

The Law and You

Laws Against Unsolicited Fax and E-Mail Communications

One day near the end of January, I was shocked to receive a telephone call from one of the Salt Lake Tribune's reporters. His interest was in my lawsuit against a company that had sent me an unsolicited fax.

He wrote an article that occupied an entire column on the front page of the Tribune. From that article, I received numerous telephone calls, including several from TV stations who wanted interviews. It seems that I am not alone. So, this month's column is intended to provide additional information that may be helpful.

In 1996, Utah enacted a law that makes it unlawful for anyone to transmit an unsolicited fax unless there is an "established business relationship." Chapter 25a of Title 13 is entitled the Telephone and Facsimile Solicitation Act. It provides criminal and civil remedies.

A person who violates the "Act" may be subject to a fine and a "cease and desist order." A person who continues to violate the Act after receiving notice of being in violation is guilty of a class A misdemeanor.

The Act also provides for a private right of action. If you receive an unsolicited fax, you can bring an action in court and seek \$500 in damages, attorney fees, and costs of filing a lawsuit. That is a significant deterrent to a would-be violator.

I have received hundreds and hundreds of unwanted and unsolicited faxes. I also receive lots of junk mail. But faxes are most irritating because I am forced to print the advertisement with my paper and with my ink or toner.

So, I decided to try and stop the madness. After discovering the remedy provided in Title 13, I began mailing letters to senders of unsolicited faxes. I asked them to remove my fax number from their database. Later, I also began to request a settlement fee.

When a sender makes no effort to respond, I bring a lawsuit and demand \$500.

Over time, the number of unsolicited faxes reaching my fax machine has declined to a trickle. I still receive some faxes, but the senders are generally not identifiable. These senders intentionally avoid using their names and addresses. In those cases, it becomes very difficult and time consuming to track down the sender. Nonetheless, it has been worth it to stem the volume of unsolicited faxes.

A similar and every increasing pet peeve is receiving unwanted e-mails on my computer. These e-mails are unsolicited and may include sleazy or even pornographic materials.

Utah also has a law against such e-mail messages. Chapter 36 of Title 13 is entitled "Unsolicited Commercial and Sexually Explicit Email Act." However, the statute is far more complicated than the fax Act. It also only provides \$10 in damages for each unwanted e-mail. That is hardly worth the effort of writing a letter.

More disconcerting, however, is that only a very few senders of unwanted e-mails leave a trail or identifying information. It is most difficult to identify the sender of e-mail. In particular, even if a name is used, an address is almost always missing.

Try to find out who owns a toll-free telephone number, and you will begin to understand the frustration and difficulty. We need tougher laws governing the information required by senders of e-mail. We also need tougher laws regulating the service companies that host web sites.

Until the identity of a sender of e-mail can be ascertained, the civil remedies provided by Chapter 36 of Title 13 will be of little use.

The next time you receive an unwanted fax, you might try writing a letter or bringing an

action in Small Claims Court. You first must identify the sender so that you can properly serve a summons. After obtaining judgment, you also need to collect the judgment. If the sender resides outside the State of Utah, things get more tricky.

Since the Act provides for attorney fees, you might find an attorney who will take your case on a contingency basis. Check your local Yellow Pages.