

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5773 HOUSE JUDICIARY

1 member shall be kept on the job; this paragraph may not be interpreted
2 to amend the terms of a collective bargaining agreement; in this
3 paragraph

4 (A) "disabled national guard member" means a former
5 member of the national guard who was discharged or released from
6 the national guard under honorable conditions because of a dis-
7 ability incurred in the line of duty;

8 (B) "national guard member" means a person who has
9 served for at least eight years as a member of the Alaska
10 National Guard or an Alaska National Guard Reserve Unit.

Alaska State Legislature

P.O. Box Y
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Legislative Research Agency



February 9, 1990

MEMORANDUM

TO: Representative Max Gruenberg

ATTN: Phil Merrell

FROM: Leola Weimer *LW*
Legislative Analyst

RE: Definition of POW

You asked what determination the Department of Defense used for a prisoner of war (POW).

Attached is a copy of the criteria the Department of Defense uses in determining who is eligible to receive a Prisoner of War Medal. According to Captain Formica from the Office of the Chairman of the Joint Chiefs of Staff, POW Desk, in Washington, D.C., application of this criteria will ensure that only legitimate former POWs are recognized.

I have also attached a copy of 10 USC 1128, authorized by Public Law 99-145 for your information.

Please contact this office if you have questions or need further information.

Attachment

PRISONER OF WAR MEDAL

1. Eligibility Requirements

a. Authorized by P.L. 99-145, 10 U.S.C. 1128.

b. Authorized for any person who, while serving in any capacity with the U.S. Armed Forces, was taken prisoner and held captive after April 5, 1917.

(1) Civilians and Foreign Nationals. The Prisoner of War (POW) Medal shall be issued only to U.S. and foreign civilians who have received credit for U.S. military service as determined by the DoD Civilian/Military Service Review Board and Advisory Panel under DoD Directive 1000.20. The period of creditable military service must include the period of captivity from date of capture through date of release.

(2) Missing in Action (MIA). The POW Medal only shall be issued to the legal next of kin (NOK) of military personnel or civilians who have received credit for U.S. military service and whose POW status officially has been confirmed and recognized as such by the Military Departments. The NOK of persons listed as missing but for whom there is no evidence of having been a POW shall not be issued the POW Medal. Return of remains, in and of itself, does not constitute evidence of POW status. The NOK of POWs who die in captivity may be issued the POW Medal irrespective of the length of the captivity period.

(3) Hostages, Detainees, and Internees. The POW Medal shall be issued only to those taken prisoner by an enemy during armed conflict. For the purpose for this medal, armed conflicts are defined as World War I, World War II, Korean Conflict, Vietnam War. Hostages of terrorists and persons detained by governments with which the United States is not engaged actively in armed conflict are not eligible for the POW Medal.

c. Character of Service. Any person convicted by a U.S. military tribunal of misconduct or a criminal charge or whose discharge is less than honorable based upon actions while a POW is ineligible for the medal. POWs whose conduct was not in accord with the Code of Conduct and whose actions are documented by U.S. military records are ineligible for the medal. Resolution of questionable cases shall be the responsibility of the Secretaries concerned.

2. Subsequent Awards. No more than one POW Medal shall be awarded. For subsequent acts justifying award of the medal, service stars shall be awarded and worn on the suspension and service ribbon of the medal. A period of captivity terminates on return to U.S. military control. Escapees who do not return

§ 1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces of the United States—

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958; or

[See main volume for text of (2), (b) and (c)]

(d) In this section:

(1) The term "widow" includes widower.

(2) The term "parents" includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis.

(3) The term "next of kin" includes only children, brothers, sisters, half brothers, and half sisters.

(4) The term "children" includes stepchildren and children through adoption.

(5) The term "World War I" includes the period from April 6, 1917, to March 3, 1921.

(6) The term "World War II" includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(Amended Pub.L. 98-94, Title XII, § 1268(B), Sept. 24, 1983, 97 Stat. 706; Pub.L. 100-26, § 7(k)(5), Apr. 21, 1987, 101 Stat. 284.)

1987 Amendment. Subsec. (d). Pub.L. 100-26, § 7(k)(5)(A), substituted "In this section:" for "In this section—".

Subsec. (d)(1). Pub.L. 100-26, § 7(k)(5)(B), inserted "The term" following the paragraph designation.

Pub.L. 100-26, § 7(k)(5)(C), substituted "widower" for "widow".

Subsec. (d)(2) to (4). Pub.L. 100-26, § 7(k)(5)(B), inserted "The term" in each paragraph following the paragraph designation.

Pub.L. 100-26, § 7(k)(5)(C), substituted "in loco parentis" for "in loco parentis"; "half sisters" for "half sisters"; and "adoption" for "adoption";, respectively.

Subsec. (d)(5). Pub.L. 100-26, § 7(k)(5)(B), inserted "The term" following the paragraph designation.

Pub.L. 100-26, § 7(k)(5)(D), substituted "to March 3, 1921." for "to March 21, 1921; and".

Subsec. (d)(6). Pub.L. 100-26, § 7(k)(5)(B), inserted "The term" following the paragraph designation.

1983 Amendment. Subsec. (a)(1). Pub.L. 98-94, § 1268(B), substituted "who" for "Who" at the beginning of par. (1), thereby correcting a typographical error in par. (1) as originally enacted.

Legislative History. For legislative history and purpose of Pub.L. 98-94, see 1983 U.S. Code Cong. and Adm. News, p. 1081.

§ 1127. Precedence of the award of the Purple Heart

In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary of the military department concerned shall accord the Purple Heart a position of precedence, in relation to other awards and decorations authorized to be displayed, not lower than that immediately following the bronze star.

(Added Pub.L. 98-625, Title V, § 653(a), Oct. 19, 1984, 98 Stat. 2532, and amended Pub.L. 99-145, Title V, § 653, Nov. 8, 1985, 99 Stat. 634.)

1985 Amendment. Pub.L. 99-145 substituted "the bronze star" for "the lowest position accorded any award or decoration for valor".

Legislative History. For legislative history and purpose of Pub.L. 99-145, see 1984 U.S. Code

Cong. and Adm. News, p. 4174. See, also, Pub.L. 99-145, 1985, U.S. Code Cong. and Adm. News, p. 472.

§ 1128. Prisoner-of-war medal: Issue

(a) The Secretary concerned shall issue a prisoner-of-war medal to any person who, while serving in any capacity with the armed forces, was taken prisoner and held captive—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(b) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

(c) In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary concerned shall accord the prisoner-of-war medal a position of precedence, in relation to other awards and decorations authorized to be displayed—

(1) immediately following decorations awarded for individual heroism, meritorious achievement, or meritorious service; and

(2) before any other service medal, campaign medal, or service ribbon authorized to be displayed.

(d) Not more than one prisoner-of-war medal may be issued to a person. However, for each succeeding service that would otherwise justify the issuance of such a medal, the Secretary concerned may issue a suitable device to be worn as the Secretary determines.

(e) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

(f) If a person dies before the issuance of a prisoner-of-war medal to which he is entitled, the medal may be issued to the person's representative, as designated by the Secretary concerned.

(g) Under regulations to be prescribed by the Secretary concerned, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

(h) The Secretary of Defense shall ensure that regulations prescribed by the Secretaries of the military departments under this section are uniform so far as practicable.

(Added Pub.L. 99-145, Title V, § 532(a)(1), Nov. 8, 1985, 99 Stat. 633.)

Effective Date. Section 532(b) of Pub.L. 99-145 provided that: "Section 1128 of title 10, United States Code [this section], as added by subsection (a), applies with respect to any person taken prisoner and held captive after April 5, 1917."

Legislative History. For legislative history and purpose of Pub.L. 99-145, see 1985 U.S. Code Cong. and Adm. News, p. 472.

Library References

Armed Services ¶ 30.

C.J.S. Armed Services § 36.

CHAPTER 59—SEPARATION

§ 1162. Reserves; discharge

Notes of Decisions

In discharge orders did not vest Secretary of the Navy with authority to discharge him because they applied to reserve, not regular, officers, and thus judicial review of that claim was prohibited. *Walton v. Lehman*, D.C.Pa. 1983, 543 F.Supp. 1293.

12. Scope of review

Discharged navy officer did not raise, for administrative review before Board for Correction of Naval Records, claim that citation of this section

§ 1163. Reserve components: members; limitations on separation

[See main volume for text of (a) to (c)]

(d) Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system, may not be involuntarily

(17) the rehabilitation administrator of the Workers' Compensation Board;

(18) guards employed by the Department of Public Safety for emergencies;

(19) *[Repealed, § 22 E.O. No. 69 (1988).]*

(20) employees of the Alaska State Fire Commission. (§ 6 ch 144 SLA 1960; am § 2 ch 48 SLA 1961; am § 2 ch 133 SLA 1961; am § 4 ch 5 SLA 1966; am § 3 ch 104 SLA 1969; am § 2 ch 109 SLA 1969; am § 4 ch 78 SLA 1971; am § 9 ch 47 SLA 1974; am § 4 ch 82 SLA 1975; am § 10 ch 207 SLA 1975; am § 2 ch 157 SLA 1976; am § 19 ch 263 SLA 1976; am E.O. No. 39 § 6 (1977); am § 1 ch 103 SLA 1978; am § 2 ch 108 SLA 1978; am E.O. No. 41 § 3 (1980); am E.O. No. 42 §§ 3, 4 (1980); am E.O. No. 43 § 4 (1980); am E.O. No. 44 § 5 (1980); am E.O. No. 45 § 3 (1980); am E.O. No. 46 § 4 (1980); am § 18 ch 115 SLA 1980; am § 3 ch 79 SLA 1981; am § 4 ch 110 SLA 1981; am E.O. No. 48 § 3 (1981); am § 4 ch 50 SLA 1982; am § 26 ch 93 SLA 1982; am § 8 ch 112 SLA 1982; am 1983 Initiative Proposal No. 2, § 6; am § 106 ch 6 SLA 1984; am § 15 ch 55 SLA 1984; am § 2 ch 103 SLA 1984; am E.O. No. 58 § 18 (1984); am § 59 ch 21 SLA 1985; am § 54 ch 37 SLA 1986; am § 2 ch 84 SLA 1986; am § 5 ch 48 SLA 1987; am § 12 ch 98 SLA 1988; am § 1 ch 107 SLA 1988; am § 33 ch 141 SLA 1988; am E.O. No. 69 § 22 (1988))

Effect of amendments. — The amendments by Section 12, ch. 98, SLA 1988, effective July 1, 1988, and sec. 1, ch. 107, SLA 1988, made identical changes in subsection (c)(9), deleting the repeal line of former subparagraph (J), redesignating former subparagraphs (K) and (L) as present subparagraphs (J) and (K), and adding subparagraph (L).

The 1988 amendment by ch. 141, § 33,

effective June 9, 1988, repealed former subsection (c)(13), which read "investment officers in the Department of Revenue."

The 1988 amendment by E.O. No. 69, § 2, effective March 12, 1988, repealed former subsection (c)(19), which read "the deputy director of the division of housing assistance in the Department of Community and Regional Affairs."

Article 3. Personnel Rules.

Section

150. Scope of the rules
157. Position descriptions

Section

158. Reemployment rights for injured state employees

Sec. 39.25.150. Scope of the rules. The personnel rules shall provide for

(1) the preparation, maintenance, and revision by the director of personnel, subject to approval of the commissioner of administration and the personnel board, of a position classification plan for all positions in the classified and partially exempt services; the position classification plan shall include

(A) a grouping together of all positions into classes on the basis of duties and responsibilities;

(B) an appropriate title, a description of the duties and responsibilities, training and experience qualifications, and other necessary specifications for each class of position;

(2) the preparation, maintenance, revision and administration by the director of personnel of a pay plan for all positions in the classified and partially exempt services; the pay plan (A) shall be based upon the position classification plan; (B) shall provide for fair and reasonable compensation for services rendered, and reflect the principle of like pay for like work; (C) may be amended, approved, or disapproved by the legislature in regular or special session; after the pay plan is in effect, a salary or wage payment may not be made to a state employee covered by the plan unless the payment is in accordance with this chapter and the rules adopted under this chapter or unless the payment is in accordance with a valid agreement entered into in accordance with AS 23.40;

(3) the use of employee selection methods, including open competitive examinations, when appropriate, that will fairly test the capacity and fitness of the person examined to discharge the duties of the class in which employment is sought;

(4) the establishment and maintenance of eligible lists for appointment and promotion providing the names of eligible candidates in order of their relative performance in the examinations;

(5) the procedure for certifying eligible candidates; the rule adopted under this paragraph may include procedures providing a preference for certifying local residents when appropriate;

(6) promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service and promotion shall be by competitive examination whenever possible; in considering promotions, the applicants' qualifications, performance records, seniority, and conduct shall be evaluated;

(7) a period of probation not to exceed one year before an appointment to a position becomes permanent, except that a permanent employee receiving a promotional appointment retains permanent status in the service and job class from which appointed for the duration of the probationary period and may be demoted to a former class without right of appeal, notwithstanding AS 39.25.170, but if the employee is dismissed from the service the appeal rights under AS 39.25.170 apply;

(8) nonpermanent and emergency appointments to positions in the state service in accordance with AS 39.25.195 — 39.25.200;

(9) provisional appointment without competitive examination when appropriate eligible lists are not available;

(10) transfers from one department to another and from another merit system jurisdiction to the state service;

(11) transfers from one area of the state to another;

(12) the reinstatement of a person who resigns in good standing;

(13) layoffs for reason of lack of money or work, abolition of positions, or material changes in duties or organization; both performance and seniority records shall be considered in the development of layoff orders;

(14) the development, maintenance, and use of employee performance records;

(15) the establishment of disciplinary measures which may include disciplinary suspension without pay;

(16) the procedures for review of disputed personnel actions, for resolving employee and interagency grievances, and for resolving grievances of the general public concerning the operation of the state personnel system:

(17) hours of work for all employees in the state service;

(18) methods and procedures covering overtime work and pay;

(19) the granting of employment preference rights to a veteran not within the area of promotion, when the veteran possesses the necessary qualifications in the job classification applied for under this chapter; in an examination to determine the qualification of applicants for entrance into the classified service under merit system examination, five additional points shall be added to the passing grade of a veteran and 10 additional points shall be added to the passing grade of a disabled veteran, but the additional points may be used only the first time the veteran obtains a position in the classified service; if a position in the classified service is eliminated, employees shall be released in accordance with rules which give due effect to all factors; if all job qualifications are equal, the veteran shall be given preference over the nonveteran and the veteran shall be kept on the job; this paragraph may not be interpreted to amend the terms of a collective bargaining agreement; in this paragraph

(A) "veteran" means a person with 181 days or more active service in the armed forces of the United States who has been honorably discharged after having served during any period

(i) between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and October 14, 1976; or

(ii) in which the person was awarded a campaign badge or expedition medal, or the Purple Heart or other award or decoration for heroism or gallantry in action;

(B) "disabled veteran" means a veteran who is entitled to compensation under laws administered by the United States Veterans' Administration, or a person who was honorably discharged or released from active duty because of a service-connected disability;

(20) the employment of persons in permanent positions on a part-time basis of 15 hours or more a week, including the employment of

two persons to fill one permanent full-time position; these employees shall be designated as permanent part-time employees;

(21) the granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination for periods up to four months and the granting of eligibility to a severely handicapped person provisionally appointed under the rules who demonstrates ability to perform the job for permanent appointment without competitive examination; provisional employment under this paragraph may not exceed four months during a 12-month period; "severely handicapped" as used in this paragraph means persons certified by the director of the division of vocational rehabilitation to be severely handicapped;

(22) the establishment of programs facilitating the employment of disadvantaged persons;

(23) the delegation, when feasible, of personnel responsibilities and duties to the principal departments of the executive branch;

(24) the establishment of a transition period of up to 12 months for an employee to be reappointed to a classified position if the employee's position is withdrawn from the partially exempt or exempt service and placed in the classified service;

(25) other rules and administrative regulations, not inconsistent with this chapter, that are necessary for its enforcement. (§ 13 ch 144 SLA 1960; am § 1 ch 130 SLA 1961; am § 1 ch 147 SLA 1962; am § 1 ch 117 SLA 1966; am § 1 ch 33 SLA 1967; am § 3 ch 226 SLA 1970; am § 1 ch 39 SLA 1971; am § 3 ch 42 SLA 1971; am § 1 ch 21 SLA 1973; am § 1 ch 27 SLA 1976; am § 1 ch 4 SLA 1978; am § 2 ch 67 SLA 1979; am § 38 ch 94 SLA 1980; am §§ 1, 2 ch 89 SLA 1982; am § 14 ch 112 SLA 1982; am § 1 ch 7 SLA 1987; am § 2 ch 127 SLA 1988)

Effect of amendments. — The 1988 amendment, in paragraph (19)(A), divided the formerly undivided language into an introductory paragraph and item (i), added "or" at the end of item (i), and added item (ii).

Editor's notes. — This section is set out above to correct a minor error in subsection (19).

Sec. 39.25.157. Position descriptions. The division of personnel, in consultation with the appropriate department or agency, shall require the preparation of and shall maintain a position description for each position in the classified service. The position description shall describe the essential functions of the position and the actual skills and abilities required to perform the tasks assigned to the position. A general requirement for physical abilities may not be imposed on a job classification unless each position within the class requires the use of the physical ability. (§ 2 ch 86 SLA 1988)

H B

2 3 2

HOUSE COMMITTEE REPORT

1/26

3

(7)

Date Referred: March 20, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 232

HOUSE BILL NO. 232

[PROHIBIT UNSOLICITED FAX TRANSMISSIONS]

"An Act relating to the use of facsimile devices for commercial solicitation."

RECOMMENDATIONS:

- be replaced with CS HB 232 (SA) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

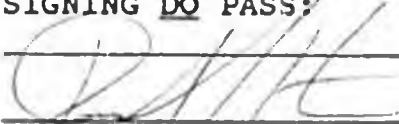
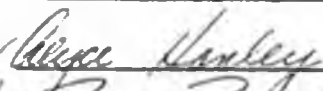
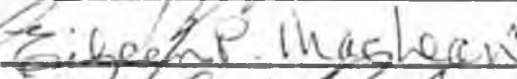
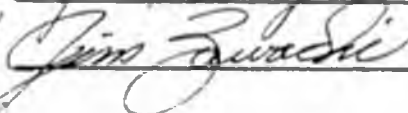


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- zero fiscal note _____
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- zero fn/analysis _____

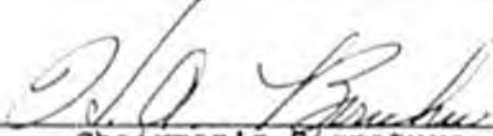
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SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

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Chairman's Signature

STATE OF ALASKA



LYMAN E. HOFFMAN
CO-CHAIRMAN
HOUSE FINANCE COMMITTEE

P.O. BOX V
UNEAU, ALASKA 99811
(907) 465-3706

HOUSE OF REPRESENTATIVES

DISTRICT 25

- ADLACHAK
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- SIWIK
- SIGHTMUTE
- SUNAPICHUK
- OSCARVILLE
- PLATINUM
- QUINJAGAK
- TOKSOOK BAY
- TUNTUTULIAK
- TUNUNAK

M E M O R A N D U M

TO: Representative Peter Goll
 Representative Max Gruenberg
 Co-Chairmen, House Judiciary Committee

FROM: Representative Lyman Hoffman *Lyman*
 Co-Chairman, House Finance Committee

DATE: January 25, 1990

SUBJ: CS for House Bill 232 (State Affairs)



Please find attached the back-up information for CSHB232.

I respectfully request a public hearing on this legislation. My staff aide, Bob Herron, will assist your committee at your convenience.

If there are any questions concerning this bill, please do not hesitate to contact my office.

Thank you.

C S for H O U S E B I L L N O. 2 3 2
(State Affairs)

"An Act relating to junk telephone calls, the use of automatic dialing and announcing devices, and the use of facsimile devices for commercial solicitation."

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3. Other States' Proposed Legislation
4. Opposition to HB 232
5. Comments on HB 232
6. Examples of fax solicitation
7. Memo from Representative Red Boucher
8. Misc.

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOP HOUSE BILL NO. 232 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to junk telephone calls, the use of
7 automatic dialing and announcing devices, and the use
8 of facsimile devices for commercial solicitation."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 45.50.472(b) is amended to read:

11 (b) In this section

12 (1) "automatic dialing and announcing device" means equip-
13 ment that dials programmed telephone numbers and plays a recorded
14 message when the call is answered;

15 (2) "junk telephone call" means a telephone call made for
16 the purpose of advertising through the use of a recorded advertise-
17 ment.

18 * Sec. 2. AS 45.50.472(c) is repealed and reenacted to read:

19 (c) A violation of this section constitutes a violation of
20 AS 45.50.472 - 45.50.561. A person who receives a communication in
21 violation of this section is presumed to have suffered an ascertain-
22 able loss of money or property under AS 45.50.53, and is entitled to
23 recover actual damages or \$200, whichever is greater, under that
24 section.

25 * Sec. 3. AS 45.50.472 is amended by adding a new subsection to read:

26 (d) A person may not use an automatic dialing and announcing
27 device to call an unlisted, unpublished, emergency, or toll free long
28 distance number.

29 * Sec. 4. AS 45.50 is amended by adding a new section to read:

1 Sec. 45.50.475. COMMERCIAL SOLICITATION BY MEANS OF A FACSIMILE
2 DEVICE. (a) A person may not make a transmission to a facsimile
3 device for commercial solicitation. This section applies to all
4 commercial solicitation intended to be received by a facsimile device
5 within the state.

6 (b) A violation of this section constitutes a violation of
7 AS 45.50.471 - 45.50.561. A person who receives a commercial solici-
8 tation in violation of this section is presumed to have suffered an
9 ascertainable loss of money or property under AS 45.50.531 and is
10 entitled to recover actual damages or \$200, whichever is greater,
11 under that section.

12 (c) This section does not prohibit the Alaska Public Utilities
13 Commission from adopting additional regulations concerning trans-
14 missions to facsimile devices.

15 (d) In this section

16 (1) "commercial solicitation" means the unsolicited elec-
17 tronic or telephonic transmission to a facsimile device to encourage a
18 person or persons to purchase property, goods, or services;

19 (2) "facsimile device" is a device that is capable of
20 receiving and copying on to paper reasonable reproductions or facsimi-
21 les of documents and photographs that have been transmitted electroni-
22 cally or telephonically over telecommunication lines.

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the use of facsimile devices for
7 commercial solicitation."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 45.50 is amended by adding a new section to read:

10 Sec. 45.50.475. COMMERCIAL SOLICITATION BY MEANS OF A FACSIMILE
11 DEVICE. (a) A person may not make a transmission to a facsimile
12 device for commercial solicitation. This section applies to all
13 commercial solicitation intended to be received by a facsimile device
14 within the state.

15 (b) A violation of this section constitutes a violation of
16 AS 45.50.471 - 45.50.561. A person who receives a commercial solici-
17 tation in violation of this section is presumed to have suffered an
18 ascertainable loss of money or property under AS 45.50.531 and is
19 entitled to recover actual damages or \$200, whichever is greater,
20 under that section.

21 (c) This section does not prohibit the Alaska Public Utilities
22 Commission from adopting additional regulations concerning trans-
23 missions to facsimile devices.

24 (d) In this section

25 (1) "commercial solicitation" means the unsolicited elec-
26 tronic or telephonic transmission to a facsimile device to encourage a
27 person or persons to purchase property, goods, or services;

28 (2) "facsimile device" is a device that is capable of
29 receiving and copying on to paper reasonable reproductions or

1 facsimiles of documents and photographs that have been transmitted
2 electronically or telephonically over telecommunication lines.
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This bill amends AS 45.50 by adding a new section that would make an unsolicited commercial transmission to a facsimile device a prohibited act under the Unfair Trade Practices and Consumer Protection Act. The bill also provides a private right of action, under AS 45.50.531, for persons who receive commercial solicitations in violation of the prohibition. Because of the private right of action provided in the bill, state enforcement is not anticipated. Consequently, there should not be a fiscal impact for the Department of Law. In any event, state enforcement is unlikely because of the 63 percent reduction in the department's consumer protection activities since FY86, which has been caused by state budget reductions.

FISCAL NOTE

REQUEST:

Revision Date: January 18, 1990
 Title: "An Act relating to the use of facsimile devices for commercial solicitation."
 Sponsor: Repr. Hoffman
 Requestor: House State Affairs

Agency Affected: Department of Law
 BRU: Consumer Protection
 Components: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 18, 1990

Richard I. Pegues / FOR /

Approved by Commissioner: Douglas B. Bailey, Attorney General Date: January 18, 1990
 Agency: Department of Law

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 232

This bill amends AS 45.50.531 by adding a new section that would make an unsolicited commercial transmission to a facsimile device a prohibited act under the Unfair Trade Practices and Consumer Protection Act. The bill also provides a private right of action, under AS 45.50.531, for persons who receive commercial solicitations in violation of the prohibition. Because of the private right of action provided in the bill, state enforcement is not anticipated. Consequently, there should not be a fiscal impact for the Department of Law. In any event, state enforcement is unlikely because of the 63 per cent reduction in the department's consumer protection activities since FY 1986, which has been caused by state budget reductions.

FISCAL NOTE APR 4 1989

REQUEST:

Revision Date: _____ Agency Affected: Department of Law
Title: "An Act relating to the use of fac- BRU: Consumer Protection
simile devices for commercial solicitation."
Sponsor: Repr. Hoffman Components: Consumer Protection
Requestor: House State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollar)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: April 3, 1989

Approved by Commissioner: Douglas B. Baile, Attorney General
Agency: Department of Law

Date: April 3, 1989

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF CONNECTICUT 3
Proposed Bill No. 6620 Page 1 of 1 4
Referred to Committee on ENERGY AND PUBLIC UTILITIES 5
LCO No. 3002 6
Introduced by REP. MANIA, 63rd DIST. 7
General Assembly 8
January Session, A.D., 1989 9

AN ACT PROHIBITING THE TRANSMITTAL OF UNSOLICITED COMMERCIAL 11
MESSAGES THROUGH THE USE OF MACHINES WHICH SEND OR RECEIVE 12
FACSIMILES THROUGH THE TELEPHONE. 13

Be it enacted by the Senate and House of Representatives in 15
General Assembly convened: 16

That the general statute be amended to prohibit the 17
transmittal of any unsolicited commercial messages through the 18
use of a machine which sends or receives facsimiles through the 19
telephone. 20

STATEMENT OF PURPOSE: To protect owners of machines which send or 23
receive facsimiles through the telephone from receiving any 24
unsolicited commercial messages. 25

AN ACT PROHIBITING UNSOLICITED FACSIMILE MACHINE MESSAGES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

That the general statutes be amended to provide that no person shall use a machine that electronically transmits facsimiles of documents through connection with a telephone network to transmit unsolicited advertising material for the sale of any real property, goods or services.

STATEMENT OF PURPOSE: To prohibit the use of a fax machine to transmit unsolicited advertising messages.

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House Bill 2227

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Task Force on Telecommunications)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prohibits use of automatic dialing and announcing devices and recorded message for certain telephonic solicitations. Prohibits use of "fax" machines to transmit unsolicited advertising material.

A BILL FOR AN ACT

1 Relating to telecommunications; creating new provisions; and amending ORS 646.608.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1.** Section 2 of this Act is added to and made a part of sections 1 to 20, chapter 447,
4 Oregon Laws 1987.

5 **SECTION 2.** (1) No person shall use an automatic dialing and announcing device to call for any
6 purpose any unlisted, unpublished, emergency or toll free long distance number.

7 (2) As used in this section, "automatic dialing and announcing device" means equipment that
8 dials programmed telephone numbers and plays a recorded message when the call is answered.

9 **SECTION 3.** No person shall use a machine that electronically transmits facsimiles of docu-
10 ments through connection with a telephone network to transmit unsolicited advertising material for
11 the sale of any realty, goods or services.

12 **SECTION 4.** ORS 646.608 is amended to read:

13 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
14 ness, vocation or occupation the person does any of the following:

15 (a) Passes off real estate, goods or services as those of another.

16 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
17 proval, or certification of real estate, goods or services.

18 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
19 ciation with, or certification by, another.

20 (d) Uses deceptive representations or designations of geographic origin in connection with real
21 estate, goods or services.

22 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
23 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
24 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

25 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
26 reconditioned, reclaimed, used or second-hand.

27 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
28 or that real estate or goods are of a particular style or model, if they are of another.

29 (h) Disparages the real estate, goods, services, property or business of a customer or another
30

NOTE: Matter in bold face in an amended section is new; matter *(italic and bracketed)* is existing law to be omitted.

1 by false or misleading representations of fact.

2 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
3 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
4 a limitation of quantity.

5 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
6 or amounts of price reductions.

7 (k) Makes false or misleading representations concerning credit availability or the nature of the
8 transaction or obligation incurred.

9 (L) Makes false or misleading representations relating to commissions or other compensation to
10 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
11 stration purposes or in exchange for submitting names of potential customers.

12 (m) Performs service on or dismantles any goods or real estate when not authorized by the
13 owner or apparent owner thereof.

14 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
15 vides the information required under ORS 646.611.

16 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
17 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
18 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
19 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
20 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
21 tomer enters into the transaction.

22 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
23 cize a product, business or service.

24 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
25 not to deliver them as promised.

26 (r) Organizes or induces or attempts to induce membership in a pyramid club.

27 (s) Makes false or misleading representations of fact concerning the offering price of, or the
28 person's cost for real estate, goods or services.

29 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
30 known material defect or material nonconformity.

31 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

32 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
33 ORS 698.640 whether in a commercial or noncommercial situation.

34 (w) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

35 (x) Violates ORS 646.850 (1).

36 (y) Violates any requirement of ORS 646.661 to 646.686.

37 (z) Violates ORS 128.821, 128.836, 128.856 to 128.866 or 128.891.

38 (aa) Violates ORS 646.883 or 646.885.

39 (bb) Violates section 3 of this 1989 Act.

40 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
41 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

42 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
43 need not prove competition between the parties or actual confusion or misunderstanding.

44 (4) No action or suit shall be brought under paragraph (u) of subsection (1) of this section unless

HB 2227

1 the Attorney General has first established a rule in accordance with the provisions of ORS 183.310
2 to 183.550 declaring the conduct to be unfair or deceptive in trade or commerce.
3 _____

HOUSE BILL NO. 1513

State of Washington 51st Legislature 1989 Regular Session
by Representatives Jacobsen, Todd, Anderson, Heavey, K. Wilson,
Dellwo, Beck, Bowman and Appelwick

Read first time 1/27/89 and referred to Committee on Energy &
Utilities.

1 AN ACT Relating to the Use of facsimile devices for commercial
2 solicitation; and adding a new section to chapter 80.36 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Sec. 1. A new section is added to chapter 80.36
5 RCW to read as follows:

6 (1) As used in this section:

7 (a) A "facsimile device" is a device that is capable of receiving
8 and copying on to paper reasonable reproductions or facsimiles of
9 documents and photographs that have been transmitted electronically
10 or telephonically over telecommunication lines.

11 (b) "Commercial solicitation" means the unsolicited electronic or
12 telephonic transmission to a facsimile device for the purpose of
13 encouraging a person or persons to purchase property, goods, or
14 services.

15 (2) No person may make a transmission to a facsimile device for
16 purposes of commercial solicitation. This section applies to all
17 commercial solicitation intended to be received by facsimile devices
18 within the state.

19 (3) A violation of this section is a violation of chapter 19.86
20 RCW. It shall be presumed that damages to the recipient of
21 commercial solicitations transmitted to a facsimile device are five
22 hundred dollars.

23 (4) Nothing in this section shall be construed to prevent the
24 Washington utilities and transportation commission from adopting
25 additional rules regulating transmissions to facsimile devices.

STATE OF NEW YORK

3082

1989-1990 Regular Sessions

IN SENATE

March 2, 1989

Introduced by Sen. TULLY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to unsolicited facsimile transmission

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new article
2 32 to read as follows:

ARTICLE 32

UNSOLICITED FACSIMILE TRANSMISSION

3 Section 640. Definitions.

4 641. Unsolicited facsimile transmission.

5 642. Violation and penalties.

6 § 640. Definitions. As used in this article:

7 1. "Facsimile transmission" shall mean every process in which elec-
8 tronic signals are transmitted by telephone lines, conversion into
9 written text.

10 2. "Unsolicited facsimile transmission" shall mean a facsimile transmis-
11 sion made by telephonic means to a telephone number without the express
12 prior request of the person called promoting goods or services for pur-
13 chase by the recipient.

14 3. "Facsimile solicitor" means any natural person, firm, organization,
15 partnership, association, or corporation who makes or causes to be made
16 an unsolicited residential facsimile transmission, including, but not
17 limited to, transmissions made by use of automated dialing or recorded
18 message devices.

19 § 641. Unsolicited facsimile transmission. No facsimile solicitor
20 shall make an unsolicited facsimile transmission to a telephone number.

21 EXPLANATION--Matter in italics (underscored) is new; matter in brackets
22 () is old law to be omitted.

LBD04150-02-9

1 § 642. Violation and penalties. Whenever there shall be a violation
2 of this article, an application may be made by the attorney general in
3 the name of the people of the state of New York to a court or justice
4 having jurisdiction by a special proceeding to issue an injunction, and
5 upon notice to the defendant of not less than five days, to enjoin and
6 restrain the continuance of such violations; and if it shall appear to
7 the satisfaction of the court or justice that the defendant has, in
8 fact, violated this article, an injunction may be issued by such court
9 or justice, enjoining and restraining any further violation, without
10 requiring proof that any person has, in fact, been injured or damaged
11 thereby. In any such proceeding, the court may make allowances to the
12 attorney general as provided in paragraph six of subdivision (a) of sec-
13 tion eighty-three hundred three of the civil practice law and rules, and
14 direct restitution. Whenever the court shall determine that a violation
15 of this article has occurred, the court may impose a civil penalty of
16 not more than one thousand dollars for each violation. In connection
17 with any such proposed application, the attorney general is authorized
18 to take proof and make a determination of the relevant facts and to is-
19 sue subpoenas in accordance with the civil practice law and rules.
20 § 2. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law.



DIRECT
ADVERTISING

BOX 93057
ANCHORAGE
9 9 5 0 5

907-345-4490
FAX-345-2363

APR 5 1989

April 2, 1989

Mr. Lyman Hoffman,

I am directly opposed to your introduction of House Bill 232, "An Act relating to the use of facsimile devices for commercial solicitation."

I am opposed to this type of legislation for the very fact that I am in this type of "Business Advertising."

I believe that I am the only person in Anchorage, for that matter, the state of Alaska, that does fax advertising. As you can read from my letterhead, it is called Fax Direct Advertising. I do the very thing that you are trying to legislate by sponsoring House Bill 232.

Since I'm the opposition, and I've read your side of the story (HB 232), let me tell what my concerns are.

It is true fax user does pay for the paper cost. But the cost to the user is only \$.03 to \$.05 per page depending on the length of the message.

As to fax machines being occupied with unsolicited messages, the nature of most unsolicited messages is that they are sent by computer. These computers are usually programmed to take advantage of low night phone rates. Most fax users have little or no fax traffic during the night hours. Hence, the concern for tying up a fax machine with an unsolicited message may be overblown.

The Federal Communications Commission received a total of 8,000 complaints about various telecommunications problems during 1988. Only 20 of these complaints were directed at junk fax. (Reported in NOMDA "Hotline" Feb. 1989, page 2.) A spokeswoman for the American Facsimile Association, an association of fax users, says, "When fax users mention junk fax, I ask them how many pieces of junk fax they receive. They usually tell me one or two per week." In short, the problem of unsolicited fax messages is perhaps overblown.

If fax messages are illegal, it will mean that each fax user must obtain permission from the intended recipient prior to making a transmission. There are various problems with this;



DIRECT
ADVERTISING

BOX 93057
ANCHORAGE
9 9 5 0 9

907-345-4490
FAX-345-2363

1. More than 8 billion fax messages are sent in the U.S. each year. The labor cost to obtain permission to send (including costs for both the sender and the intended recipient) could easily exceed \$1 per message. Hence the cost to American businesses could exceed \$8 billion.
2. With so many billions of fax messages flying around, there could be potentially millions of disputes about whether verbal permission was given to transmit a message. Governments would need significant staffs to and budgets in the tens or hundreds of millions of dollars in order to resolve these disputes.
3. Fax users have invested over \$4 billion in their fax equipment. Many of these are small business firms. When they purchased their fax equipment, many were motivated by the low labor cost of fax equipment, which features unattended operation. If fax users must obtain permission to send messages, many will need "Fax Machine Operators" to obtain permission to send messages to intended recipients and to give permission to other senders to transmit messages. To all firms this will represent a significant cost. To small firms, the cost may be prohibitive. It will result in many firms not getting the value out of the equipment that they have already purchased.
4. With such restrictions on fax usage and threats of large fines or law violations, fax will no longer be such a popular medium to the average business. As such, sales of new fax machines will drop. And in virtually every state of the U.S. there are sales offices for fax machines makers and a number of manufacturing plants. These will undoubtedly lay off thousands of workers.
5. While laws limiting telephone solicitations to residences have been upheld by the courts, the courts have never permitted any complete prohibition of the unsolicited mail or telephone sales pitches. And the standard of privacy is much higher for residential solicitation than it would be for businesses with fax machines. So it is highly likely that any complete prohibition of unsolicited fax messages would be ruled unconstitutional.

I would like to discuss this further with yourself or for that matter, your committee.

— LUIS MARQUEZ



Backgrounder

038903

States Information Center
The Council of State Governments
Iron Works Pike
P.O. Box 11910
Lexington, KY 40578
(606) 252-2291

Date: March, 1989
Topic: JUNK FAX
Infokey: Communications
(NT) Telephone

FAX ATTACKS: "And now an unsolicited message from..."

Facsimile \ 'fak-sim-e-le\ "A unit that scans and encodes a document into electrical signals and sends them over telephone lines to the receiver where the signals are reconstructed to produce an exact duplicate of the document."¹

Junk Fax \ 'junk fax\ "unsolicited advertising messages transmitted via facsimile machines."²

Facsimile systems - fast, convenient, comparatively inexpensive and reliable- are fast becoming a favorite method of communication. Two million fax machines have been sold in the United States in the last few years. More than four million are expected to be sold by 1991.³ Last year an estimated 785,000 units were installed, almost doubling the number in use.⁴

These machines tend to be turned on and hooked up to dedicated phone lines 24 hours a day. The Trojan horse of office equipment, they then receive any document that is sent to them. Although the sender pays for the phone call, the transmissions tie up the fax machine at an average of a minute a page, and the receiver has to pay for the thermal-coated paper on which the incoming document is printed. Such paper costs up to ten cents per page.

Fax machines are vulnerable to a rising tide of junk fax. Fax advertising presents endless opportunities for advertisers. One entrepreneur reports a 6.75 percent response rate to his fax advertisements, compared to the usual one percent.⁵ However, not all recipients of these ads are so enthusiastic. Representative Ken Jacobsen of Seattle, Washington terms the tactic the "ultimate in abusive use of a private communication system....You get a message you didn't want from people you don't know on paper they didn't buy."⁶ Consequently, a number of states are drafting legislation to restrict junk fax transmissions.

Connecticut:

HB-6620, introduced by Rep. Nania (R-63rd), prohibits "the transmittal of unsolicited commercial messages through the use of machines which send or receive facsimiles through the telephone."

*This CSG Backgrounder was compiled by Karen Marshall, Information Specialist, States Information Center, The Council of State Governments.

Note: Backgrounder information is the latest available at the time of publication, but for updates, you should contact the appropriate state or federal agency directly. This material does not represent the position of The Council of State Governments. Information is included based on relevance to the topic. Some material, as noted, is copyrighted and may not be reproduced further without permission of the original publisher. Contact the States Information Center or the writer at CSG.

CSG Backgrounder -- Junk Fax

HB-5396, co-sponsored by Rep. Tulisano (D-29th) and Rep. Taborsak (D-109th), states that "no person shall use a machine that electronically transmits facsimiles of documents through connection with a telephone network to transmit unsolicited advertising material which proposes a commercial transaction." It fines violators \$200 or more. In addition, HB-5396 declares a person guilty of harassment when "with intent to harass, annoy or alarm another person, he electronically transmits a facsimile of a document through connection with a telephone network, in a manner likely to cause annoyance or alarm."

Maryland:

HB-1319, Consumer Protection - Unsolicited Facsimile Transmissions by adding to Section 14-1313 of the Commercial Law, sponsored by Delegates Gilbert Genn (D-16th) and Lawrence Wiser (D-18th). Violation of the section could initiate a civil action by the Attorney General with a penalty not to exceed \$1,000 per violation.

New Mexico:

HB-494, sponsored by Representative Leonard Lee Rawson (R-37th), as amended by the Judiciary Committee, prohibits transmittal of any unsolicited commercial facsimile messages "for the sale of any real property, goods or services." The civil penalty is one thousand dollars per violation. HB-494 differs in that the state corporation commission would enforce the provisions through the adoption of rules and regulations.

New York:

SB-3082, introduced by Senator Michael Tully (R-7th) as an act to amend the general business law. Unsolicited facsimile transmissions are those "without the express prior request of the person called". The court may impose a civil penalty of not more than one thousand dollars for each violation.

Oregon:

HB-2227, through the House Environment and Energy Committee and Senate Telecommunications and Consumer Affairs Committees, prohibits use of fax machines to "transmit unsolicited advertising material for the sale of any realty, goods or services." Violations would be prosecuted through the state attorney general's office under consumer protection statutes.

Washington:

HB-1513, introduced by Representatives Jacobsen, Todd, Anderson, Heavey, K. Wilson, Dellvo, Beck, Bowman and Appelvick, as amended by the Committee on Energy and Utilities, bans "transmission to a facsimile device for purposes of commercial solicitation"... "without making a request to the party who will receive the transmission, asking for permission to make the transmission. The transmission can only be made upon receipt of an affirmative response from the party who will receive the transmission." Violators would face a \$500 fine per offense. "Consent can be given by phone to a particular vendor or general consent can be given by notifying marketing-industry trade associations."

Alternatives to government intervention include unlisted fax numbers or antijunk technology such as a machine that would accept messages only from an approved list of callers. The news media are especially inundated by junk fax, largely from releases by public relations people. According to Frank Martinneau of

CSG Backgrounder -- Junk Fax

Association Trends magazine, the New York Times newspaper has dealt with this problem by changing its fax number every week. Reporters then give out the new number as needed. Martineau thinks that eventually it may be possible to implement a system similar to the Personal Identification Number (PIN) used with automatic bank tellers.¹¹

Junk fax may not be the only innovation to which facsimile machines can be put. Daniel Fishman, co-author of The Book of Fax, envisions some enterprising person entering the business of fax-a-porn.¹²

NOTES

1. Canon U.S.A., Inc., Quickstart, New York: Canon U.S.A., Inc., p.21.
2. Herb Kirchhoff, Ed., State Telephone Regulation Report, Vol. 7, No. 4, February 23, 1989, Alexandria, VA: Telecom Publishing Group, p. 1.
3. "Many Climb on Fax Bandwagon, But There Is Potential for Abuse," Lexington Herald-Leader, February 6, 1989.
4. "A Mounting Pile of 'Junk' Fax," Newsweek, July 25, 1988.
5. Ibid.
6. "Lawmakers Consider Ban on Unwanted Ads on Fax Machines," Lexington Herald-Leader, February 26, 1989, p. A8.
7. Herb Kirchhoff, Ed., State Telephone Regulation Report, p. 2-3.
8. Ibid., p. 3.
9. "Mounting Pile of 'Junk' Fax."
10. "Lawmakers Consider Ban..."

Telephone conversation with Frank Martineau, Association Trends magazine, on March 17, 1989.

11. "Many Climb on Fax Bandwagon."

Price -- \$5.00
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The Council of State Governments

DeHART and DARR
TELECOPIER COVER MEMORANDUM

DATE 4-7-89

- (1) TO: Rep Boucher
(2) COMMENT: re AK HB 232
(3) ADDRESSEE: House State Affairs Committee
(4) ADDRESSEE CITY & STATE: _____
(5) ADDRESSEE FAX: 207 465 2186
(6) CONFIRMATION TELEPHONE: _____
(7) TOTAL NUMBER OF PAGES: 4 INCLUDING COVER MEMORANDUM
(8) FROM: Anne Darr

McLEAN OFFICE

1360 Beverly Road
Suite #201
McLean, VA 22101
Main Phone: 703/448-1000
FAX No.: 703/790-3460

as promised

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JH _____

DeHart and Darr

Comments prepared by Anne Darr

DeHart and Darr Associates, Inc has represented the direct marketing industry in the state legislatures for twenty years.

On behalf of the Direct Marketing Association (DMA) we thank Chairman Boucher and each member of the State Affairs Committee for the opportunity to share our views with you regarding House Bill 232.

The members of DMA bring you goods and services, manufactured and offered by others, through direct mail advertising and telecommunications.

We have 3,000 companies nationwide and we employ millions of Americans.

We make it possible for any American, including the elderly and the handicapped, to live alone, in rural or metropolitan areas, and have access to goods and services by phone and by mail. Maybe in the future -- by fax.

As an industry, the DMA has been particularly responsive to consumer needs as well as to those of our member companies. DMA and its president, Jonah Gitlitz, believe in being responsible, ethical, and helpful business people.

For example,

1. DMA instituted the Mail Preference Service (MPS) in 1971. This means that any American can send his/her name and address to MPS and be deleted from national mailing lists. It is interesting to note that more people have asked to get ON lists than to get off.
2. DMA instituted the Telephone Preference Service (TPS) in 1978. This means that any person can send his/her telephone number to TPS and be deleted from national telephone calling lists.

We have not taken any steps regarding facsimile transmission as yet. That is because it is so new and such an exploding and innovative communication channel, that we have not been able to develop a responsible position as yet. We have been able to identify only a few examples of marketers using fax at this time.

DMA does plan to review the fax issue during 1989 -- so that we can report to you, our lawmakers, what we have learned and what we recommend.

In the meantime, we urge restraint in your approach -- in the approach of any state legislature.

FAX may turn out to be the best and the most efficient way to do business ---
or it may turn out to be the the worst!

Until we can determine together who is using fax and who might use fax, we urge
you to REGULATE, not ban.

DMA's proposal at this time is this:

1. prohibit fax UNLESS
 - a. it is between two persons or entities who have a previous relationship
OR
 - b. the fax connection occurs between the hours of 6 pm and 9 am, local
time
- AND
- c. any faxor agrees, and indeed establishes an inhouse system and procedure,
to delete the name of any faxee, upon request.

DMA believes this solves your problem to curb any runaway abuses and gives you a
vehicle to amend when more facts about FAX are available.

Finally, we would like to mention that the exploding technological aspects of
facsimile should not be ignored.

1. "regular" paper is now available
2. a new "gizmo" is on the market this month which enables anyone with a
fax to attach it and this means that any other person desiring to fax
to him or her will need an "access" number

Sometimes, 50% of a problem solves itself as the invention is perfected.

Thank you for the opportunity to communicate with the Alaska legislature!

If you have further questions, please contact Margaret Gottlieb
Director of State Legislative Affairs
Direct Marketing Association (DMA)
(in Washington)
at 202 347 1222

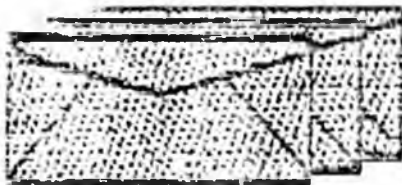
#

DMA comments on Automatic Dialing Announcing Devices

1. definition should clarify that an adad means "without the use of a live operator"
2. an adad call should identify:
 1. person or organization
 2. purpose of the call
3. adad call should disconnect immediately when the called person hangs up
4. hours for adad calls should be restricted to between 8 am and 9 pm
5. adad solicitation calls should not be permitted to public institutions (hospitals) or emergency numbers (fire, police)

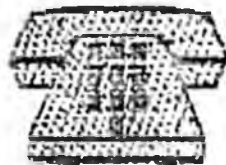
Costs Of Junk Mail, Junk Telephone Calls, And Junk Fax

For all examples, we have used a labor cost of \$12.00 per hour including salary, benefits, employer paid payroll taxes, and workman's compo. We have added 50% to that hourly rate to include typical office overheads of rent, utilities, and supervisory costs. Total cost for the office employee is thus \$18.00 per hour.



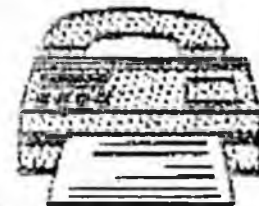
Junk Mail

The time for an office worker to open a piece of junk mail and evaluate whether to keep it or toss it out would typically be 15-30 seconds. At \$18.00 per hour cost, the cost for this 15-30 seconds is \$0.75 to \$1.15 per piece of junk mail.



Junk Telephone Calls

Unsolicited calls to sell products to offices are a common occurrence. The time it takes an office worker to determine that the call is unsolicited and to disengage from the conversation is typically 30 seconds to 1 minute. At \$18.00 per hour cost, the cost per junk telephone call is \$1.50 to \$3.00.



Junk Fax

There are three main differences between junk fax and junk mail. They are:

1. Junk fax is generally not addressed to a person so it may be easier to detect that the item is unsolicited.
2. There is no envelope to open so any time spent dealing with junk fax is mainly in deciding whether to keep the advertisement or throw it out. Also, junk fax is generally single page as opposed to junk mail which might contain several pages to evaluate.
3. The recipient of junk fax pays for the paper cost which can be \$0.02 to \$0.03 depending on the length of the message.

It typically would take 10 seconds or less to decide whether to throw out junk fax. At a cost of \$18.00 per hour this is \$0.30, plus the paper cost of \$0.03. Total cost is \$0.33.

CONCLUSION: Per piece of junk fax, the cost is no more than junk mail and considerably less than the cost of answering a junk telephone call.

CONCLUSION	
	COSTS TO PROCESS
Junk Mail (per piece)	\$0.75-\$1.15
Junk Telephone Calls (per call)	\$1.50-\$3.00
Junk Fax (per page)	\$0.33

**SAVE 50%
ON FAX PAPER**

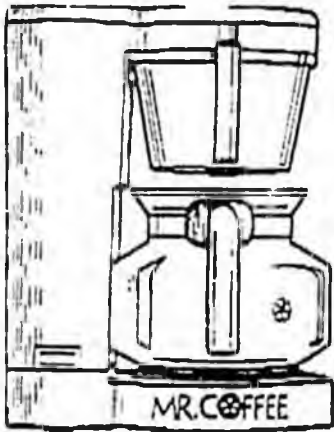
GET A FREE \$40 MR. COFFEE COFFEEMAKER

Just try 2 cases of MR. FAX paper in your office. With your order, we will ship your Free Mr. COFFEE coffeemaker. It makes 10 great cups of coffee, tea or hot chocolate. It's perfect for home or office or a gift for someone special.

If you are not completely satisfied with our fax paper, return the paper and owe nothing. Keep the MR. COFFEE with our compliments! And since your credit is pre-approved, you have no risk and no delay.

MR. FAX now supplies over 10,000 American companies including over 25% of the Fortune 500. We offer you the best quality paper, low prices, and same day shipment from our 3 convenient warehouses. Won't you try us soon?

If you need more than 2 cases, you get one MR. COFFEE Free with each 2 cases you buy!



- Superior Paper— We make it ourselves in our California plant!
- Immediate Delivery— We deliver 2nd DAY by UPS from our California warehouse (if order is received by 2:00 PM PST).
- No Hassle Guarantee— If you're not completely delighted with your purchase, simply return it to us within 15 days and we'll issue a full refund. No questions asked.
- Pre-Approved Credit— Your credit is good with us.

MR. FAX Discount Price (per roll) (8.5 inch x 328 feet nominal—6 rolls per case) LIST PRICE \$22 (SAVE 50%)

1 Case **\$11.99/roll**

6 Cases **\$10.99/roll**

3 Cases **\$11.49/roll**

12 Cases **\$10.49/roll**

Rolls Shorter Than 328 Feet at Lower Prices. Above prices are net after deducting MR. FAX "Fast-Pay" Discount. Shipping and handling added to invoice.

If you prefer not to receive MR. FAX information, please let us know. Fax us back at (714) 830-9864 with your Fax Number. MR. FAX will not contact you again.

ORDER FORM

Complete Form and FAX to: (714) 830-9864

Or Call Toll-Free 1-800-262-8214 or Inside CA (714) 830-9861.



MR. FAX

Company Name _____ P.O. # _____

Your Name _____

Shipping Address _____

City _____ State _____ Zip _____

Fax # _____ Telephone # _____

Machine Brand _____ Model No _____ How many cases? _____

Include with shipment _____ **FREE MR. COFFEE Coffeemaker (1 for every 2 cases ordered)**

OFFER VALID FOR 30 DAYS.



DIRECT BOX 93057 907-345-4490
ADVERTISING ANCHORAGE, AK 99509 FAX-345-2363

"FASTEST DIRECT ADVERTISING IN ANCHORAGE"

It's fast. In as little as 15 seconds, you can have your printed advertisement faxed to businesses in your market area. Whether it be, across the street or across the city, FAX DIRECT ADVERTISING is here to help you.

Yes, help you to reach the people and businesses that will benefit from the services that you offer or the products you sell.

FAX DIRECT ADVERTISING can reach your market through any of three effective means:

1. AREA OF THE CITY.
2. TYPE OF BUSINESS.
3. ZIP CODE.

For the cost of a stamp* you can have your printed advertisement faxed to your market area.

FAX TRANSMISSION RATES . . .

001-249 Fax transmissions @ 40¢ per transmission.
250-499 Fax transmissions @ 35¢ per transmission.
500-999 Fax transmissions @ 30¢ per transmission.
1,000 + Fax transmissions @ 25¢ per transmission.

Do you need help in putting your advertising together? FAX DIRECT ADVERTISING offers typesetting and paste-up services for an additional fee.

FAX DIRECT ADVERTISING is on the technological edge of direct advertising.

Differentiate yourself from everyone else.

Get it there fast and first with FAX DIRECT ADVERTISING.

Call us direct or fax us for more information today.

*1M or more transmission rate.



DIRECT
ADVERTISING

L U I S
M A R Q U E Z

907-345-4490
FAX-345-2363

BOX 93057
ANCHORAGE
9 9 5 0 9



Program & Counsel Staff

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

TO: Dennis J. Burns, Aide
House State Affairs Committee

FROM: Julie A. Barney, Legislative Associate
Assembly Consumer Affairs and Protection Committee

RE: Unsolicited Fax Transmissions: Example

DATE: April 5, 1989

Following is a single page example of an unsolicited fax transmission, which I reference in my oral testimony. I look forward to discussing this issue with the Committee tomorrow.

Telephone: (518) 455-4881
FAX: (518) 455-4380
Address: Rm. 513, Capitol
Albany, NY 12210-

12248

02/12/1985 12.22.59PM FINE SERVICES
SIGNAL:2300 YORKVILLE NYC

PL
02/MAR 09 '89

70

Joan's Designs

A WOMENS BUSINESS ENTERPRISE
CERTIFIED ORGANIZATION

ATTENTION: Purchasing Agents State of New York

SPECIAL
Quantity Discounts

Vertical Blinds

1" Mini Blinds

Window Shades



Call With Sizes and Quantities for Pricing

Phone (315) 724-~~XXXX~~

Fax (315) 831-~~XXXX~~

A CERTIFIED WOMENS BUSINESS ENTERPRISE STATE OF N.Y.



04/05/89

16:26

518-455-4305

002

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Heading Off 'Junk Fax' at the Wire

By KIRK JOHNSON

Special to The New York Times

HARTFORD, Jan. 19 — Don't fax me, I'll fax you: Under a bill proposed in the Connecticut General Assembly, that would be the official message here to businesses, direct marketers and others who send unsolicited advertisements — "junk fax" — over the telephone wires.

The bill, proposed by a legislator who confesses to a philosophical dislike for facsimile technology, would make it a civil offense to bother people with unwanted fax messages. Fines could be \$200 or more, though details of the proposal have not been worked out.

What has furrowed a few brows is that not even the bill's author, Representative Richard D. Tulisano is sure that junk fax is much of a problem in Connecticut or anywhere else. And the ultimate fate of the bill is anyone's guess.

But Mr. Tulisano, a Democrat, said he thinks the proliferation of the machines, two million of which have been sold nationwide in the last few years, will sooner or later bring on fax attacks by people selling products or services — and tying up fax machines in the process. Similar bills are before the Washington and Oregon state legislatures this year.

"I don't want to wait until the horse has escaped, and then worry about it," Mr. Tulisano said.

Fax technology, which allows in-

stantaneous transmission of documents from one machine to another, has transformed business communication in thousands of offices. And though the use of the machines as a sales tool is apparently not widespread, marketing experts agree with Mr. Tulisano that the volume will grow.

For example, a company in H-

vine, Calif., called Mr. Fax, has compiled a data base of 400,000 fax numbers and is looking for more, even offering gifts to people who provide more numbers — a free Mr. Coffee for 100 numbers and a Sony Watchman for 1,000 numbers. Although Mr. Fax is now using its data base to market only its own fax paper, the fear is that

the company, and others like it, could allow other businesses to use their data bases.

"We feel that we aren't really participating in junk fax," said Elliott Segal, vice president in charge of marketing at Mr. Fax, which transmits about 60,000 fax sheets a week to its clients. Mr. Fax takes orders for its paper, quite naturally, by fax machine.

Already, some local businesses have begun advertising by fax. In Hartford, which has about 20,000 fax machines, according to an estimate by the Southern New England Telephone Company, such advertisements are sent occasionally by local car dealerships. One such ad says a dealer will take \$100 off on a Honda if a buyer brings in the fax sheet.

Meanwhile, the number of potential targets for advertisers is growing. At the city's largest employer, the Aetna Life and Casualty Company, the 1,600 people who work in the company's three office buildings communicate by fax, and an internal directory is published by the company to make it easier.

One problem that people like Mr. Segal see in the antifax bills is exactly how the laws should be worded so as not to violate free speech protections. In Connecticut, as well as in Washington and Oregon, no public hearings have been held and the final wording of the proposals has not been worked out.



BY KIRK JOHNSON

NYT 1/20/89

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THE LAW



From
Goddesses to
Dolphins



A New and
Powerful
Partner

ART



An Antic
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SPORTS



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Computers/Communications

Wonders of technology brought cheap communications. Great, but one consequence is a bad case of information overload—a nuisance for consumers, a headache for marketers.

Prepare for E-mail attack

DIRECT MAIL OPERATORS send so many "urgent" mailgrams that most people don't even open the envelopes now. Solicitors hit you at night with so many phone solicitations that you shelled out the extra bucks for an unlisted number. Then they got through with random dialers. So you bought an answering machine. And now they've invaded your computer and your fax machine with junk mail. Is there no peace?

This is the information age that the futurists talked about, the day when telephone technology, fax machines and electronic mail would make communication cheap and plentiful. Too plentiful.

Says Mitchell Kapor, the former chairman of Lotus Development Corp.: "It's a well-known phenomenon in large corporations that when you come back from a long weekend you'll find 50 pieces of electronic mail in your mailbox, spend hours going through it, and end up with most of it being stuff you don't want to see." Kapor protects himself at home with an unpublished telephone number, and opts for a public electronic mail address for his computer. Yet the unwanted messages still come through.

By David Charbock

So many unwanted messages are floating around that the wanted ones sometimes get lost in the shuffle. And so we have what could perhaps be called a war of access, fought on a battleground of chips and software. Everyone, it seems, is screaming for your attention. Among the callers' weapons are electronic white pages, power dialers that can do 20,000 calls a day, and systems that hunt down unpublished fax numbers.

Defensive strategies? These include fax switchboards with software to route unwanted calls into answering machines and call blockers that reject calls from specific unwanted numbers. Tomorrow's strategies will include software that filters out sales pitches from electronic mail by looking for telltale words like "insurance" and "financial planner."

The ultimate gatekeeper for the busy executive or the very private individual is, of course, another human being. But secretaries and butlers are expensive. For most people, then, the answer to junk communications will be found in call blockers, software filters and screening devices that enable communication targets to dig an electronic moat around themselves.

The roots of this emerging electronic warfare are to be



found in the very success of semiconductors, which have made talk cheap. But with information, more can be less—a phenomenon once quantified by MIT Professor Ithiel de Sola Pool. Tracking various media from 1960 to 1977, De Sola Pool found that there has been a rapid growth (9% annually) in data made available in the form of periodicals, television, radio, phone calls, mail, faxes and telexes. At the same time there has been a much slower growth (3% annually) in data consumed. Out there at the margin, in short, only about a third of the extra information is getting through. We are suffering from information overload. The transmission of information, while becoming cheaper, is becoming less efficient. The De Sola Pool study concluded that even while transmission costs are dropping, it is costing more to send a message and have it sink in.

While senders are spending more to reach out, some receivers are spending more not to be touched. Survey Sampling, a Fairfield, Conn. research firm, says 28% of all U.S. households have an unlisted number. Los Angeles is 56% unlisted.

New Jersey Bell, which already charges customers \$12.50 a year for the privilege of not having their numbers published, is offering another defense this year, Caller ID, in some parts of its territory. For \$78 a year plus a onetime charge of \$60 for a readout device, a residential customer sees the number of the caller when his phone rings. If he recognizes the number, he picks up; if he doesn't, he might ignore the call or maybe let an answering machine get it.

For \$48 a year New Jersey Bell will accept a list of up to six calling numbers that will be blocked from your phone altogether; the callers get a central-office recording telling them to buzz off. Depending on how many stockbrokers, bill collectors and ex-spouses you are trying to avoid, six may fall far short of your needs. But New Jersey Bell's services are just the opening wedge of call-blocking technology. If a \$60 device can capture phone-number data from the phone line for display, another device could sit between a telephone and a personal computer, trapping and storing incoming phone numbers. There it could be compared against an unlimited list of *numeri non grati*. Perhaps, as Caller ID spreads to other Bell companies (Nynex plans to offer the service as well), some entrepreneur will market software that can identify the sleazier phone solicitors—penny stock touts, for example—and cut them off.

Businesses are already figuring ways to turn Caller ID

into an offensive weapon, says a telephone consultant who is advising them. In New Jersey, commercial accounts can identify calling phone numbers for \$102 a year. Obvious scheme: Advertise, say, a free book on municipal bonds with a phone number to call, then capture the callers' numbers and feed them to ravening cold-call brokers.

Don't forget that the strongest weapon in the arsenal of people making calls is phone numbers. Getting those numbers along with your name, address, zip code and any other personal information (the more personal the better) is big business. List brokers thrive by leasing computer tapes containing magazine circulation lists, product warranty registration lists and other information to direct marketers.

Technology makes this process a bigger problem. Nynex is selling, for \$10,000, a compact disc containing 10 million white page listings for its New York and New England service area. The discs are updated monthly and include a little more information than the paper white pages: names, addresses, zip codes and, of course, phone numbers. Chief customers for Nynex' disc: bill collectors, banks and law enforcement agencies.

Once the marketer has a million numbers, what does he do with them? Feeds them into a power dialer, also known as a junk-call machine. About \$38 million worth of the power dialing equipment was sold in 1988, according to William Reed at Link Resources, a New York market research firm. This notwithstanding about 30 state laws supposedly restricting them. (Massachusetts has a law requiring phone companies to make available to operators of power dialers a list of phone customers who have asked to be spared such solicitations. But the law does not require the junk call operators to get the list, much less to honor it. In Florida a 1987 law bans phone machines from calling people with pitches for "tangible" goods like aluminum siding. "Tangible," however, does not cover the activities of stockbrokers and insurance salesmen.

Boston-area-based Davox Corp. says one purchaser of its CAS-1000 system, which supports 64 phone lines and 32 customer service representatives, was able to dial 20,000 numbers and make 4,000 contacts in one day. Those dialers aren't cheap. A midlevel Davox system—one that supports 16 lines and 8 to 10 agents—is priced at \$125,000.

As telemarketers spend more for offense, their audience will have to step up defensive outlays. One manager of a bed-and-breakfast in San Francisco uses a device called



Comp/Comm

PriveCode to stop his phone from ringing. "I was tired of being offered free dancing lessons," he says. "With a phone in every room, every time they rang the house sounded like it was taking off to the sky."

PriveCode asks callers for their access number, which they punch in with a touch-tone phone. The inn's guests have a code that makes the phone rings come in bursts of four. The booking agent uses a code that rings three times. The manager's friends have yet another code that sets off two rings. The single-ring code is for "special occasions," he says. Dance lesson pitchmen can't make the phone ring at all.

PriveCode was invented by IMM Corp. in Philadelphia, which, alas, doesn't sell it anymore. It was a marketing failure, partly because of its high price (about \$300 for a single extension) and partly because it doesn't also have a message-taking option for people who don't know the code. But experts say it would be easy to build a ring-blocking device into the current generation of \$100 answering machines, which already use codes to read back messages to the owner calling in from another phone.

Another defensive technology has been around for a long while but is much more feasible with modern software-controlled pboxes, or switchboards. Keep two phone extensions. One rings when a stranger dials your company and asks to be connected to you. That extension is shunted to a secretary. The other extension is known to people you want to hear from. You pick up that extension yourself, saving the inconvenience of a screening by your secretary. Software-driven switchboards facilitate this dodge immensely. For one thing, they can easily change your private extension number if it leaks out to outsiders. For another, they can shunt the cold-callers to a low-cost dump such as a voice mailbox. If corporate executives of the future can win this little electronic battle, they can probably make do with fewer secretaries.

But marketing people, desperate for new leads, are fighting back: Offensive software is moving ahead. A Norcross, Ga. company, Digital Publications, is selling a program and 5,000-name database that allows publicists to mass-distribute faxed press releases automatically at night, at a



cost of 10 cents each, much cheaper than the average 30 cents paid per mailed press release. Mr. Fax, a fax supply company in Irvine, Calif., has accumulated a large database of fax numbers by offering cameras and Sony Walkmans for lists of fax numbers. Such lists are one reason fax users are inundated with mail—and paying for the insult, since suppliers are on them.

Defense against junk fax assaults: Don't let out your fax numbers. Soon, however, fax marketers will have a powerful retaliatory weapon, inspired by the "demon dialer" of the movie *War Games*. Zoom Telephonics in Boston plans to release in March a \$595 modem that can be programmed to randomly dial thousands of numbers, hunting for responses that betray the characteristic signals of a fax machine beginning to receive. The fax numbers are stored for later retrieval.

Now what do you do? So far only a few fax manufacturers have added a feature that demands an access code before permitting a transmission to begin. But such features may soon become standard on all machines rather than options.

Electronic mail—messages sent from computer to computer—presents a more complicated battlefield. It's more

powerful than letter mail and potentially more invasive. Why so? With a fax message, you don't know whether or not the intended recipient got the message or read it, but some electronic mail systems, for instance, permit the sender to attach a "receipt" to a message so he'll know when you've read it and can follow up with a phone call. Defense: Forward the message to yourself and then read it. The receipt won't be triggered.

E-mail still has a way to go before it replaces the post office—or snailmail, as its detractors call it. However, it is already formidable. The number of messages over public systems (such as CompuServe and MCI Mail) reached about 500 million in 1987. Coopers & Lybrand predicts that number will reach 2 billion in 1992. On private, corporate electronic mail systems, there were about 1 billion messages in 1988, and there could be over 10 billion by 1992.

When the first corporate electronic mail systems were installed in the 1970s, users noticed a disquieting phenomenon: unwanted messages. "Someone in a branch office hires a new salesman and sends a message to everyone in the company, including the chairman," says Walter Ul-

rich, a partner at Coopers & Lybrand in Houston. "That clutters everyone's mailbox. It is so simple to simply address the message to 'everyone' that there is abuse. Without electronic mail that branch manager would never think of making the same announcement, running off 10,000 Xerox copies and then mailing it out." As chairman of the privacy and security subcommittee of the Electronic Mail Association, Ulrich is monitoring ways to cope with this problem of overuse.

Help is on the way. Professor Thomas Malone at MIT's Sloan School of Management is leading a project called the Information Lens, a system of filters, defined by the user, that scans incoming mail and sorts it into "folders" according to user-defined criteria. Mail from the boss will be flagged as urgent if the user has so programmed the system. The Lens can also identify messages from electronic pests by the way the user handles them, and can route them into an electronic trash can or low-priority folder.

General broadcasts, like junk mail, can be regarded as useless by many recipients, who would prefer not to receive impersonal communications. The Lens, rather than posting a copy of a broadcast message in everyone's in-box, puts it into an electronic pool of other broadcast messages. Members of the system can tell the Lens to search the pool for items of interest, retrieve them, and save them in a personal file. In this system the receiver has more control over the communication channel than the sender.

"Imagine various kinds of pricing schemes," says Malone. "On a simple level a sender is charged for sending messages and charged more for sending a message to many people. You can imagine some more elaborate schemes: One would be a toll for getting information into your mailbox. You won't be willing to look at messages from random strangers unless they are willing to pay to get that information into your mailbox.

"That way I have a certain kind of filter that says it has to be worthwhile to the sender to get it to me. Such a system increases the incentive for the sender to target his communications more directly."

Professor Nicholas Negroponte, director of MIT's Media Lab, envisions a world of "reverse advertising." "I tell my computer to tell the world that I want to buy a windsurfer for under \$800, and the windsurfer world responds with bids." Don't call us, we'll call you. Now we're talking. ■



A MATTER OF FAX

Hot gadget often just a high-tech headache

By DONNA FREEDMAN
Daily News reporter



One of the hottest accessories in Los Angeles these days is a fax machine for your car phone. It says "prestige." It says "status."

I say baloney. Nobody can be that important. (Besides, if you're phoning and faxing, who's driving?)

In case you don't already know, a facsimile machine can send an 8-by-11-inch document anywhere in the world, in under half a minute, for the price of a phone call. It scans a document and changes the dark marks into digital pulses. The phone line converts the pulses into voice tones; the phone on the other end changes the voice tones back to digital pulses, which are printed on paper.

The machines used to be big, ugly and expensive. Modern technology has made them smaller, cuter and cheaper (as little as \$700). Managers of huge businesses and small offices don't know how they ever got along without them.

The Anchorage Telephone Utility installs about 25 fax lines a month. You can find faxes in Anchorage oil companies and village city councils. Consumers can dial locally or nationally to order everything from auto parts to gag gifts. At least one sandwich shop in Anchorage takes lunch orders by fax and faxes its daily menu to 40 regular customers.

Please see Page E-2, FAX



FAX: High-tech miracle, or waste of paper?

Continued from Page E-1

Not that faxes are strictly business. Rich kids in Beverly Hills fax each other their homework assignments. On television's "Murphy Brown," a character played by Candice Bergen once got tanked at a company party and faxed her chest to the West Coast.

Local disc jockey Greg Wilkinson asks listeners to fax him weird things. The strangest so far was a photocopy of someone's edible underwear. Nothing as good as the "Murphy Brown" stunt: "No body parts," Wilkinson says.

Etiquette specialists may have to incorporate fax facts into their next books. Is it acceptable to send wedding invitations by fax? What about RSVPs? And can the happy couple fax its thank-you notes?

Then there's fax flirting: If a faxer in another office seems funny and charming, are you allowed to strike up an electronic conversation,

or ask for a date?

At least one entrepreneur is making a buck on this sort of thing. SinglesFax, an electronic personals column in New York, matches up wary singles to exchange faxes before agreeing to date. It may be a new trend: "safe fax."

A potentially serious issue is fax advertising. Fax owners are a direct-marketer's dream: the ultimate captive audience. You can't hide from advertisers once they have your fax number. And it gets better: they tie up your line to send you something you never asked for — and you get to pay for the paper!

Luis Marquez owns a new Anchorage company specializing in fax-direct advertising. So far he has several customers, and a list of 1,600 fax numbers.

He says he doesn't send obnoxious ads, and only faxes after regular business hours. He invites people to fax him back if they'd like their number taken off his list.

"I'm being very responsible about this," Marquez insists. He says the cost of paper is negligible: two to four cents a page.

Sean Elder of The Office Place disagrees. Paper can cost from 4 to 7 cents a sheet, he says, and as much as 10 cents a sheet when you add the cost of regular fax machine maintenance.

He also says that after business hours is when some fax machines are busiest — phone rates are lower then. Someone trying to send legitimate documents "might not be able to get through because someone was flooding the lines with junk mail," Elder says.

Ken Longacre is one of Marquez's customers; he recently had 750 health insurance bidding proposals sent out. He says that about 25 people were interested, that two faxes were "completely irate" and that half a dozen asked to be excluded from future faxings.

"You're going to step on some toes," Longacre ad-

mits, "but you're also generating a lot of business."

As someone with toes, I'm concerned. I get hundreds of pieces of junk mail a year. It doesn't cost me anything to throw it away. But how much paper would all those pizza coupons and magazine solicitations use? When would the business stuff be able to get through?

And imagine calling all those advertisers and asking them to remove you from their lists. Sure sounds like a pleasant way to spend a couple of years — that is, assuming they agree to do it.

It's just another delightful consequence of technology. We got the wonders of computers, and viruses started cropping up. Now that the nation is hooked on faxes, we won't be able to escape from somebody who wants to sell us life insurance or slightly irregular pantyhose.

Chalk it up to the fax of life. And if you care to discuss the subject, feel free to call or write. Please don't fax.

ers who are no less a... she says.

Researchers say that a shift in social attitudes — including changes in sexual mores and the family, and a redefinition of women's roles — has lessened the stigma of being an unmarried mother or single parent, which in turn has had a significant impact on the number of babies placed for adoption. That shift in social attitudes occurred during the time when abortion became legal.

The vast majority of babies who are placed for adoption are the children of teen-age mothers, but about 42 percent of teen-agers end their pregnancies with abortion.

No statistics are available on the number of married women or couples who place babies for adoption, but family-planning experts say that the number is small.

According to the Alan Guttmacher Institute, a non-profit group specializing in reproductive research, 19 percent of women who have abortions are married, and women over age 40 end 51 percent of their pregnancies with abortion. About 35 percent of women who have abortions have either one or two children, according to

Talk to
TRAVELCENTER

FREE
SPINAL AND SCOT
EXAMINATIC

MARCH 6 TO MAR



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: House State Affairs Committee Members

FROM: Representative H.A. "Red" Boucher, Chair
House State Affairs

DATE: January 23, 1990

RE: HB 232

You will recall the House State Affairs Committee held two hearings on HB 232 last session. The following summarizes the testimony and comments from those hearings:

Testimony

1. Rick Lauber, Pacific Seafood Processors Association

Stated he received unsolicited Fax advertising which he opposes. His concern, however, related to situations where fish processors sell to brokers by Fax. Would they be violating the provisions in HB 232?

Commercial solicitation under HB 232 means unsolicited electronic or telephone transmission. The process used by Mr. Lauber was unsolicited, however, it seemed appropriate and legitimate.

Companies which have a business relationship with a customer could easily receive the customer's permission to, and in the future, use the customer's Fax for unsolicited advertisements. The real problem was unsolicited, unwanted transmissions and this included automatic dialing machines.

2. Julie Barney, staff New York Assembly

Similar legislation was pending before the New York Assembly. Ms Barney indicated that the costs and losses incurred to the recipient of "junk" Fax transmission was the impetus behind the legislation.

Ms Barney testified that she believed companies which had a business relationship with a customer could easily receive the customer's permission to use the customer's machine for unsolicited advertisements from the company.

3. Anne Darr, Direct Marketing Association (DMA)

Supported HB 232. She testified that DMA deleted any person from the national mailing lists who wished to be removed.

Ms Darr said the DMA had established a special task force look into unsolicited Fax transmissions. She testified that DMA was urging and supporting a regulatory approach to unsolicited Fax transmissions.

4. Luis Marquez, Direct Advertising

Testified against HE 232. Mr. Marquez indicated that his business sent Fax advertising to 2,000 Fax machines throughout Alaska.

Mr. Marquez discussed his policy for Fax transmissions. He stated he did not sell his database list and that he had only received complaints from 1 to 2 percent of his customers. Mr. Marquez indicated he did not believe Fax advertising had become a problem in Alaska.

Mr. Marquez testified he believed the industry should be self-policing.

5. Robert Mintz, Assistant Attorney General

Testified that national studies showed that people generally did not voice their objections to unsolicited transmissions. Those studies showed that only 1 out of 26 dissatisfied customers on average would actually take the time to communicate a complaint to a company.

Mr. Mintz testified that he believed it was better public policy to stop a problem before it became a widespread.

B-6 Tuesday, March 21, 1989, The Anchorage Times

Bill targets fax ads

JUNEAU — The newest route for junk mail is through facsimile machines, and Rep. Lyman Hoffman wants to hang up on such unsolicited advertising.

House Bill 232 would prohibit people from sending unsolicited advertisements through facsimile machines, and would establish a \$200 minimum civil penalty for violations of the ban.

The Bethel Democrat said he introduced the legislation Monday at the request of a constitu-

ent who had called to complain about unsolicited advertisements coming into his office through his facsimile machine.

Machine owners must pay for the paper consumed by electronic junk mail and sometimes must wait to use their machines while unsolicited advertisements are coming in over the telephone line, Hoffman said.

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LEGISLATIVE BILL DIGEST

HB 1513

Restricting the use of facsimile devices for commercial solicitation.

Prohibits transmissions to facsimile devices for the purpose of commercial solicitation.

Makes violations unfair business practices and presumes damages in the amount of five hundred dollars to the recipients of commercial solicitations transmitted to a facsimile device.

AMENDED BILL COMPARED TO ORIGINAL: The original bill contained an absolute prohibition of commercial solicitation through fax.

Fiscal Note: Not Requested.

House Committee - Testified For Original Measure in Committee:
Ravelle Brickman; Pauline Bowers.

House Committee - Testified Against Original Measure in Committee:
None Presented.

House Committee - Testimony For: It is a great inconvenience and costly to Fax machine owners to receive advertising over their machines.

House Committee - Testimony Against: None Presented.

FISCAL NOTE

REQUEST:

Revision Date: January 18, 1990
 Title: "An Act relating to the use of
 facsimile devices for commercial solicitation."
 Sponsor: Repr. Hoffman
 Requestor: House State Affairs

Agency Affected: Department of Law
 BRU: Consumer Protection
 Components: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 18, 1990
 Approved by Commissioner: Richard I. Pegues / FOR / Douglas B. Bailey, Attorney General Date: January 18, 1990
 Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

This bill amends AS 45.50 by adding a new section that would make an unsolicited commercial transmission to a facsimile device a prohibited act under the Unfair Trade Practices and Consumer Protection Act. The bill also provides a private right of action, under AS 45.50.531, for persons who receive commercial solicitations in violation of the prohibition. Because of the private right of action provided in the bill, state enforcement is not anticipated. Consequently, there should not be a fiscal impact for the Department of law. In any event, state enforcement is unlikely because of the 63 percent reduction in the department's consumer protection activities since FY86, which has been caused by state budget reductions.

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 232

Prohibit Unsolicited Fax Transmissions

Received March 20, 1989
by Reps. Hoffman and Boucher

Heard April 6, 1989
Heard April 25, 1989
Heard January 24, 1990

Committee Substitute adopted January 24, 1990

Passed Out of Committee January 24, 1990
4 Do Pass
2 No Recommendation

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- Item 3: Printed Articles Pertaining to HB 232
- Item 4: Similar Legislation from New York and Washington
- Item 5: Memorandum and Backup from House Research
Request 89.315, March 16, 1989
- Item 6: Letter from Fax Direct Advertising, April 2, 1989
- Item 7: Alaska Statutes re: Unlawful acts and practices
- Item 8: Department of Law Letter and News Releases,
April 21, 1989
- Item 9: Memorandum from LAA re: Fax Procedures in the
LIO's, September 26, 1989
- Item 10: Memorandum from Legislative Council Staff re: Junk
Fax, November 3, 1988
- Item 11: Memorandum from Rep. Boucher, January 23, 1990

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 20, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 232

HOUSE BILL NO. 232

[PROHIBIT UNSOLICITED FAX TRANSMISSIONS]

"An Act relating to the use of facsimile devices for commercial solicitation."

RECOMMENDATIONS:

- be replaced with CS HB 232 (SA) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis Dept law

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

[Signature]
Eileen P. Mahan
[Signature]
[Signature]

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		✓	
<u>[Signature]</u>		✓	

[Signature]
Chairman's Signature

Item 2

FISCAL NOTE

REQUEST:

Revision Date: January 18, 1990
Title: "An Act relating to the use of facsimile devices for commercial solicitation."
Sponsor: Repr. Hoffman
Requestor: House State Affairs

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MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: January 18, 1990
Approved by Commissioner: Richard I. Pegues / FOR / Douglas B. Bailly, Attorney General Date: January 18, 1990
Agency: Department of Law

Distribution (by preparer):

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House bill attacks junk mail by fax

JUNEAU — The newest route for junk mail is through facsimilie machines, and Rep. Lyman Hoffman wants to hang up on such unsolicited advertising. House Bill 232 would prohibit people from sending unsolicited advertisements through facsimilie machines, and would establish a \$200 minimum civil penalty for violations of the ban. The Bethel Democrat said he introduced the legislation Monday at the request of a constituent. Machine owners must pay for the paper consumed by electronic junk mail and sometimes must wait to use their machines while unsolicited advertisements are coming in over the telephone line, Hoffman said.

**Give us the
straight
*FAX!**

A fast, simple and effective
way to place your classified
line or display ads.

24 HOUR • AUTOMATIC FAX

279-8170

Anchorage Daily News

*This phone line is for use with office/
commercial FAX machines only.



Backgrounder

038903

States Information Center
The Council of State Governments
Iron Works Pike
P.O. Box 11910
Lexington, KY 40578
(606) 252-2291

Date: March, 1989
Topic: JUNK FAX
Infokey: Communications
(NT) Telephone

FAX ATTACKS: "And now an unsolicited message from..."

Facsimile \ 'fak-sim-e-le\ "A unit that scans and encodes a document into electrical signals and sends them over telephone lines to the receiver where the signals are reconstructed to produce an exact duplicate of the document."¹

Junk Fax \ 'junk fax\ "unsolicited advertising messages transmitted via facsimile machines."²

Facsimile systems - fast, convenient, comparatively inexpensive and reliable- are fast becoming a favorite method of communication. Two million fax machines have been sold in the United States, in the last few years. More than four million are expected to be sold by 1991.³ Last year an estimated 785,000 units were installed, almost doubling the number in use.⁴

These machines tend to be turned on and hooked up to dedicated phone lines 24 hours a day. The Trojan horse of office equipment, they then receive any document that is sent to them. Although the sender pays for the phone call, the transmissions tie up the fax machine at an average of a minute a page, and the receiver has to pay for the thermal-coated paper on which the incoming document is printed. Such paper costs up to ten cents per page.

Fax machines are vulnerable to a rising tide of junk fax. Fax advertising presents endless opportunities for advertisers. One entrepreneur reports a 6.75 percent response rate to his fax advertisements, compared to the usual one percent.⁵ However, not all recipients of these ads are so enthusiastic. Representative Ken Jacobsen of Seattle, Washington terms the tactic the "ultimate in abusive use of a private communication system....You get a message you didn't want from people you don't know on paper they didn't buy."⁶ Consequently, a number of states are drafting legislation to restrict junk fax transmissions.

Connecticut:

HB-6620, introduced by Rep. Nania (R-63rd), prohibits "the transmittal of unsolicited commercial messages through the use of machines which send or receive facsimiles through the telephone."

*This CSG Backgrounder was compiled by Karen Marshall, Information Specialist, States Information Center, The Council of State Governments.

Note: Backgrounder information is the latest available at the time of publication, but for updates, you should contact the appropriate state or federal agency directly. This material does not represent the position of The Council of State Governments. Information is included based on relevance to the topic. Some material, as noted, is copyrighted and may not be reproduced further without permission of the original publisher. Contact the States Information Center or the writer at CSG.

CSG Backgrounder -- Junk Fax

HB-5396, co-sponsored by Rep. Tulisano (D-29th) and Rep. Taborsak (D-109th), states that "no person shall use a machine that electronically transmits facsimiles of documents through connection with a telephone network to transmit unsolicited advertising material which proposes a commercial transaction." It fines violators \$200 or more. In addition, HB-5396 declares a person guilty of harassment when "with intent to harrass, annoy or alarm another person, he electronically transmits a facsimile of a document through connection with a telephone network, in a manner likely to cause annoyance or alarm."

Maryland:

HB-1319, Consumer Protection - Unsolicited Facsimile Transmissions by adding to Section 14-1313 of the Commercial Law, sponsored by Delegates Gilbert Genn (D-16th) and Lawrence Wiser (D-18th). Violation of the section could intitiate a civil action by the Attorney General with a penalty not to exceed \$1,000 per violation.

New Mexico:

HB-494, sponsored by Representative Leonard Lee Rawson (R-37th), as amended by the Judiciary Committee, prohibits transmittal of any unsolicited commercial facsimile messsages "for the sale of any real property, goods or services." The civil penalty is one thousand dollars per violation. HB-494 differs in that the state corporation commission would enforce the provisions through the adoption of rules and regulations.

New York:

SB-3082, introduced by Senator Michael Tully (R-7th) as an act to amend the general business law. Unsolicited facsimile transmissions are those "without the express prior request of the person called". The court may impose a civil penalty of not more than one thousand dollars for each violation.

Oregon:

HB-2227, through the House Environment and Energy Committee and Senate Telecommunications and Consumer Affairs Committees, prohibits use of fax machines to "transmit unsolicited advertising material for the sale of any realty, goods or services." Violations would be prosecuted through the state attorney general's office under consumer protection statutes.

Washington:

HB-1513, introduced by Representatives Jacobsen, Todd, Anderson, Heavey, K. Wilson, Dellvo, Beck, Bowman and Appelwick, as amended by the Committee on Energy and Utilities, bans "transmission to a facsimile device for purposes of commercial solicitation"... "without making a request to the party who will receive the transmission, asking for permission to make the transmission. The transmission can only be made upon receipt of an affirmative response from the party who will receive the transmission." Violators would face a \$500 fine per offense. "Consent can be given by phone to a particular vendor or general consent can be given by notifying marketing-industry trade associations."

Alternatives to government intervention include unlisted fax numbers or antijunk technology such as a machine that would accept messages only from an approved list of callers. The news media are especially inundated by junk fax, largely from releases by public relations people.¹⁰ According to Frank Martinneau of

CSG Backgrounder -- Junk Fax

Association Trends magazine, the New York Times newspaper has dealt with this problem by changing its fax number every week. Reporters then give out the new number as needed. Martineau thinks that eventually it may be possible to implement a system similar to the Personal Identification Number (PIN) used with automatic bank tellers.¹¹

Junk fax may not be the only innovation to which facsimile machines can be put. Daniel Fishman, co-author of The Book of Fax, envisions some enterprising person entering the business of fax-a-porn.¹²

NOTES

1. Canon U.S.A., Inc., Quickstart, New York: Canon U.S.A., Inc., p.21.
2. Herb Kirchhoff, Ed., State Telephone Regulation Report, Vol. 7, No. 4, February 23, 1989, Alexandria, VA: Telecom Publishing Group, p. 1.
3. "Many Climb on Fax Bandwagon, But There Is Potential for Abuse," Lexington Herald-Leader, February 6, 1989.
4. "A Mounting Pile of 'Junk' Fax," Newsweek, July 25, 1988.
5. Ibid.
6. "Lawmakers Consider Ban on Unwanted Ads on Fax Machines," Lexington Herald-Leader, February 26, 1989, p. A8.
7. Herb Kirchhoff, Ed., State Telephone Regulation Report, p. 2-3.
8. Ibid., p. 3.
9. "A Mounting Pile of 'Junk' Fax."
10. "Lawmakers Consider Ban..."
11. Telephone conversation with Frank Martineau, Association Trends magazine, on March 17, 1989.
12. "Many Climb on Fax Bandwagon."

Price -- \$5.00
Copyright 1989
The Council of State Governments

From Junk Mail to Junk Fax in No Time at All

In a half dozen years, sales of facsimile machines have gone from next to nothing to more than half a million a year, and predictions are that 2.5 million of the mail-bypass marvels will be installed by 1990. "Will you fax it to me?" has become as common a request as "Mail me a copy" and the newer process is both faster and cheaper. Once the machine has been bought (for \$2,000 and up), all it takes to receive or send messages in a minute is a power line, a phone jack and a supply of paper. Thereafter, the only cost is the phone charge. Some of the new higher-priced models have memory chips to store phone numbers and automatic dialing instructions so they can be programmed to send documents at night when long-distance phone rates are cheapest.

Perhaps it was inevitable that about the time delicatessens began taking lunch orders off a fax machine from the office around the corner, some enterprising vendor would dream up the idea of putting advertising material right in the hands of fax machine owners, using their own paper supplies, and getting their attention in a way that junk mail does not. That's pretty hard to stop. Although some manufacturers supply "closed network" machines with a special built-in 4-digit access code, these systems are primarily for intracompany use in large organizations, not for blocking transmissions from the "outside." Such networks require

that a would-be advertiser acquire the network's special code number and then go into his own sending machine, change the standard code, and after the transmission, switch it back to standard for sending to other recipients—a cumbersome process. But for the ordinary fax user, there is no easy defense against unwanted receipts.

"Junk fax" may not be much of a problem yet, but

some state legislators see dire portents in the technology. Washington Representative Ken Jacobsen has sponsored a bill that would require senders of commercial solicitations to get advance permission from the intended receiver, or face civil action that could bring the unwilling recipient of the fax ad up to \$500. Jacobsen said, "This is the ultimate in abusive use of a private communication system. You get a message you didn't want from people you don't know on paper they didn't buy." The legislation didn't get out of the House before the March 15 deadline

and will be carried over to the next session.

At least five other states considered similar legislation this year—California, Connecticut, Maryland, New York and Oregon. Most would prohibit unsolicited transmission of messages to a facsimile device for purposes of commercial gain or sale of real property, goods or services. Three separate bills introduced in California would make sending unsolicited advertising to a facsimile machine a misdemeanor. At press time in mid-June none of the proposed bills had passed.

'Do it Yourself' Statutory Wills Honored in Four States

To encourage people to make wills and simplify the process, four states have legalized statutory, or standard form, wills.

Financial and legal experts warn that without a will the chances are high that your property will not end up in the hands of those you choose.

California was the first state to recognize a standard will in 1983, followed by Maine and Wisconsin in 1984 and Michigan in 1986. Representative Perry Bullard sponsored the Michigan law because he believed people are intimidated by the thought of visiting a lawyer, and too many people die each year without a will. "Popularity of the statutory will has exceeded our wildest expectations. Strong demand continues even today," he said,

New York is considering legislation now. "Wills should not be a mystery to people," said Assemblyman Jerrold Nadler, author of the New York bill. "This will substantially lower costs for people without complicated or huge estates."

A statutory will provides a basic last will and testament for those with uncomplicated estates who would not otherwise see a lawyer to have one drawn up. When completed and signed, it has the same power as one drawn up by a lawyer. Copies of the forms are usually available from state legislatures or the state bar association free, or for a nominal fee.

Those opposed to the standard forms fear that they might not be properly filled out and might lead to litigation

over the author's intent. For complicated estates, the standard form is inadequate.

Wills determine a number of questions including who gets your property and when they get it, as well as who your children's guardians will be. Wills can also minimize federal estate and state inheritance taxes.

There are certain limits to a will's power, though. For example, most states require that a spouse receive a minimum percentage of an estate unless a prenuptial agreement was signed by both. Also, property owned jointly usually falls to the sole ownership of the survivor, regardless of the provisions of the will. A will cannot change life insurance beneficiaries or the specifications for the use of a trust.

Lobbying backfires as two states thwart unwanted fax messages

The New York Legislature in June approved a bill to put a damper on junk fax by banning the facsimile transmission of all advertisements longer than five pages and restricting the sending of shorter ads to between 9 p.m. and 6 a.m. Violators would be subject to fines of \$100. Connecticut Governor William O'Neill made up his mind to sign similar legislation (which calls for a \$200 fine for sending an unwanted fax) after fax users jammed his office machine for hours with messages opposing the bill.

Court strikes down sales tax exemption on religious papers



The Supreme Court, in a highly divided opinion, has struck down a Texas statute that exempted religious publications from the state's sales tax. The tax was challenged by *Texas Monthly* magazine, which claimed that the exemption was unconstitutional. The magazine had paid about \$150,000 in sales tax under protest in 1985 and sued for a refund. The statute was ruled unconstitutional by a district court, upheld by a state appellate court that said it preserved the separation between church and state, and struck down by a Supreme Court majority of six justices in three separate opinions. Fourteen other states have similar laws giving tax breaks to religious books, magazines and news-

Missouri prepared to rent prison cells, has space to spare



While some states are struggling with prison overcrowding, Missouri is prepared to rent cell space temporarily at the newly constructed Western Missouri Correctional Center in Cameron, for about \$65 per day per inmate. The proposal, modeled after similar ones in Minnesota and Washington, could produce as much as \$10 million in revenue.

Connecticut has highest sales tax in the country

As of July 1, Connecticut's sales tax rose to 8 percent, making it the highest state rate in the United States. The highest total, combining state and local rates, according to *The Wall Street Journal*, is 10 percent at New Orleans International Airport.

Legislators nationwide leap on to flag wagon

All the states except Alaska and Wyoming have laws banning flag-burning, but lawmakers there have said the lack was an oversight. Within two weeks of the Supreme Court's wildly unpopular decision that to protect the principle of free political expression you can burn the flag, legislatures in five states passed resolutions supporting a constitutional amendment against flag-burning, and at least 10 other state legislatures have approved resolutions criticizing the ruling or calling for an amendment to re-

New study says rural families pay more excise tax

Rural families bear the greatest burden of excise taxes, according to a study by the American Agriculture Movement, Washington lobbying organization for farmers. The study concluded that rural families spend 33 percent more for taxes on gasoline, motor oil, tobacco products, utilities and public services than do other Americans.

Two states frown on free school program with commercials

"Channel One," a free 12-minute daily news program for school use created by Whittle Communications Inc., has gotten the cold shoulder from California and New York education officials because it contains two minutes of advertising. The program, tested in six high schools across the country last spring, will be offered free of charge to some 8,000 participating schools. Whittle provides satellite dish, a VCR, television monitors, wire and maintenance in return for an agreement by the school to broadcast the show daily, including two minutes of paid commercials. Greeted by some educators as a potentially valuable service, the program with its advertising to a captive audience was banned in New York--and California plans to cut state aid to schools that use it.



How the mighty have fallen

bated by the political trauma surrounding Mr Dukakis himself. His popularity in Massachusetts, sky-high last year, has plumbed new depths since he lost the election. By saying he would not run again for governor shortly after announcing his plans for a tax increase, he doomed his package to irrelevance and lost what remained of his political clout. And blame for the budget mess sticks to him. He was deceived, or deceived himself, about revenues that were falling short of projections during last year. That means he was either dishonest or incompetent—either one a blow to his managerial reputation.

Meanwhile all sorts of minor scandals have been breaking around him: shady property deals, corrupt college presidents, vitriolic arguments between his lieutenants. The press fell with glee on the bad timing of Mr Dukakis's latest venture: raising \$100,000 of political funds—which may or may not be for a presidential run in 1992. A week before, Mr Dukakis had made his first political visit to New Hampshire since the election.

Haitians

Pride and prejudice

MIAMI

"FRED" EUGENE was an honour's student, a member of the high-school choir, a cook at a nearby Burger King on the edge of Miami's inner city, the pride of his family. Then, in October 1984, he bought a gun and killed himself. The reason: "Fred", born Phede Eugene, was mortified that his girl friend had discovered his darkest secret. He was Haitian, one of those whose families

landed in rickety boats on the pricey sands of Miami Beach in 1990.

Today, Phede Eugene's tragedy serves as a marker against which current attitudes can be measured. With remarkable speed, Haitians have become a successful and valued addition to Miami's rich ethnic mix. With that success has come a pride that was all but missing just five years ago.

When the Eugene family arrived, Haitians were the butts of cruel prejudice. They were treated as unwanted refugees by the federal government; considered a social burden by Miami's; scorned by American blacks and ridiculed for their religious and cultural practices. Worst of all, and uniquely in the history of American immigrants, they were officially branded as a group at high risk of carrying the AIDS virus. Haitian youths like Phede Eugene became "cover-ups", claiming they were Bahamian or American-born blacks.

Today "cover-ups" are rare. The north-east Miami neighbourhood known as Little Haiti throbs with the Caribbean feel of its roots in Hispaniola. Buildings are splashed in bright, primary colours and signs are in

Creole. Some Haitians date the birth of self-esteem to February 7 1986, when Jean-Claude Duvalier, the Haitian dictator, was driven into exile. But probably more important has been the quiet daily successes of individual Haitians in businesses, in schools—indeed, wherever they have matched themselves against others.

Little Haiti began attracting the upper-class Haitian exiles—doctors, lawyers, academics—who had fled the country first to Canada and New York city. Soon a community that began with impoverished and illiterate boat people had accepted the graft of an upwardly mobile middle class. They, in turn, provided role models for others. Meanwhile the federal government apologetically repudiated its AIDS claim, dropping Haitians from the high-risk categories.

But success brings its own perils. Re-enacting the saga of past immigrant groups, the Haitians find that their tradition of tight-knit, highly disciplined families is being diluted in the American melting pot. Teens, who are proving to be stunningly adept at mastering American ways during school hours, are finding it impossible to re-

Stop me before I fax again

WASHINGTON, DC

FAX machines are wonderfully useful, which is why there are more than 2m of them in America. But they are useless or worse when someone is sending you a fax you don't want. "Junk fax"—consisting mostly of unsolicited advertisements and press releases—is the electronic equivalent of junk mail. But it is even more annoying than junk mail because it ties up your machine and uses up your paper. As a result, disgruntled fax owners are taking their case to sympathetic state and federal legislators.

In mid-May Connecticut's governor, Mr William O'Neill, signed a law that bars unsolicited advertising messages from being sent to fax machines in the state. A wave of protests against the

bill—faxed into the governor's office while he was awaiting urgent faxed flood reports from the state Office of Emergency Management—convinced Mr O'Neill to sign it. However, the law exempts political speech, so would not have prevented this fax attack.

A similar lobbying effort backfired in Maryland. The governor's office received more than 340 fax messages in a single day, prompting Mr William Schaefer to approve a law that outlaws fax advertising unless the advertiser already has a business connection with a prospective customer. Mr Steve Ridinger, who heads a fax-paper company, says he organised the protest at the request of his customers. His company, Mr Fax, rewards customers with a free camera for providing the company with 100 new fax numbers. So far, he has compiled a database of 500,000 fax numbers and sends 60,000 fax advertisements a week.

At least 15 other states and the federal government are considering legislation against fax advertising. Fax-industry supporters, such as Mr Ridinger, contend that these laws violate their constitutional right of free speech. But there is no constitutional right to tie up a stranger's fax machine, thereby denying him the ability to exercise his own right of faxed speech.



PCs now doubling as fax machines

By John Himmick
USA TODAY

Quicker than almost anyone expected, the personal computer is turning into a fax machine.

About a dozen firms — including AT&T, Western Union, CompuServe — now sell products that let you "fax" information from a PC to a fax machine.

This week, software giant Lotus Development teamed with MCI Communications to capitalize on this trend. Western Union made PC-to-fax the thrust of a major ad campaign. Western Union now sends 25,000 faxes a day from PCs to fax machines.

"It's become our fastest-growing business service," says Western Union spokesman Warren Bechler.

The advantages are obvious. If you can fax from a PC, you no longer have to walk down the hall or walk in line to use a fax machine. The PC-to-fax products also let you simultaneously transmit a fax to up to 1,000 fax machines.

How the technology works depends on the other computer. Some use programs that convert computer information into a form a fax machine can understand.

If you're using a service that you want to use, you type a few characters and the phone number to where you want the fax sent. Then you dial an electronic mail service, such as AT&T Mail or MCI Mail, and, using a modem, transmit the information to the service via phone line.

The call then transmits your fax. Some products don't transmit from fax machines to PCs.

What effect will this have on fax machines?

"Everyone will still have fax machines," says Steve Smith. "But you'll see them less. It could slow the fax explosion down."

About 3% of today's faxes are sent from PCs to fax machines. Within five years, that figure will jump to 25%, predicts CAP International, a research firm.

01

USA Today 6/9/89
Steve Gruff FYI



STATED BRIEFLY

Abortion frenzy begins

■ Officials in several states hit the ground running after the U.S. Supreme Court ruling on abortion.

The July 3 ruling in *Webster vs. Reproductive Health Services*, which gave states more leeway in dealing with abortion, prompted Florida Gov. Bob Martinez to call on other states to enact laws restricting abortion. Martinez said he may call for a special session to consider tightening Florida's abortion laws.

Not every governor, however, shares Martinez' sentiments. New York Gov. Mario Cuomo said he would defend his state's current abortion law, which allows public dollars to be spent on abortions.

"My budget for 1990 will call for continued Medicaid funding and I will oppose the inevitable attempt by some legislators to deny fairness to poor people because the Supreme Court follows a lower standard," Cuomo said in a statement released from his office.

In Pennsylvania, Rep. Stephen Freind, R-Havertown, has launched a battle for legislation to tighten abortion laws. Freind said the Supreme Court ruling has opened the door for Pennsylvania to outlaw abortion performed on the basis of the child's sex, to require spousal notification, and to enact waiting periods except in the case of a medical emergency.

Political battles over abortion will be fierce, Freind predicted.

"The other side has been content to let the courts do their dirty work," he said. "You will see them gear up like they have never been geared up before. This battle will be waged at the grassroots level, at the campaign level and in the legislature."

The National Abortion Rights Action League and Right to Life agreed with Freind's prediction and said strategy is being laid.

Olivia Gans, director of American Victims of Abortion, an arm of Right to Life, said her organization will

concentrate in part on legislation prohibiting abortion as a means of birth control or as a way of controlling the sex of a child. Gans said pro-life advocates also want to see an increase in laws requiring parental and spousal notification.

Tamar Abrams, communications director of the National Abortion Rights Action League, said her organization already has earmarked key states where lobbying efforts will be the heaviest. Abrams said states viewed as heavily favoring restrictions on abortion include Alabama, Arkansas, Florida, Georgia, Idaho, Illinois, Missouri, Montana, Nebraska, New Jersey, Pennsylvania, Utah and West Virginia.

Those states believed to favor keeping abortion legal are Alaska, Hawaii, Colorado, Connecticut, Massachusetts, Maine, New Mexico, New York, North Carolina, Virginia and Washington.

Buyers beware: used car trick

■ Unscrupulous used car dealers have found a haven in South Dakota because of a quirk in a state law, says state Division of Motor Vehicles Director Larry Zwemke.

"We've become an auto washing state for people trying to unload damaged cars in other states," Zwemke said.

The one-year-old law was designed to protect car buyers by requiring the owners of vehicles with more than \$1,000 damage to file a detailed damage disclosure statement with the state, instead of just obtaining a damaged car title. The disclosure statement then must be presented to the new owner along with the title.

Since the law took effect in July 1988, however, Zwemke said the number of damaged out-of-state vehicles entering South Dakota has nearly doubled as unscrupulous damaged car dealers use South Dakota to obtain a clean title for damaged cars. The cars are then sold in states where damaged car

disclosure statements are not required.

"We've probably had 1,000 damaged cars come in from out of state last year," Zwemke said. "The majority have been from Rhode Island, New Jersey and New York."

An interim legislative study commission is examining the problem in preparation for possible legislative action in January.

Battling junk fax

■ Starting Oct. 1, companies that send unsolicited advertising via fax machine in Connecticut will be violating the law.

Rep. Richard Tulisano, D-Rocky Hill, who introduced the bill in January, received numerous complaints of junk fax attacks from across the country.

"As the number of fax users continues to proliferate, so does the potential for fax abuse," Tulisano said. "It is similar to the problem of junk mail, except junk fax creates a very real expense for the receiver in the form of electricity, special fax paper and occupying time where needed information cannot come in."

Opponents claim the legislation violates constitutional free speech rights, a contention Tulisano dismisses. "When someone's property rights are violated, limits can certainly be imposed," he said.

Tulisano said, however, that interstate faxing over telephone lines will pose an enforcement problem and that "any true regulatory success will ultimately depend on federal action."

Nevada's nonsexist assembly

■ A female Nevada assembly member struck back this year at the state practice of identifying all members of her legislative chamber as assemblymen.

Assemblywoman Jane Wisdom, D-Las Vegas, led a successful fight in June to change state law to allow her and her female colleagues to use the term assemblywoman on busi-

The Tide Is Turning ...

Early in 1989 the tide seemed to be running in favor of restrictive fax legislation. But that has all changed. Fax users, and there are now 3,000,000 nationally, are complaining that these proposed restrictions will keep them from being able to run their businesses and make them less competitive with competitors in other states and other countries.

And government officials in those states which have passed legislation are beginning to find out that enforcement of these laws represents a huge effort and a multi-million dollar expense.

Nine states have dropped fax legislation, two states (Oregon and New York) have dropped restrictive bills in favor of measures which allow fax users to send messages until they are asked to stop by the recipient. A similar bill is pending in Congress. The Council of State Governments have also adopted model legislation along these guidelines.

Surveys now show more than 75% of fax users are against restrictive fax legislation. The tide has turned and we thought you would want to know.

San Francisco Examiner

Friday, July 14, 1989

Our Legislature is all faxed up

JOHN C. DVORAK

IN A technophobic frenzy, the state Legislature has been trying to outlaw a non-existent problem — the junk fax. That's any unsolicited Fax trying to sell you something. "The junk fax doesn't exist," but it might — someday!" say the legislators. So we'd better stamp it out with needless legislation — AB 576.

But there's something fishy about AB 576. One of the big promoters of the current junk fax phobia are Assembly members Richard Katz, D-Panorama City, (who spent last Monday whining before the Senate Business and Professions Committee about how it's costing people whole nickels and dimes to receive these junk faxes). Nobody promoting this mania, including junk fax phobe state Sen. Quentin Kopp, I-S.F., can produce any examples of this plague. Nonetheless, a new law is about to be passed by a Legislature with nary a member who can describe how a fax even works. It's unbelievable.

AB 576 is a disaster. It says that you may not transmit an unsolicited fax which has anything to do with the "lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit." The wording is simple — too simple. There is no definition of "advertising material," for example. In the strictest reading it means I cannot fax my editor at the paper asking him if I can write an

extra column this week. My mother cannot fax me telling me that I have a birthday gift at her house and that she wants me to do some work. I pointed this out to the committee and one member said that this was ludicrous, who would complain about these faxes that I just described? In other words, I can break the law without worry. My Mom can break the law and it's OK! Scotflaw.

The fine for my mother is \$500, by the way.

And you small companies that like to fax press releases to the media. Forget it. It might be considered advertising.

So, the flow of information grinds to a halt. You can be sure the Japanese won't pass a law like this. The way I see the issue, if you don't want to receive a fax, then turn off your machine! We don't need laws like this. (A funny aspect to all this is that if I want to get a competitor in trouble I'll just send unsolicited faxes of the competitor's flyer to everyone! These legislators have no concept of high-tech hijinks, either.)

One company lobbying against the law sent faxes to its customers, who in turn sent their views to the Legislature. South San Francisco's Jackie Speier, a Democrat, called the faxed messages from her constituents "drivel." She asked why these people didn't send letters like "normal" people. In other words, anyone who uses a fax is an abnor-

mal geek to be shunned. Hey, lady, we're nearing the end of the 20th Century. Check the calendar. Do you still use a quill pen?

The fax is a simple and fast way to get a message through, but be assured that the members of the Assembly do not want to see them. They hate them. They want letters sent that can be opened by assistants and filed away — i.e., ignored. They'd probably like to do away with the phone if they could. "Drivel," she said.

This blatant scorn of constituents, because of its use of a modern communication technology is incredible especially in proximity to Silicon Valley. South City voters should oust this woman first chance they get.

Laws against technology and innovation are a bad idea, period. That's what this law is and it must be defeated. Katz says that if the law isn't passed then we'll be inundated by flyers from sandwich shops sent to our fax machines. Will a sandwich shop be going to hire someone full-time to fax out offers for turkey sandwich discounts? Earth to Katz. Earth to Katz. Come in. Come in.

Is the law really a cover for the interests of the arcane Postal Service, Federal Express, Purolator, and UPS?

A better law would be to make all legislators publish their fax numbers so the public could tell them what it really thinks.

Amos, Murray release results of questionnaire sent to voters

CBCIL WHIG 5-8-81

Senator William H. Amos (D-5) and Delegate Ethel Murray (D-35B) recently announced the results of a legislative questionnaire sent to voters in District 5B. Over 1300 citizens voiced their opinions through the printed questionnaire which covered a variety of issues ranging from decriminalization of drugs to the cleanup of the Chesapeake Bay.

"I am pleased with the response to this survey," Senator Amos said. "Delegates Murray and I use these questionnaires, which are not printed at government expense, to keep us abreast of how voters feel on a variety of important issues facing our district."

According to the survey, District 5B voters overwhelmingly oppose Mayor Schmoke's proposal for decriminalizing drugs. Respondents support mandatory AIDS testing to obtain a marriage license, and the closing of family values in public schools, voters support signing the use of corporal punishment in Cecil County schools.

Most favor an amendment requiring a balanced federal budget. Not surprisingly a majority of respondents support the state's light rail proposal which would provide service to Cecil County.

Respondents were divided on the number of issues including the Chesapeake Bay Cleanup, the use of nuclear power to generate electricity, and the increase in state funding to support child care for needy families.

Eighty-six percent of the respondents opposed Mayor Schmoke's proposal to decriminalize the use and possession of drugs. Ninety-two percent of the respondents, however, favor testing prison guards and law enforcement officials for drug abuse.

The results of the questionnaire indicate that sixty percent of the respondents oppose the effectiveness of the Chesapeake Critical Areas Programs. Critical Areas Program is development of the Bay's shoreline. Forty percent of those responding, however, felt that Critical Areas Program is effective.

In addition, eighty-two percent of the respondents favor appropriations of additional money for Cecil County's cultural Preservation Pro-

gram. Currently, the program shields certain agricultural lands from development.

On a related environmental issue, fifty one percent of the respondents oppose increasing our reliance on the use of nuclear power.

Seventy-six percent of those responding to the questionnaire rated the County's public school system as good or very good, while two percent rated the school system as excellent. The respondents favored (73 percent to 33 percent) the required teaching of family values, and abstinence from pre-marital sex as part of the school system's curriculum.

Most respondents (83 percent) would ride on the proposed light rail system which would start in Perryville and make stops in Aberdeen and Edgewood on its way to Baltimore. Senator Amos noted that since the questionnaire was sent, Governor Schaefer and Secretary of Transportation Richard Trainer have implemented the light rail project and have scheduled the service to begin in the Spring of 1991.

Finally, sixty-percent of Cecil County responses favor the NASCAR raceway.

County residents may contact Senator Amos at 301-838-7555 or Delegate Murray at 398-8558 for additional information on the questionnaire.

A fax attack

Measure would put an end to electronic junk mail in Md.

By RODERICK ROYAL
The way state Del. C. Lawrence Wisner sees it, advertisers could tie up your fax machine with the same kind of junk mail that clogs your mailbox.

Wisner and a fellow Montgomery County Democrat, Del. Gilbert Genn, introduced a bill this year to prohibit unsolicited facsimile messages. Gov. William Donald Schaefer will have to sign the bill sometime this month for it to become a law by the start of the next fiscal year in July.

The bill would impose penalties of \$1,000 on a company that sends unsolicited fax messages.

The governor has not yet decided to sign the bill, but the state attorney general has ruled it constitutional, said Schaefer's press secretary, Louise Hayman.

Wisner is an attorney who said he cannot afford to have his fax machine tied up anymore than he can stand to have his tele-

phone tied up by recorded advertisements. While in the state Senate in 1978, Wisner introduced a bill that made recorded automatic solicitations illegal in Maryland.

Through fax directories and services, advertisers can have access to the fax numbers of companies, Wisner said.

A fax lobbying committee is trying to stir opposition to the bill. Not surprisingly, the National Fax Users Committee is faxing unsolicited messages about the bill and its effects. The committee urges concerned fax users to fax their dissatisfaction about the bill to Schaefer.

According to the committee, an average company sends about 4,000 messages annually. The telephone and labor costs to obtain permission to send messages would be at least \$1.50 per message, or \$6,000 annually, the committee estimates.

No one at the committee could be reached for comment yesterday.

IN THE STATES -- Fax, Monitoring, Mail Lists, Credit Cards, AIDS

Handwritten: Done 1/4 I 90

An ill-advised lobbying technique against a bill banning unsolicited facsimile messages backfired in Connecticut when the governor's fax machine was jammed for hours with unwanted messages. For 48 hours the machine in the office of Gov. William A. O'Neill's office spit out dozens of angry messages from businesses opposing the bill. The bill, HR 5396, would prohibit those businesses and others from doing exactly what they were doing -- sending fax advertisements without consent of the recipient.

At the time this occurred, the week of May 9, O'Neill had not decided whether to sign the bill. An aide to the governor pointed out that the telephonic lobbying campaign backfired because it proved how annoying unwanted fax messages can be. The governor's office shut down its machine May 12 and was unable to receive possibly important messages concerning state business. When the machine was turned on the next day, the angry lobbying letters kept coming in. "You could not have done a better job of bringing home the problem addressed in the bill that you oppose," one of the governor's aides said, in a fax message to the National Fax Users Committee, a California-based group that prompted the lobbying. The governor's office reported that no fax was received in response from California. But by May 16, Gov. O'Neill had decided to sign the bill, which is now P.A. 103. It calls for a \$200 fine for sending an unwanted fax message. The fax association now has a second opportunity to do it right; a similar bill (H 1319) is awaiting the governor's signature in Maryland.

The New York Assembly on May 8 approved legislation to require companies that monitor employees' phone calls to include a beep tone on the line. Employees would also have to be notified of the monitoring (A 4639A). Telephone company employees have appeared in the State Capitol wearing buttons saying, "Don't bug me." The Senate disapproved the measure in 1989. * * * Also in New York, relatives of celebrities testified May 15 in support of amending the state's privacy law to extend the "right of publicity" to 50 years beyond the death of a famous person. The right of publicity permits a person to control commercial uses of his or her name and image, but in most states this right expires at death. Appearing before Sen. Emanuel K. Gold, the sponsor, were John Wayne's son, Billie Holiday's sister, Fred Astaire's widow, Babe Ruth's daughter, W.C. Fields' grandson, and an agent representing the estate of James Dean. Because of the concentration of advertising and publishing in New York City, a new state law would have nationwide effect.

The New York Assembly has been asked to prohibit merchants from having a credit-card customer provide address or telephone number on a credit-card sales form. Many merchants ask for this information, even after they have credit approval from the card company, and some merchants use the information to compile their own mailing and telephone sales lists. In supporting the proposal (A 7099), Attorney General Robert Abrams pointed out that this information is not necessary for the merchant (because credit-card companies guarantee payment after telephone approval) and that Visa regulations prohibit stores from doing this and American Express discourages it. MasterCard and other card issuers do not require it, contrary to what customers are led to believe. The sponsor, Assemblyman Daniel Feldman, has also introduced A 6525 to require all publishers of subscription periodicals to provide an opportunity, when a subscription or renewal is solicited, to prevent his or her name being sold or rented to mailers. Charities would have to do the same thing. So would issuers of credit or debit cards, under Feldman's proposed A 6526.

Michigan has enacted a comprehensive AIDS law that requires confidentiality of test results. PA 488, Laws of 1989. The Ohio Senate has approved a similar bill.

STATE OF NEW YORK

3082

1989-1990 Regular Sessions

IN SENATE

March 2, 1989

Introduced by Sen. TULLY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to unsolicited facsimile transmission

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new article
2 32 to read as follows:

3 ARTICLE 32

4 UNSOLICITED FACSIMILE TRANSMISSION

5 Section 640. Definitions.

6 641. Unsolicited facsimile transmission.

7 642. Violation and penalties.

8 § 640. Definitions. As used in this article:

9 1. "Facsimile transmission" shall mean every process in which elec-
10 tronic signals are transmitted by telephone lines for conversion into
11 written text.

12 2. "Unsolicited facsimile transmission" means any facsimile transmis-
13 sion made by telephonic means to a telephone number without the express
14 prior request of the person called promoting goods or services for pur-
15 chase by the recipient.

16 3. "Facsimile solicitor" means any natural person, firm, organization,
17 partnership, association, or corporation who makes or causes to be made
18 an unsolicited residential facsimile transmission, including, but not
19 limited to, transmissions made by use of automated dialing or recorded
20 message devices.

21 § 641. Unsolicited facsimile transmission. No facsimile solicitor
22 shall make an unsolicited facsimile transmission to a telephone number.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets () is old law to be omitted.

1 § 642. Violation and penalties. Whenever there shall be a violation
2 of this article, an application may be made by the attorney general in
3 the name of the people of the state of New York to a court or justice
4 having jurisdiction by a special proceeding to issue an injunction, and
5 upon notice to the defendant of not less than five days, to enjoin and
6 restrain the continuance of such violations; and if it shall appear to
7 the satisfaction of the court or justice that the defendant has, in
8 fact, violated this article, an injunction may be issued by such court
9 or justice, enjoining and restraining any further violation, without
10 requiring proof that any person has, in fact, been injured or damaged
11 thereby. In any such proceeding, the court may make allowances to the
12 attorney general as provided in paragraph six of subdivision (a) of sec-
13 tion eighty-three hundred three of the civil practice law and rules, and
14 direct restitution. Whenever the court shall determine that a violation
15 of this article has occurred, the court may impose a civil penalty of
16 not more than one thousand dollars for each violation. In connection
17 with any such proposed application, the attorney general is authorized
18 to take proof and make a determination of the relevant facts and to is-
19 sue subpoenas in accordance with the civil practice law and rules.
20 § 2. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law.



Program & Control Staff

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

02/13/1989 12:22:59PM FINE SERVICES PL
0 318-455-4305 VOPE-FILE AUTO 02-04-89 9. 21 00:

TO: Dennis J. Burns, Aide
House State Affairs Committee

FROM: Julie A. Barney, Legislative Associate
Assembly Consumer Affairs and Protection Committee

RE: Unsolicited Fax Transmissions: Example

DATE: April 5, 1989

Following is a single page example of an unsolicited fax transmission, which I reference in my oral testimony. I look forward to discussing this issue with the Committee tomorrow.

Telephone: (518) 455-4881
FAX: (518) 455-4380
Address: Rm. 513, Capitol
Albany, NY 12210

Joan's Designs



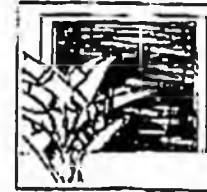
ATTENTION: Purchasing Agents State of New York

SPECIAL
Quantity Discounts

Vertical Blinds

1" Mini Blinds

Window Shades



Call With Sizes and Quantities for Pricing

Phone (315) 724- [redacted] Fax (315) 831- [redacted]

"A CERTIFIED WOMENS BUSINESS ENTERPRISE, STATE OF N.Y."



04/05/89

16:26

518-455-4305

002

(4) Any sale, lease, or use of customer premises equipment except such equipment as is regulated on July 28, 1985;

(5) Private shared telecommunications services, unless the commission finds, upon notice and investigation, that customers of such services have no alternative access to local exchange telecommunications companies. If the commission makes such a finding, it may require the private shared telecommunications services provider to make alternative facilities or conduit space available on reasonable terms and conditions at reasonable prices.

Enacted by Laws 1985, ch. 450, § 9.

80.36.380. Reports

Subject to RCW 40.07.040, the commission shall provide the legislature with a biennial report through 1991 on the status of the Washington telecommunications industry. The report shall describe the competitiveness of all markets as defined by the commission; the availability of diverse and affordable telecommunications services to all people of Washington, particularly to customers in rural or sparsely populated areas; and the level of rates for local exchange and interexchange telecommunications service. The report also shall address the quality and extent of the state's telecommunications infrastructure. The report also shall address the question of whether competition in certain markets has developed to such an extent that the commission recommends additional regulatory flexibility such as detariffing or total deregulation and the evidence therefor; and the need for further legislation to achieve the purposes of RCW 80.36.300 through 80.36.370 and 80.04.010. The commission shall also monitor cost of service methodologies and shall recommend to the legislature whether cost of service ratemaking shall become a standard for telecommunications services.

Enacted by Laws 1985, ch. 450, § 41. Amended by Laws 1987, ch. 293, § 6; Laws 1987, ch. 505, § 76.

Reviser's Note: This section was amended by 1987, c 293, § 6 and by 1987, c 505, § 78, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

80.36.390. Telephone solicitation

(1) As used in this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

For purposes of this section, each individual real estate agent or insurance agent who maintains a separate list from other individual real estate or insurance agents shall be treated as a company or organization. For purposes of this section, an organization as defined in RCW 29.01.090 or 29.01.100 and organized pursuant to RCW 29.42.010 shall not be considered a commercial or nonprofit company or organization.

(2) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first thirty seconds of the telephone call.

(3) If, at any time during the telephone contact, the called party states or indicates that he or she does not wish to be called again by the company or organization or wants to have his or her name and individual telephone number removed from the telephone lists used by the company or organization making the telephone solicitation, then:

(a) The company or organization shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The company or organization shall not sell or give the called party's name and telephone number to another company or organization: *Provided*, That the company or organization may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(4) A violation of subsection (2) or (3) of this section is punishable by a fine of up to one thousand dollars for each violation.

(5) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general shall notify the company with a letter of warning that the section has been violated.

(6) A person aggrieved by repeated violations of this section may bring a civil action in superior court to enjoin future violations, to recover damages, or both. The court shall award damages of at least one hundred dollars for each individual violation of this section. If the aggrieved person prevails in a civil action under this subsection, the court shall award the aggrieved person reasonable attorneys' fees and cost of the suit.

(7) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by (a) annual inserts in the billing statements mailed to residential customers, or (b) conspicuous publication of the notice in the consumer information pages of local telephone directories.

Enacted by Laws 1986, ch. 277, § 2. Amended by Laws 1987, ch. 229, § 13.

Legislative finding—Laws 1986, ch. 277: "The legislature finds that certain kinds of telephone solicitation are increasing and that these solicitations interfere with the legitimate privacy rights of the citizens of the state. A study conducted by the utilities and transportation commission, as directed by the forty-ninth legislature, has found that the level of telephone solicitation in

this state is significant to warrant regulatory action to protect the privacy rights of the citizens of the state. It is the intent of the legislature to clarify and establish the rights of individuals to reject unwanted telephone solicitations." [Laws 1986, ch. 277, § 1.]

Cross References

Charitable solicitations, see ch. 19.09.

80.36.400. Automatic dialing and announcing devices—Commercial solicitation by

(1) As used in this section:

(a) An automatic dialing and announcing device is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 80.36 RCW. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices.

Enacted by Laws 1986, ch. 281, § 2.

Legislative finding—Laws 1986, ch. 281: "The legislature finds that the use of automatic dialing and announcing devices for purposes of commercial solicitation: (1) Deprives consumers of the opportunity to immediately question a seller about the veracity of their claims; (2) subjects consumers to unwarranted

invasions of their privacy; and (3) encourages inefficient and potentially harmful use of the telephone network. The legislature further finds that it is in the public interest to prohibit the use of automatic dialing and announcing devices for purposes of commercial solicitation." [Laws 1986, ch. 281, § 1.]

80.36.410. Lifeline service—Legislative finding

The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service. Therefore, the legislature finds that it is in the public interest to take steps to mitigate the effects of these changes on low-income persons.

Enacted by Laws 1987, ch. 229, § 3.

Expiration

This section expires June 30, 1990. See Historical Note, post.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: "RCW 80.36.410 through 80.36.480 shall expire June 30, 1990, unless extended by the legislature." [Laws 1987, ch. 229, § 12.]

80.36.420. Lifeline service—Availability, components

Lifeline assistance shall be available to participants of department programs set forth in RCW 80.36.470. Lifeline assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate lifeline service rate for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single lifeline service rate for all local exchange companies operating in the state of Washington. The lifeline service rate shall include any federal end user access charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the lifeline service rate, consider all charges for local exchange service, including federal end user access charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The lifeline service rate shall only be available to eligible customers subscribing to the lowest available local exchange flat rate service, where the lowest local exchange flat rate, including any federal end user access charges and any other charges necessary to obtain local exchange service, is greater than the lifeline service rate.

(d) The cost of providing the lifeline service shall be paid, to the maximum extent possible, by a waiver of all or part of the federal end user access charge and, to the extent necessary, from the lifeline fund created by RCW 80.36.430.

Enacted by Laws 1987, ch. 229, § 4.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.430. Lifeline service—Surcharge

Costs associated with lifeline telephone service shall be recovered through a lifeline surcharge on all other switched access lines. The lifeline surcharge shall be applied equally to all residential and business access lines not to exceed sixteen cents per month. The surcharge collected by the telecommunications companies shall not be construed as gross income or gross receipts for purposes of state, county or municipal public utility taxes. All money collected from the lifeline surcharge shall be transferred to a lifeline fund administered by the department. Local exchange companies shall bill the fund for their expenses incurred in offering lifeline telecommunications services, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department shall recover its administrative costs from the fund.

Enacted by Laws 1987, ch. 229, § 5.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.440. Lifeline service—Rules

The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.490.

Enacted by Laws 1987, ch. 229, § 6.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.450. Lifeline service—Limitation

Lifeline service shall be limited to one residential access line per eligible household.

Enacted by Laws 1987, ch. 229, § 7.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.460. Lifeline service—Deposit waivers, connection fee discounts

Local exchange companies shall file tariffs with the commission which waive deposits on local exchange service for eligible subscribers and which establish a fifty percent discount on service connection fees for eligible subscribers. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered from the lifeline fund. Eligible subscribers shall be allowed one waiver of a deposit and one discount on service connection fees per year.

Enacted by Laws 1987, ch. 229, § 8.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.470. Lifeline service—Eligibility

Participants in the following department programs are eligible for lifeline assistance: Aid to families with dependent children, chore services, food stamps, supplemental security income, refugee assistance, and community options program entry system (COPES). The department shall notify the participants of their eligibility.

Enacted by Laws 1987, ch. 229, § 9.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.480. Lifeline service—Legislative review

The energy and utilities committees of the legislature shall review the results of the lifeline program and shall explore by December 15, 1989, whether additional lifeline measures are warranted.

Enacted by Laws 1987, ch. 229, § 10.

Expiration

This section expires June 30, 1990. See Historical Note following § 80.36.410.

Expiration date—Laws 1987, ch. 229, §§ 3 to 10: See Historical Note following § 80.36.410.

80.36.500. Information delivery services through exclusive number prefix

(1) As used in this section:

(a) "Information delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix.

(b) "Information providers" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls.

(c) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's announcement machine, to use the caller's telephone device to access more specific information.

(2) The utilities and transportation commission shall by rule require any local exchange company that offers information delivery services to a local telephone exchange to provide each residential telephone subscriber the opportunity to block access to all information delivery services offered through the local exchange company. The rule shall take effect by October 1, 1988.

(3) All costs of complying with this section shall be borne by the information providers.

(4) The local exchange company shall inform subscribers of the availability of the blocking service through a bill insert and by publication in a local telephone directory.

Enacted by Laws 1988, ch. 123, § 2.

Legislative finding, intent—Laws 1988, ch. 123: "(1) The legislature finds that throughout the state there is widespread use of information delivery services, which are also known as informa-

tion-access telephone services and commonly provided on a designated telephone number prefix. These services operate on a charge-per-call basis, providing revenue for both the information

provider and the local exchange company. The marketing practices for these telephone services have at times been misleading to consumers and at other times specifically directed toward minors. The result has been placement of calls by individuals, particularly by children, who are uninformed about the charges that might apply. In addition, children may have secured access to obscene, indecent, and salacious material through these services. The legislature finds that these services can be blocked by certain local exchange companies at switching locations, and that devices exist which allow for blocking within a residence. Therefore, the legislature finds that residential telephone users in the state are entitled to the option of having their phones blocked from access to information delivery services.

"(2) It is the intent of the legislature that the utilities and transportation commission and local exchange companies, to the extent feasible, distinguish between information delivery services that are misleading to consumers, directed at minors, or otherwise objectionable and adopt policies and rules that accomplish

80.36.510. Legislative finding

The legislature finds that a growing number of companies provide, in a nonresidential setting, telecommunications services necessary to long distance service without disclosing the services provided or the rate, charge or fee. The legislature finds that provision of these services without disclosure to consumers is a deceptive trade practice.

Enacted by Laws 1988, ch. 91, § 1.

80.36.520. Disclosure of alternate operator services

The utilities and transportation commission shall by rule require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

For the purposes of this chapter, "alternate operator services company" means a person providing a connection to intrastate or interstate long-distance services from places including, but not limited to, hotels, motels, hospitals, and customer-owned pay telephones.

Enacted by Laws 1988, ch. 91, § 2.

80.36.530. Violation of consumer protection act—Damages

In addition to the penalties provided in this title, a violation of RCW 80.36.510 or 80.36.520 constitutes a violation of chapter 19.86 RCW, the consumer protection act. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved.

Enacted by Laws 1988, ch. 91, § 3.

the purposes of RCW 80.36.500 with the least adverse effect on information delivery services that are not misleading to consumers, directed at minors, or otherwise objectionable." [Laws 1988, ch. 123, § 1.]

Investigation and report by commission: "By October 1, 1988, the commission shall investigate and report to the committees on energy and utilities in the house of representatives and the senate on methods to protect minors from obscene, indecent, and salacious materials available through the use of information delivery services. The investigation shall include a study of personal identification numbers, credit cards, scramblers, and beep-tone devices as methods of limiting access." [Laws 1988, ch. 123, § 3.]

Severability—Laws 1988, ch. 123: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [Laws 1988, ch. 123, § 4.]

80.36.900. Severability—1985 c 450

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Enacted by Laws 1985, ch. 450, § 42.

80.36.901. Legislative review—1985 c 450

The legislature shall conduct an intensive review of chapter 450, Laws of 1985 during the 1989–1991 biennium to determine whether the purposes of chapter 450, Laws of 1985 have been achieved and if further relaxation of regulatory requirements is in the public interest.

Enacted by Laws 1985, ch. 450, § 44.

CHAPTER 80.40—UNDERGROUND NATURAL GAS STORAGE ACT

Section

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80.40.010. Definitions

As used in this chapter, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" shall mean the Washington utilities and transportation commission;

"Committee" shall mean the oil and gas conservation committee established by RCW 78.52.020;

"Natural gas" shall mean gas either in the earth in its original state or after the same has been produced by removal therefrom of component parts not essential to its use for light and fuel;

"Natural gas company" shall mean every corporation, company, association, joint stock association, partnership or person authorized to do business in this state and engaged in the transportation, distribution, or underground storage of natural gas;

"Underground reservoir" shall mean any subsurface sand, strata, formation, aquifer, cavern or void whether natural or artificially created, suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom;

"Underground storage" shall mean the process of injecting and storing natural gas within and withdrawing natural gas from an underground reservoir: *Provided*, The withdrawal of gas from an underground reservoir