

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 753  
Economic Matters

(Delegate Howard, *et al.*)

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Consumer Protection - Unsolicited Transmissions to a Facsimile Device - Private  
Actions

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This bill authorizes a recipient of an unsolicited commercial solicitation sent to a facsimile (fax) device, in addition to any action by the Attorney General, to bring an action to recover • the greater of \$500 or actual damages; and • reasonable attorney's fees.

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Fiscal Summary

**State Effect:** The bill would not directly affect State finances or operations. If the Attorney General's Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources.

**Local Effect:** The bill would not directly affect local finances or operations.

**Small Business Effect:** Potential minimal.

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Analysis

**Current Law:** A person may not intentionally transmit a fax for the purpose of commercial solicitation. The Attorney General may initiate a civil action against a person who violates the prohibition to recover for the State a penalty of up to \$1,000 for each violation.

**Background:** The federal Telephone Consumer Protection Act prohibits a person from using a fax machine, computer, or other device to send an unsolicited advertisement to a fax machine. The Act authorizes a person or entity, if otherwise permitted by the laws or

court rules of a state, to bring an action in state court • to enjoin a violation of this prohibition; and/or • to recover the greater of \$500 or actual monetary damages. In *R.A. Ponte Architects, Ltd. V. Investors' Alert, Inc.*, 382 Md. 689 (2004), the Maryland Court of Appeals held that Maryland courts have jurisdiction to try a private cause of action brought under this federal prohibition.

The federal Act does not preempt state laws that prohibit the use of fax machines or other electronic devices to send unsolicited advertisements.

Since the beginning of 2005, the Office of the Attorney General has received 83 fax-related complaints from consumers. Although the Attorney General has brought actions in cases that included fax-related complaints, no actions have been brought solely due to fax-related complaints.

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### **Additional Information**

**Prior Introductions:** Nearly identical bills were introduced in 2007, 2006, and 2005. HB 211 of 2007 received a hearing in the House Economic Matters Committee and was later withdrawn. HB 766 of 2006 and HB 1011 of 2005 received unfavorable reports from Economic Matters.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection); Department of Legislative Services

**Fiscal Note History:** First Reader - March 7, 2008  
mcp/ljm

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