

108TH CONGRESS
2D SESSION

S. 2603

To amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2004

Mr. SMITH (for himself, Mr. ALLEN, Mr. HOLLINGS, and Mr. SUNUNU) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Junk Fax Prevention
5 Act of 2004”.

1 **SEC. 2. PROHIBITION ON FAX TRANSMISSIONS CONTAINING**
2 **UNSOLICITED ADVERTISEMENTS.**

3 (a) PROHIBITION.—Section 227(b)(1)(C) of the Com-
4 munications Act of 1934 (47 U.S.C. 227(b)(1)(C)) is
5 amended to read as follows:

6 “(C) to use any telephone facsimile ma-
7 chine, computer, or other device to send, to a
8 telephone facsimile machine, an unsolicited ad-
9 vertisement, unless—

10 “(i) the unsolicited advertisement is
11 from a sender with an established business
12 relationship with the recipient; and

13 “(ii) the unsolicited advertisement
14 contains a notice meeting the requirements
15 under paragraph (2)(D), except that the
16 exception under clauses (i) and (ii) shall
17 not apply with respect to an unsolicited ad-
18 vertisement sent to a telephone facsimile
19 machine by a sender to whom a request
20 has been made not to send future unsolic-
21 ited advertisements to such telephone fac-
22 simile machine that complies with the re-
23 quirements under paragraph (2)(E); or”.

24 (b) DEFINITION OF ESTABLISHED BUSINESS RELA-
25 TIONSHIP.—Section 227(a) of the Communications Act of
26 1934 (47 U.S.C. 227(a)) is amended—

1 (1) by redesignating paragraphs (2) through
2 (4) as paragraphs (3) through (5), respectively; and

3 (2) by inserting after paragraph (1) the fol-
4 lowing:

5 “(2) The term ‘established business relation-
6 ship’, for purposes only of subsection (b)(1)(C)(i),
7 shall have the meaning given the term in section
8 64.1200 of title 47, Code of Federal Regulations, as
9 in effect on January 1, 2003, except that—

10 “(A) such term shall include a relationship
11 between a person or entity and a business sub-
12 scriber subject to the same terms applicable
13 under such section to a relationship between a
14 person or entity and a residential subscriber;
15 and

16 “(B) an established business relationship
17 shall be subject to any time limitation estab-
18 lished pursuant to paragraph (2)(G))”.

19 (c) REQUIRED NOTICE OF OPT-OUT OPPOR-
20 TUNITY.—Section 227(b)(2) of the Communications Act
21 of 1934 (47 U.S.C. 227(b)(2)) is amended—

22 (1) in subparagraph (B), by striking “and” at
23 the end;

24 (2) in subparagraph (C), by striking the period
25 at the end and inserting a semicolon; and

1 (3) by adding at the end the following:

2 “(D) shall provide that a notice contained
3 in an unsolicited advertisement complies with
4 the requirements under this subparagraph only
5 if—

6 “(i) the notice is clear and con-
7 spicuous and on the first page of the unso-
8 licited advertisement;

9 “(ii) the notice states that the recipi-
10 ent may make a request to the sender of
11 the unsolicited advertisement not to send
12 any future unsolicited advertisements to a
13 telephone facsimile machine or machines
14 and that failure to comply, within the
15 shortest reasonable time, as determined by
16 the Commission, with such a request meet-
17 ing the requirements under subparagraph
18 (E) is unlawful;

19 “(iii) the notice sets forth the require-
20 ments for a request under subparagraph
21 (E);

22 “(iv) the notice includes—

23 “(I) a domestic contact telephone
24 and facsimile machine number for the

1 recipient to transmit such a request to
2 the sender; and

3 “(II) a cost-free mechanism for a
4 recipient to transmit a request pursu-
5 ant to such notice to the sender of the
6 unsolicited advertisement; the Com-
7 mission shall by rule require the send-
8 er to provide such a mechanism and
9 may, in the discretion of the Commis-
10 sion and subject to such conditions as
11 the Commission may prescribe, ex-
12 empt certain classes of small business
13 senders, but only if the Commission
14 determines that the costs to such class
15 are unduly burdensome given the rev-
16 enues generated by such small busi-
17 nesses;

18 “(v) the telephone and facsimile ma-
19 chine numbers and the cost-free mecha-
20 nism set forth pursuant to clause (iv) per-
21 mit an individual or business to make such
22 a request during regular business hours;
23 and

24 “(vi) the notice complies with the re-
25 quirements of subsection (d);”.

1 (d) REQUEST TO OPT-OUT OF FUTURE UNSOLIC-
2 ITED ADVERTISEMENTS.—Section 227(b)(2) of the Com-
3 munications Act of 1934 (47 U.S.C. 227(b)(2)), as
4 amended by subsection (c), is further amended by adding
5 at the end the following:

6 “(E) shall provide, by rule, that a request
7 not to send future unsolicited advertisements to
8 a telephone facsimile machine complies with the
9 requirements under this subparagraph only if—

10 “(i) the request identifies the tele-
11 phone number or numbers of the telephone
12 facsimile machine or machines to which the
13 request relates;

14 “(ii) the request is made to the tele-
15 phone or facsimile number of the sender of
16 such an unsolicited advertisement provided
17 pursuant to subparagraph (D)(iv) or by
18 any other method of communication as de-
19 termined by the Commission; and

20 “(iii) the person making the request
21 has not, subsequent to such request, pro-
22 vided express invitation or permission to
23 the sender, in writing or otherwise, to send
24 such advertisements to such person at such
25 telephone facsimile machine;”.

1 (e) AUTHORITY TO ESTABLISH NONPROFIT EXCEP-
2 TION.—Section 227(b)(2) of the Communications Act of
3 1934 (47 U.S.C. 227(b)(2)), as amended by subsections
4 (c) and (d), is further amended by adding at the end the
5 following:

6 “(F) may, in the discretion of the Commis-
7 sion and subject to such conditions as the Com-
8 mission may prescribe, allow professional or
9 trade associations that are tax-exempt nonprofit
10 organizations to send unsolicited advertisements
11 to their members in furtherance of the associa-
12 tion’s tax-exempt purpose that do not contain
13 the notice required by paragraph (1)(C)(ii), ex-
14 cept that the Commission may take action
15 under this subparagraph only—

16 “(i) by regulation issued after public
17 notice and opportunity for public comment;
18 and

19 “(ii) if the Commission determines
20 that such notice required by paragraph
21 (1)(C)(ii) is not necessary to protect the
22 ability of the members of such associations
23 to stop such associations from sending any
24 future unsolicited advertisements; and”.

1 (f) AUTHORITY TO ESTABLISH TIME LIMIT ON ES-
2 TABLISHED BUSINESS RELATIONSHIP EXCEPTION.—Sec-
3 tion 227(b)(2) of the Communications Act of 1934 (47
4 U.S.C. 227(b)(2)), as amended by subsections (c), (d),
5 and (e) of this section, is further amended by adding at
6 the end the following:

7 “(G)(i) may, consistent with clause (ii),
8 limit the duration of the existence of an estab-
9 lished business relationship to a period not
10 shorter than 5 years and not longer than 7
11 years after the last occurrence of an action suf-
12 ficient to establish such a relationship, but only
13 if—

14 “(I) the Commission determines that
15 the existence of the exception under para-
16 graph (1)(C) relating to an established
17 business relationship has resulted in a sig-
18 nificant number of complaints to the Com-
19 mission regarding the sending of unsolic-
20 ited advertisements to telephone facsimile
21 machines;

22 “(II) upon review of such complaints
23 referred to in subclause (I), the Commis-
24 sion has reason to believe that a significant
25 number of such complaints involve unsolic-

1 ited advertisements that were sent on the
2 basis of an established business relation-
3 ship that was longer in duration than the
4 Commission believes is consistent with the
5 reasonable expectations of consumers;

6 “(III) the Commission determines
7 that the costs to senders of demonstrating
8 the existence of an established business re-
9 lationship within a specified period of time
10 do not outweigh the benefits to recipients
11 of establishing a limitation on such estab-
12 lished business relationship; and

13 “(IV) the Commission determines
14 that, with respect to small businesses, the
15 costs are not unduly burdensome, given the
16 revenues generated by small businesses,
17 and taking into account the number of spe-
18 cific complaints to the Commission regard-
19 ing the sending of unsolicited advertise-
20 ments to telephone facsimile machines by
21 small businesses; and

22 “(ii) may not commence a proceeding to
23 determine whether to limit the duration of the
24 existence of an established business relationship
25 before the expiration of the 3-year period that

1 begins on the date of the enactment of the Junk
2 Fax Prevention Act of 2004.”.

3 (g) UNSOLICITED ADVERTISEMENT.—Section
4 227(a)(5) of the Communications Act of 1934, as so re-
5 designated by subsection (b)(1), is amended by inserting
6 “, in writing or otherwise” before the period at the end.

7 (h) REGULATIONS.—Except as provided in section
8 227(b)(2)(G)(ii) of the Communications Act of 1934 (as
9 added by subsection (f)), not later than 270 days after
10 the date of enactment of this Act, the Federal Commu-
11 nications Commission shall issue regulations to implement
12 the amendments made by this section.

13 **SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX EN-**
14 **FORCEMENT.**

15 Section 227 of the Communications Act of 1934 (47
16 U.S.C. 227) is amended by adding at the end the fol-
17 lowing:

18 “(g) JUNK FAX ENFORCEMENT REPORT.—The Com-
19 mission shall submit an annual report to Congress regard-
20 ing the enforcement during the past year of the provisions
21 of this section relating to sending of unsolicited advertise-
22 ments to telephone facsimile machines, which report shall
23 include—

24 “(1) the number of complaints received by the
25 Commission during such year alleging that a con-

1 sumer received an unsolicited advertisement via tele-
2 phone facsimile machine in violation of the Commis-
3 sion’s rules;

4 “(2) the number of such complaints received
5 during the year on which the Commission has taken
6 action;

7 “(3) the number of such complaints that re-
8 main pending at the end of the year;

9 “(4) the number of citations issued by the Com-
10 mission pursuant to section 503 during the year to
11 enforce any law, regulation, or policy relating to
12 sending of unsolicited advertisements to telephone
13 facsimile machines;

14 “(5) the number of notices of apparent liability
15 issued by the Commission pursuant to section 503
16 during the year to enforce any law, regulation, or
17 policy relating to sending of unsolicited advertise-
18 ments to telephone facsimile machines;

19 “(6) for each notice referred to in paragraph
20 (5)—

21 “(A) the amount of the proposed forfeiture
22 penalty involved;

23 “(B) the person to whom the notice was
24 issued;

1 “(C) the length of time between the date
2 on which the complaint was filed and the date
3 on which the notice was issued; and

4 “(D) the status of the proceeding;

5 “(7) the number of final orders imposing for-
6 feiture penalties issued pursuant to section 503 dur-
7 ing the year to enforce any law, regulation, or policy
8 relating to sending of unsolicited advertisements to
9 telephone facsimile machines;

10 “(8) for each forfeiture order referred to in
11 paragraph (7)—

12 “(A) the amount of the penalty imposed by
13 the order;

14 “(B) the person to whom the order was
15 issued;

16 “(C) whether the forfeiture penalty has
17 been paid; and

18 “(D) the amount paid;

19 “(9) for each case in which a person has failed
20 to pay a forfeiture penalty imposed by such a final
21 order, whether the Commission referred such matter
22 for recovery of the penalty; and

23 “(10) for each case in which the Commission
24 referred such an order for recovery—

1 “(A) the number of days from the date the
2 Commission issued such order to the date of
3 such referral;

4 “(B) whether an action has been com-
5 menced to recover the penalty, and if so, the
6 number of days from the date the Commission
7 referred such order for recovery to the date of
8 such commencement; and

9 “(C) whether the recovery action resulted
10 in collection of any amount, and if so, the
11 amount collected.”.

12 **SEC. 4. GAO STUDY OF JUNK FAX ENFORCEMENT.**

13 (a) IN GENERAL.—The Comptroller General of the
14 United States shall conduct a study regarding complaints
15 received by the Federal Communications Commission con-
16 cerning unsolicited advertisements sent to telephone fac-
17 simile machines, which study shall determine—

18 (1) the mechanisms established by the Commis-
19 sion to receive, investigate, and respond to such
20 complaints;

21 (2) the level of enforcement success achieved by
22 the Commission regarding such complaints;

23 (3) whether complainants to the Commission
24 are adequately informed by the Commission of the
25 responses to their complaints; and

1 (4) whether additional enforcement measures
2 are necessary to protect consumers, including rec-
3 ommendations regarding such additional enforce-
4 ment measures.

5 (b) **ADDITIONAL ENFORCEMENT REMEDIES.**—In
6 conducting the analysis and making the recommendations
7 required under subsection (a)(4), the Comptroller General
8 shall specifically examine—

9 (1) the adequacy of existing statutory enforce-
10 ment actions available to the Commission;

11 (2) the adequacy of existing statutory enforce-
12 ment actions and remedies available to consumers;

13 (3) the impact of existing statutory enforcement
14 remedies on senders of facsimiles;

15 (4) whether increasing the amount of financial
16 penalties is warranted to achieve greater deterrent
17 effect; and

18 (5) whether establishing penalties and enforce-
19 ment actions for repeat violators or abusive viola-
20 tions similar to those established under section 1037
21 of title 18, United States Code, would have a greater
22 deterrent effect.

23 (c) **REPORT.**—Not later than 270 days after the date
24 of the enactment of this Act, the Comptroller General shall
25 submit a report on the results of the study under this sec-

- 1 tion to Committee on Energy and Commerce of the House
- 2 of Representatives and the Committee on Commerce,
- 3 Science, and Transportation of the Senate.

