

**Calendar No. 741**108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 2603****[Report No. 108-381]**

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 24, 2004

Mr. SMITH (for himself, Mr. ALLEN, Mr. HOLLINGS, Mr. SUNUNU, Mr. BREAUX, Mr. LAUTENBERG, Mr. NELSON of Florida, Mr. BURNS, Mr. BUNNING, Ms. SNOWE, Mr. CRAIG, Mr. DORGAN, Mr. STEVENS, Mr. LOTT, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

SEPTEMBER 28, 2004

Reported by Mr. MCCAIN, without amendment

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**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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Junk Fax Prevention  
3 Act of 2004”.

4 **SEC. 2. PROHIBITION ON FAX TRANSMISSIONS CONTAINING**  
5 **UNSOLICITED ADVERTISEMENTS.**

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

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

13 “(i) the unsolicited advertisement is  
14 from a sender with an established business  
15 relationship with the recipient; and

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

1 (b) DEFINITION OF ESTABLISHED BUSINESS RELA-  
2 TIONSHIP.—Section 227(a) of the Communications Act of  
3 1934 (47 U.S.C. 227(a)) is amended—

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

6 (2) by inserting after paragraph (1) the fol-  
7 lowing:

8 “(2) The term ‘established business relation-  
9 ship’, for purposes only of subsection (b)(1)(C)(i),  
10 shall have the meaning given the term in section  
11 64.1200 of title 47, Code of Federal Regulations, as  
12 in effect on January 1, 2003, except that—

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

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

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

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

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

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

6           “(D) shall provide that a notice contained  
7 in an unsolicited advertisement complies with  
8 the requirements under this subparagraph only  
9 if—

10                   “(i) the notice is clear and con-  
11 spicuous and on the first page of the unso-  
12 licited advertisement;

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

23                   “(iii) the notice sets forth the require-  
24 ments for a request under subparagraph  
25 (E);

1 “(iv) the notice includes—

2 “(I) a domestic contact telephone  
3 and facsimile machine number for the  
4 recipient to transmit such a request to  
5 the sender; and

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

21 “(v) the telephone and facsimile ma-  
22 chine numbers and the cost-free mecha-  
23 nism set forth pursuant to clause (iv) per-  
24 mit an individual or business to make such

1 a request during regular business hours;

2 and

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

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

10 “(E) shall provide, by rule, that a request  
11 not to send future unsolicited advertisements to  
12 a telephone facsimile machine complies with the  
13 requirements under this subparagraph only if—

14 “(i) the request identifies the tele-  
15 phone number or numbers of the telephone  
16 facsimile machine or machines to which the  
17 request relates;

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

24 “(iii) the person making the request  
25 has not, subsequent to such request, pro-

1           vided express invitation or permission to  
2           the sender, in writing or otherwise, to send  
3           such advertisements to such person at such  
4           telephone facsimile machine;”.

5           (e) **AUTHORITY TO ESTABLISH NONPROFIT EXCEP-**  
6 **TION.**—Section 227(b)(2) of the Communications Act of  
7 1934 (47 U.S.C. 227(b)(2)), as amended by subsections  
8 (c) and (d), is further amended by adding at the end the  
9 following:

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

20                           “(i) by regulation issued after public  
21                           notice and opportunity for public comment;  
22                           and

23                           “(ii) if the Commission determines  
24                           that such notice required by paragraph  
25                           (1)(C)(ii) is not necessary to protect the

1 ability of the members of such associations  
 2 to stop such associations from sending any  
 3 future unsolicited advertisements; and”.

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

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

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

1           “(II) upon review of such complaints  
2 referred to in subclause (I), the Commis-  
3 sion has reason to believe that a significant  
4 number of such complaints involve unsolic-  
5 ited advertisements that were sent on the  
6 basis of an established business relation-  
7 ship that was longer in duration than the  
8 Commission believes is consistent with the  
9 reasonable expectations of consumers;

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

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

1           “(ii) may not commence a proceeding to  
2           determine whether to limit the duration of the  
3           existence of an established business relationship  
4           before the expiration of the 3-year period that  
5           begins on the date of the enactment of the Junk  
6           Fax Prevention Act of 2004.”.

7           (g)     UNSOLICITED     ADVERTISEMENT.—Section  
8     227(a)(5) of the Communications Act of 1934, as so re-  
9     designated by subsection (b)(1), is amended by inserting  
10    “, in writing or otherwise” before the period at the end.

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

17     **SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX EN-**  
18                                   **FORCEMENT.**

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

22           “(g)     JUNK FAX ENFORCEMENT REPORT.—The Com-  
23     mission shall submit an annual report to Congress regard-  
24     ing the enforcement during the past year of the provisions  
25     of this section relating to sending of unsolicited advertise-

1 ments to telephone facsimile machines, which report shall  
2 include—

3           “(1) the number of complaints received by the  
4 Commission during such year alleging that a con-  
5 sumer received an unsolicited advertisement via tele-  
6 phone facsimile machine in violation of the Commis-  
7 sion’s rules;

8           “(2) the number of such complaints received  
9 during the year on which the Commission has taken  
10 action;

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

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

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

23           “(6) for each notice referred to in paragraph  
24 (5)—

1           “(A) the amount of the proposed forfeiture  
2 penalty involved;

3           “(B) the person to whom the notice was  
4 issued;

5           “(C) the length of time between the date  
6 on which the complaint was filed and the date  
7 on which the notice was issued; and

8           “(D) the status of the proceeding;

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

14           “(8) for each forfeiture order referred to in  
15 paragraph (7)—

16           “(A) the amount of the penalty imposed by  
17 the order;

18           “(B) the person to whom the order was  
19 issued;

20           “(C) whether the forfeiture penalty has  
21 been paid; and

22           “(D) the amount paid;

23           “(9) for each case in which a person has failed  
24 to pay a forfeiture penalty imposed by such a final

1 order, whether the Commission referred such matter  
2 for recovery of the penalty; and

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

5 “(A) the number of days from the date the  
6 Commission issued such order to the date of  
7 such referral;

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

13 “(C) whether the recovery action resulted  
14 in collection of any amount, and if so, the  
15 amount collected.”.

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

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

22 (1) the mechanisms established by the Commis-  
23 sion to receive, investigate, and respond to such  
24 complaints;

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

3           (3) whether complainants to the Commission  
4 are adequately informed by the Commission of the  
5 responses to their complaints; and

6           (4) whether additional enforcement measures  
7 are necessary to protect consumers, including rec-  
8 ommendations regarding such additional enforce-  
9 ment measures.

10       (b) **ADDITIONAL ENFORCEMENT REMEDIES.**—In  
11 conducting the analysis and making the recommendations  
12 required under subsection (a)(4), the Comptroller General  
13 shall specifically examine—

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

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

18           (3) the impact of existing statutory enforcement  
19 remedies on senders of facsimiles;

20           (4) whether increasing the amount of financial  
21 penalties is warranted to achieve greater deterrent  
22 effect; and

23           (5) whether establishing penalties and enforce-  
24 ment actions for repeat violators or abusive viola-  
25 tions similar to those established under section 1037

1 of title 18, United States Code, would have a greater  
2 deterrent effect.

3 (c) REPORT.—Not later than 270 days after the date  
4 of the enactment of this Act, the Comptroller General shall  
5 submit a report on the results of the study under this sec-  
6 tion to Committee on Energy and Commerce of the House  
7 of Representatives and the Committee on Commerce,  
8 Science, and Transportation of the Senate.

Calendar No. 741

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2603**

[Report No. 108-381]

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## **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.

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SEPTEMBER 28, 2004

Reported without amendment