirements of this subsection and the requirements of subsection c. of this section, as applicable, shall constitute a violation of this act.

f. Members of nonprofit organizations, including but not limited to, professional or trade associations, who send unsolicited advertisements to the telephone facsimile machines of other members of the same organization shall be exempt from subsection a. of this section and shall be allowed to send such unsolicited advertisements to other members of the same organization, without penalty, provided that the organization provides to each of its prospective new members at the time of membership application or to each of its existing members at the time of membership renewal, as the case may be, clear and conspicuous notice of:

(1) the member's right to request that other members of the same organization not send any future unsolicited advertisements to the member's telephone facsimile machine;

(2) the organization's domestic address and facsimile machine number to which its members may transmit such a request to the organization; and

(3) the requirement that any such request to the organization shall be sent in written form to the organization's domestic address or sent by return facsimile transmission to the organization's facsimile number, in order to be effective.

A request by a member to a nonprofit organization that other members of the same organization not send future unsolicited advertisements to a member's telephone facsimile machine shall comply with the requirements of this subsection and with the requirements of subsection c. of this section, as applicable. Failure of a member of a nonprofit organization to honor a valid request, in written form or by facsimile transmission, from another member of the same organization not to send future unsolicited advertisements pursuant to the requirements of this subsection and the requirements of subsection c. of this section, as applicable, shall constitute a violation of this act.

g. Nonprofit organizations, including but not limited to, professional or trade associations, shall be exempt from subsection a. of this section and shall be allowed to send unsolicited advertisements to the telephone facsimile machine of any person, other than a new or existing member of the sending organization, within this State, without penalty, provided that such advertisements are intended to give the person notice of an event that is in furtherance of the organization's purpose, and further provided that, any such unsolicited advertisements to the person's telephone facsimile machine shall provide clear and conspicuous notice on the first page of the unsolicited advertisement. Such notice shall include:

(1) disclosure to the person that the person may request the organization not to send any such future unsolicited advertisements to the person's telephone facsimile machine; and

(2) the domestic address and facsimile machine number for the person to transmit such a request to the organization; and

(3) the requirement that any such request to the organization shall be sent in written form to the organization's domestic address or sent by return facsimile transmission to the organization's facsimile number, in order to be effective.

A request by a person to a nonprofit organization that the organization not send future unsolicited advertisements to the person's telephone facsimile machine shall comply with the

requirements of this subsection and with the requirements of subsection c. of this section, as applicable. Failure of a nonprofit organization to honor a valid request, in written form or by facsimile transmission, from a person not to send future unsolicited advertisements pursuant to the requirements of this subsection and the requirements of subsection c. of this section, as applicable, shall constitute a violation of this act.

C.56:8-159 Action by aggrieved person.

3. a. Any person aggrieved by a violation of this act may bring an action in the Superior Court in the county where the transmission was sent or was received, or in which the plaintiff resides, for damages or to enjoin further violations of this act.

b. The court shall proceed in a summary manner and shall, in the event the plaintiff establishes a violation of this act, enter a judgment for the actual damages sustained, or \$500 for each violation, whichever amount is greater, together with costs of suit and reasonable attorney's fees.

c. If the plaintiff establishes that the sender was notified by return facsimile or written means of communication to cease and desist transmission of such unsolicited advertisements, the court shall enter a judgment, on account of each subsequent transmission, for actual damages or \$1,000 for each transmission, whichever amount is greater, together with costs of suit and reasonable attorney's fees, not to exceed \$1,000.

C.56:8-160 Violation constitutes unlawful practice.

4. A violation of this act shall constitute an unlawful practice pursuant to P.L. 1960, c. 39 (C.56:8-1 et seq.) and shall be subject to all remedies and penalties available pursuant to P.L. 1960, c. 39 (C. 56:8-1 et seq.), in addition to the remedies provided to an aggrieved person by section 3 of this act.

5. This act shall take effect on the first day of the sixth month following enactment.

Approved June 29, 2005.