

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

580H0322

HOUSE BILL NO. 1227

Introduced by: Representative McCaulley and Senator Bogue

1 FOR AN ACT ENTITLED, An Act to prohibit the faxing or e-mailing of unsolicited advertising
2 materials.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No person or entity conducting business in this state may facsimile (fax) or cause
5 to be faxed, or electronically mail (e-mail) or cause to be e-mailed, documents consisting of
6 unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any
7 realty, good, services, or extension of credit unless:

8 (1) In the case of a fax, that person or entity establishes a toll-free number that a recipient
9 of the unsolicited faxed documents may call to notify the sender not to fax the
10 recipient any further unsolicited documents;

11 (2) In the case of e-mail, that person or entity establishes a toll-free telephone number or
12 valid sender operated return e-mail address that the recipient of the unsolicited
13 documents may call or e-mail to notify the sender not to e-mail any further unsolicited
14 documents.

15 A violation of this section is a Class 2 misdemeanor.



1 Section 2. Any unsolicited faxed or e-mailed documents subject to this Act shall include a
2 statement informing the recipient of the toll-free telephone number that the recipient may call,
3 or a valid return address to which the recipient may write or e-mail, as the case may be, notifying
4 the sender not to fax or e-mail the recipient any further unsolicited documents to the fax number,
5 or numbers, or e-mail address, or addresses, specified by the recipient. In the case of faxed
6 material, the statement shall be in at least nine-point type. In the case of e-mail, the statement
7 shall be the first text in the body of the message and shall be of the same size as the majority of
8 the text of the message. A violation of this section is a Class 2 misdemeanor.

9 Section 3. Upon notification by a recipient of his or her request not to receive any further
10 unsolicited faxed or e-mailed documents, no person or entity conducting business in this state
11 may fax or cause to be faxed or e-mail or cause to be e-mailed any unsolicited documents to that
12 recipient. A violation of this section is a Class 2 misdemeanor.

13 Section 4. In the case of e-mail, this Act applies when the unsolicited e-mailed documents
14 are delivered to a South Dakota resident via an electronic mail service provider's service or
15 equipment located in this state. For the purposes of this section, the term, electronic mail service
16 provider, means any business or organization qualified to do business in this state that provides
17 individuals, corporations, or other entities the ability to send or receive electronic mail through
18 equipment located in this state and that is an intermediary in sending or receiving electronic mail.

19 As used in this Act, the term, unsolicited e-mailed documents, means any e-mailed document
20 or documents consisting of advertising material for the lease, sale, rental, gift offer, or other
21 disposition of any realty, goods, services, or extension of credit that meet both of the following
22 requirements:

- 23 (1) The documents are addressed to a recipient with whom the initiator does not have an
24 existing business or personal relationship; and

1 (2) The documents are not sent at the request of, or with the express consent of, the
2 recipient.

3 Section 5. As used in this Act, the term, fax or cause to be faxed or e-mail or cause to be e-
4 mailed, does not include or refer to the transmission of any documents by a telecommunications
5 utility or internet service provider to the extent that the telecommunications utility or internet
6 service provider merely carries that transmission over its network.

7 Section 6. In the case of e-mail that consists of unsolicited advertising material for the lease,
8 sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit,
9 the subject line of each message shall include "ADV:" as the first four characters. If these
10 messages contain information that consists of unsolicited advertising material for the lease, sale,
11 rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that
12 may only be viewed, purchased, rented, leased, or held in possession by an individual eighteen
13 years of age and older, the subject line of each message shall include "ADV:ADLT" as the first
14 eight characters. A violation of this section is a Class 2 misdemeanor.

15 Section 7. An employer who is the registered owner of more than one e-mail address may
16 notify the person or entity conducting business in this state e-mailing or causing to be e-mailed,
17 documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or
18 other disposition of any realty, good, services, or extension of credit of the desire to cease e-
19 mailing on behalf of all of the employees who may use employer-provided and employer-
20 controlled e-mail addresses.

21 Section 8. A willful violation of this Act is an unfair or deceptive trade practice and is subject
22 to the relief provided under chapter 37-24.

23 Section 9. Any consumer who claims to have been adversely affected by any act or practice
24 declared to be unlawful by this Act may bring a civil action for the recovery of twice the actual

1 damages suffered or five hundred dollars for each occurrence, whichever is greater, as a result
2 of a willful act or practice. In addition, the consumer may collect the court costs and attorney fees
3 expended by the consumer to bring an action under this section.

4 Section 10. Any action arising under this Act in no way affects any cause of action arising
5 under other laws of this state or under the common law, whether or not the other cause of action
6 is included within the provisions of this Act.