



# Ohio Legislative Service Commission

## Bill Analysis

Aida S. Montano

### H.B. 183

128th General Assembly  
(As Introduced)

**Reps.** Yuko, Pillich, Foley, Letson, Chandler, Hagan, Winburn, Boyd, Murray, Skindell, Ujvagi, Harris, Luckie

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## BILL SUMMARY

- Specifies that the prohibition generally against transmitting an advertisement to a facsimile device to premises other than residential premises applies to transmitting an advertisement to a facsimile device located at the premises of a business corporation, partnership, association, joint-stock company, business trust, or other entity the premises of which are not used as a residence, eliminates the criminal penalty for that prohibition, permits the recipient of the advertisement transmitted in violation of the prohibition to bring a civil action against the person who transmitted the advertisement, and requires that the recipient recover \$1,000 for each violation determined by the court.
- Eliminates the criminal penalty for a violation of the prohibition generally against transmitting an advertisement to a facsimile device located on residential premises and modifies the civil remedy of the recipient of an advertisement transmitted in violation of the prohibition to require, instead of permit, that the recipient recover \$1,000 for each violation determined by the court.

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## CONTENT AND OPERATION

### Transmission of advertisement to facsimile device on premises other than residential premises

Existing law prohibits any person from transmitting an "advertisement" to a "facsimile device" unless the person has received prior permission from the owner or, if the device is leased, from the lessee of the device to which the message is to be sent to transmit the advertisement; or the person has a "pre-existing business relationship" with such owner or lessee. (See "**Definitions**," below, for the definitions of terms in quotation marks.) This provision does not apply to a person who transmits an

advertisement to a facsimile device located on residential premises. A violation of the above prohibition is a minor misdemeanor for a first offense and a misdemeanor of the first degree for each subsequent offense. (R.C. 4931.75(B)(1) and 4931.99(F).)

The bill deletes the provision that states that the prohibition described in the preceding paragraph does not apply to a person who transmits an advertisement to a facsimile device located on residential premises. Instead, it prohibits any person from transmitting an "advertisement" to a "facsimile device" *located at the premises of a business corporation, partnership, association, joint-stock company, business trust, or other entity the premises of which are not used as a residence* (added by the bill), unless the person has received prior permission from the owner or, if the device is leased, from the lessee of the device to which the message is to be sent to transmit the advertisement; or the person has a "pre-existing business relationship with such owner or lessee." (See "**Definitions**," below, for definitions of terms in quotation marks.) The bill eliminates the criminal penalty for a violation of that prohibition and instead provides that in addition to any other remedies, a recipient of an advertisement transmitted in violation of the prohibition may bring a civil action against the person who transmitted that advertisement or caused it to be transmitted. In that action, if a court determines that a violation has occurred, the recipient must recover \$1,000 for each violation. (R.C. 4931.75(B)(1) and (C) and 4931.99(F).)

### **Transmission of advertisement to facsimile device on residential premises**

Existing law prohibits any person from transmitting an "advertisement" to a "facsimile device" located on residential premises unless the person has received prior written permission from the owner or, if the device is leased, from the lessee of the device to which the message is to be sent to transmit the advertisement. (See "**Definitions**," below, for definitions of terms in quotation marks.) A violation of this prohibition is a minor misdemeanor for a first offense and a misdemeanor of the first degree for each subsequent offense. In addition to any other "penalties" or remedies, a recipient of an advertisement transmitted in violation of this prohibition may bring a civil action against the person who transmitted that advertisement or caused it to be transmitted. In that action, the recipient "may" recover \$1,000 for each violation. (R.C. 4931.75(B)(2) and 4931.99(F).)

The bill eliminates the criminal penalty for the prohibition described in the preceding paragraph. It modifies the civil remedy described in the preceding paragraph to provide that in addition to any other remedies (the bill deletes "other penalties"), a recipient of an advertisement transmitted in violation of the prohibition may bring a civil action against the person who transmitted that advertisement or caused it to be transmitted. In that action, *if a court determines that a violation has*

*occurred*, the recipient *must* (instead of "may") recover \$1,000 for each violation. (New or modified language is in italics.) (R.C. 4931.75(B)(2) and (C) and 4931.99(F).)

## Applicability of prohibitions

Existing law applies the prohibitions against transmitting advertisements to a facsimile device on premises other than residential premises or transmitting advertisements to a facsimile device on residential premises, as described above, to all such advertisements "intended to be so transmitted" within Ohio (R.C. 4931.75(C)). The bill applies these prohibitions, as modified by the bill, to all such advertisements transmitted in Ohio (instead of "intended to be so transmitted") (R.C. 4931.75(D)).

## Definitions

For purposes of its provisions pertaining to the transmission of advertisements to a facsimile device, existing law defines the following terms (R.C. 4931.75(A)):

"Advertisement" means a message or material "intended to cause the sale of realty, goods, or services."

"Facsimile device" means a device that electronically or telephonically receives and copies onto paper reasonable reproductions or facsimiles of documents and photographs through connection with a telephone network.

"Pre-existing business relationship" does not include transmitting an advertisement to the owner's or lessee's facsimile device.

The bill does not modify the above definitions of "facsimile device" and "pre-existing business relationship" but modifies the definition of "advertisement" to mean any message or material *promoting the availability or quality of any goods, property, or services* (instead of "intended to cause the sale of realty, goods, or services") (R.C. 4931.75(A)(1)).

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## HISTORY

### ACTION

### DATE

Introduced

05-19-09

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