

CHAPTER NO. 15

SENATE BILL NO. 39

By Henry, McNally

Substituted for: House Bill No. 511

By Hargrove, McDaniel, Harmon, Ulysses Jones, John DeBerry, Phillip Johnson, Buttry, Patton, Montgomery, Dunn, Yokley, Pleasant, Sargent, Stanley, Litz, Rowland, Roach, McKee, Walker, Eldridge, Vincent, Sharp, Coleman, Harry Brooks, Godsey, Brenda Turner, Black, Bittle, Kent, Todd, Buck, Tidwell, Hood, McDonald, Wood, Shaw, Armstrong, Sontany, Hackworth, Garrett, McMillan, Fitzhugh, Langster, Vaughn, Maddox, Harwell, Borchert, Lois DeBerry, Davis, Head, Rinks, Cobb, Tindell, Hargett, Hagood, Clem, Gresham, Mr. Speaker Naifeh

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, Part 16; Title 47, Chapter 18, Part 25 and Title 65, Chapter 4, relative to unsolicited facsimiles.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding the following as an appropriately numbered new part:

Section 65-4-_01. As used in this part, unless the context otherwise requires:

(1) "Authority" means the Tennessee regulatory authority;

(2) "Fax" or "facsimile" means:

(A) Every process in which electronic signals are transmitted by telephone lines for conversion into written text or other graphic images, but

(B) "Fax" or "facsimile" does not include:

(i) Electronic mail or "e-mail" as regulated pursuant to § 47-18-2501, et seq., or

(ii) Any transmission of electronic signals by a local exchange company to the extent that the local exchange company merely carries that transmission over its network;

(3) "Local exchange company" includes telecommunications service providers as defined in § 65-4-101, competing telecommunications service providers as such term is defined in § 65-4-101, telephone cooperatives, and cellular or other wireless telecommunications providers, or interactive computer service provider as defined by 47 USC Section 230(f);

(4) "Person" means a natural person, individual, partnership, trust, estate, incorporated or unincorporated association, any corporation, parent,

subsidiary or affiliate thereof, or any other legal or commercial entity however organized and wherever located;

(A) "Affiliate" of a specific person means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, is under common control with, the person specified;

(B) "Parent" means a company owning more than fifty percent (50%) of the voting shares, or otherwise a controlling interest, of another company;

(C) "Subsidiary" means a corporation with more than fifty percent (50%) of its outstanding voting shares being owned by its parent or the parent's other subsidiaries; and

(5) "Unsolicited facsimile advertisement" means any material advertising the commercial availability or quality of any property, goods, or services, that is transmitted by fax to any person located within the State of Tennessee without such person's prior express invitation or permission, and is transmitted from Tennessee or elsewhere for the purpose of offering the extension of credit or encouraging the purchase or rental of, or investment in, property, goods, or services.

Section 65-4-02. (a) No person shall transmit or cause another person to transmit an unsolicited facsimile advertisement, unless the sender has established a toll-free telephone (fax) number that the recipient of the unsolicited facsimile advertisement may use to notify the sender by return fax that the sender is not to fax the recipient any further unsolicited facsimile advertisements.

(b) All unsolicited facsimile advertisements subject to this section shall include on the first page, in at least twelve (12) point type, a valid return address, a toll-free telephone (fax) number, and a statement informing the recipient that the recipient may use such toll-free telephone number to return by fax a simple request that notifies the transmitter not to fax any further unsolicited facsimile advertisements to the fax number, or numbers, specified by the recipient. Such statement shall be in the following form or shall be equivalent in meaning: "If you want to be removed from our list so that you do not receive future unsolicited facsimile advertisements from us, write 'UNSUBSCRIBE' and your fax number or numbers in large, legible letters on this page, and fax this page with your request to the following toll-free fax number: () - _____."

(c) Upon notification by a recipient of the recipient's request not to receive any further unsolicited facsimile advertisements as set forth in sub-paragraph (b), no person who has received such notice shall transmit or cause to be transmitted any unsolicited facsimile advertisements to the fax number or numbers specified by that recipient.

(d) For the purposes of this part, the notification referenced in (c), shall be presumed received, subject to rebuttal, if upon complaint to the authority due to the subsequent receipt of unsolicited facsimile advertisements, the recipient provides the authority with the request notice and a printed confirmation of transmittal produced by the recipient's fax machine.

Section 65-4-_03. The authority is authorized to promulgate any rules and regulations necessary to implement and effectuate this part.

Section 65-4-_04. (a) The authority is authorized to initiate proceedings relative to a violation of this part or any rules and regulations promulgated pursuant to this part. Such proceedings include, without limitation, proceedings to: issue a cease and desist order; issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each violation; and to seek additional relief in any court of competent jurisdiction. Violations shall be calculated in a liberal manner to deter violators and to protect consumers. Each page of each unsolicited facsimile advertisement may constitute a separate violation.

(b) In the course of investigating an alleged violation of this part, the authority is authorized to issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in accordance with the provisions of this title. After proper notice, any such hearing shall be conducted in conformance with authority rules and the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. All civil penalties assessed pursuant to the provisions of this part shall be deposited in the public utilities account in the state treasury.

Section 65-4-_05. (a) The provisions of this part shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(b) The provisions of this part shall not be construed to restrict or apply to communications to and from citizens and their elected representatives.

Section 65-4-_06. (a) A violation of this part also constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in Title 47, Chapter 18, Part 1.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in that act, in addition to the penalties and remedies set forth in this part as well as that of 47 U.S.C.A. § 227, or any other cause of action, civil remedy or penalty provided by law.

SECTION 2. Tennessee Code Annotated, Section 47-18-2501(a), is amended by deleting the language "by facsimile (fax) or cause to be faxed, or send" and by deleting the language "faxed or" and the language "fax or".

SECTION 3. Tennessee Code Annotated, Section 47-18-2501(b), is amended by deleting the subsection in its entirety.

SECTION 4. Tennessee Code Annotated, Section 47-18-2501(c), is amended by deleting the language "faxed or" and the language "fax or cause to be faxed, or".

SECTION 5. Tennessee Code Annotated, Section 47-18-2501(d), is amended by deleting the language "In the case of e-mail, that person or entity" and by substituting instead the language "A person or entity sending an unsolicited e-mail".

SECTION 6. Tennessee Code Annotated, Section 47-18-2501(e), is amended by deleting the language "In the case of e-mail that" and by substituting instead the language "If e-mail".

SECTION 7. Tennessee Code Annotated, Section 47-18-2501(h), is amended by deleting the language "'fax' or 'cause to be faxed' or".

SECTION 8. Tennessee Code Annotated, Title 47, Chapter 18, Part 16, is amended by deleting the part in its entirety.

SECTION 9. This act shall take effect July 1, 2003, the public welfare requiring it.

PASSED: March 31, 2003



JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of April 2003



PHIL BREDESEN, GOVERNOR