

Protecting Wisconsin Consumers for 75 Years

Unwanted faxes

A telephone facsimile (or “fax”) machine is able to send and receive data (text or images) over a telephone line. The Telephone Consumer Protection Act of 1991 (TCPA) and the Federal Communications Commission (FCC) rules prohibit sending unsolicited advertisements, also known as “junk faxes,” to a fax machine. This prohibition applies to fax machines at both businesses and residences.

Definitions

An “unsolicited advertisement” is any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission. A person may grant permission to send a fax advertisement only with a signed, written statement that includes the fax number to which any advertisements may be sent. Just because your fax number is published or distributed does not mean others have permission to send you unsolicited advertisements.

Regulations

The Wisconsin law and FCC rules regulate the delivery of fax advertisements. The rules state:

- It is unlawful to send an unsolicited advertisement to a

fax machine without the prior written permission of the recipient of the advertisement.

- The business or entity on whose behalf the fax is being sent must identify itself in the top or bottom margin of each page or on the first page of the fax message, and must include its telephone number and the date and time the fax is sent.
- If a facsimile broadcaster (the person or entity transmitting messages to a fax machine on another person’s behalf) demonstrates a “high degree of involvement” in the sender’s fax messages, such as supplying the fax numbers to which a message is sent, the facsimile broadcaster must provide its name on the fax.
- A facsimile broadcaster may be liable if it supplies fax numbers to a business or entity sending unlawful fax advertisements.
- Faxes sent to fax servers and personal computers are covered by faxing rules.
- Wisconsin law prohibits a person from making a fax solicitation without the consent of the person solicited unless all of the following apply:

1. The document transmitted by fax machine does not exceed one page in length

and is received by the person solicited after 9 p.m. and before 6 a.m.

2. The person making the fax solicitation has had a previous business relationship with the person solicited.
 3. The document transmitted by fax machine contains the name of the person transmitting the document.
- In Wisconsin, a fax may not be sent to you if you notified the fax solicitor in writing or by fax transmission that you do not want to receive fax solicitations.

Opt-out notice requirements

Senders of permissible fax advertisements (those sent under an EBR – established business relationship – or with the recipient’s prior express permission) must provide notice and contact information on the fax that allows recipients to “opt-out” of future faxes. The notice must:

- Be clear and visible on the first page of the advertisement.
- State the recipient may make a request to the sender not to send any future faxes and failure to comply with the request within 30 days is unlawful.

- Include a telephone number, fax number, and cost-free mechanism (including a toll-free telephone number, local number for local recipients, toll-free fax number, website address or email address) to opt-out of faxes. These numbers and cost-free mechanism must permit consumers to make opt-out requests 24 hours a day, seven days a week.

Senders who receive a request not to send further faxes that meet the requirements listed in the next section must honor that request within the shortest reasonable time from the date of the request, not to exceed 30 days. They are also prohibited from sending future fax advertisements to the recipient unless the recipient subsequently provides express permission to the sender.

Opt-out request

To stop unwanted fax advertisements, your “opt-out” request must:

- Identify the fax number or numbers to which it relates.
- Be sent to the telephone number, fax number, website address or email address identified on the fax advertisement.

Filing a complaint

Consumers who have received unsolicited faxes are encouraged to contact the Bureau of Consumer Protection or FCC regarding the incident(s).

Here is the information needed to process your complaint:

- Telephone fax number where you received the unsolicited fax advertisement.

- Date you received the unsolicited fax advertisement (mm/dd/yyyy).
- Identity and/or telephone number of the business or organization that sent you the unsolicited fax advertisement.
- Whether or not you have an established business relationship with the business or organization that sent you the unsolicited fax advertisement. An established business relationship can be formed by an inquiry, application, purchase or transaction with a business or organization.
- Telephone number on the unsolicited fax advertisement that allows you to “opt out” of future fax advertisements.
- A description of the property, goods, or services promoted by the unsolicited fax advertisements.
- A statement that you have not granted the fax sender prior express invitation or permission to deliver the fax advertisement (for example, by signing a written statement that includes the fax number to which any advertisements may be sent and clearly indicates your consent to receive fax advertisements from the sender).
- A copy of the unsolicited fax advertisement, if available.

It is also possible to bring a private suit against the violator in an appropriate court in Wisconsin. Through a private suit, you can either recover the actual monetary loss that resulted from the TCPA violation, or receive up to \$500 in damages for each violation, whichever is greater.

The court may triple the damages for each violation if it finds that the defendant willingly or knowingly committed the violation.

Small claims court may be used when the amount is \$10,000 or less. If the damages are more than \$10,000 you might consider discussing your complaint with a lawyer in private practice.

For more information or to file a complaint, you may contact the:

FCC’s Consumer Center
(888) 225-5322
WEBSITE: www.fcc.gov

or:

Bureau of Consumer Protection
2811 Agriculture Drive
PO Box 8911
Madison WI 53708-8911

E-MAIL: DATCPHotline@wi.gov

WEBSITE: datcp.wi.gov

(800) 422-7128

FAX: (608) 224-4677

TTY: (608) 224-5058

(Some information taken from the FCC fact sheet: Unwanted faxes: What you can do)

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