July 21, 2004

Re: Please vote to AMEND Junk Fax Prevention Bill of 2004 (S. 2603)

Dear Senator,

I am one of the world’s leading authorities on Junk Faxes. I have been personally featured in over a hundred articles in the New York Times, Los Angeles Times, Consumer Reports, and other media.

My website, www.junkfax.org, has over 200,000 consumer and small business members in every state; all people who are extremely upset about receiving junk faxes. We are drowning in junk faxes - so much so that today legitimate faxes get LOST in all the junk faxes. For example, my business currently receives 1 legitimate fax for every 10 unwanted faxes!! I, and every other consumer with a fax machine, have to pay for all these unwanted messages: paper, toner, and lost communications.

S.2603 as introduced is a very bad bill and could dramatically INCREASE the number of junk faxes being sent. This is because a business can send 10 junk faxes for less than the cost of a single direct mail piece. No one who actively is involved in fighting junk faxes today is in favor of this bill as written. No state Attorney General or consumer advocacy organization that I’m aware of supports it either.

Consumers today can still get the commercial faxes that they want under existing law. This bill will create a new loophole that would allow businesses to unfairly shift the cost burden to the consumer who will have no say in the matter before the damage is done. It will force people to spend their time trying to get off of lists that they never asked to be put on in the first place.

The current laws and FCC rules are pro-consumer and pro-legitimate marketing. They do not need to be “fixed.” No consumer who has asked for information from a business and received that information via fax has ever sued and won. This bill is trying to fix a problem that simply does not exist.

At a minimum, on behalf of our membership, I ask that you vote FOR the following amendments:

• Change the EBR (Existing Business Relationship) to 18 months bringing it in line with the “Do not call” list that Congress approved (Hollings amendment)
• Allow the FCC to study and determine the length of the EBR if needed (McCain amendment)
• Require that companies that consistently violate the law be required to obtain prior express consent (Nelson amendment)

Unless these amendments are enacted, this bill will lead to consumers getting more unwanted faxes at their expense. We urge you to OPPOSE S. 2603 unless it is amended as above.

Sincerely yours,

Steven T. Kirsch
www.junkfax.org    cell:650-279-1008    help@junkfax.org
Re: Please vote to AMEND Junk Fax Prevention Bill of 2004 (S. 2603)

Dear Senator,

I am an attorney and small business owner. I and my clients, collages and friends, have received thousands of junk faxes over the past couple of years. Despite the fact that recent law suits have been filed, I and others have been receiving junk faxes on a daily bases. The current law does not do enough to stop this on slot, if anything the current law should be strengthened, not weakened as S.2603 will do. I, and every other consumer with a fax machine, pay for all of the junk faxes, not the sender of the faxes.

S.2603 as introduced is awful and will INCREASE the number of junk faxes being sent.

I ask that you vote against the bill, but at a minimum, I ask that you vote FOR the following amendments:

- Change the EBR (Existing Business Relationship) to 18 months bringing it in line with the “Do not call” list that Congress approved (Hollings amendment)
- Allow the FCC to study and determine the length of the EBR if needed (McCain amendment)
- Require that companies that consistently violate the law be required to obtain prior express consent (Nelson amendment)

Unless these amendments are enacted, this bill will lead to consumers getting more unwanted faxes at their expense. I urge you to OPPOSE S. 2603, but at minimum you vote for the above amendments.

Thanking you for your cooperation, I remain,

Very truly yours,

Clayton S. Morrow, Esquire
July 21, 2004

Re: Please vote to AMEND Junk Fax Prevention Bill of 2004 (S. 2603)

Dear Senator,

I’m writing you to plead against advertising by theft. HR 4600 - S 2603 is the mis-named Junk Fax Prevention Act of 2004.

I operate a home based business as a Talent Manager in Burbank, CA - representing mostly actors, and writers. Due to the nature of my business, there is constant faxing of 50-100 page scripts, contracts, production schedules, and other TV/Film materials between the major Studios, production companies, agencies, and casting offices from 9am-8pm daily. As it is, I rely on my fax machine to generate about 85% of the work for my talent.

Unfortunately, I am overwhelmed by the volume of unsolicited junk faxes that I receive on my two telephone lines and two fax machines. These junk faxes have caused enormous harm to my business. For example, a producer needed a headshot of one of my clients for a same day booking; my fax machines were receiving junk faxes so I was unable to meet his request in a timely fashion--my client lost the role! There have been times when I have needed to send urgent contracts to the Studios for clients and had to hire a local courier company to deliver the contracts because my 2 fax lines were receiving junk faxes.

That notwithstanding, I do not appreciate paying for the others’ advertising. I do not want to start getting MORE junk faxes than I have already received (I have received over 600 junk faxes since 1999!). My fax machine was rendered inoperable last year due to the wear and tear from junk faxes. I do not want to start getting junk faxes from my phone company, my grocery chain, department stores, my mortgage company, my credit card companies, my banks, or any of the hundreds and thousands of businesses that I have done business with or even INQUIRED about possibly doing business with.

The Junk Fax Prevention Act of 2004 law is oppressive to the general public. Under the proposed NEW LAW, all of the above will be free to send me masses of junk fax ads as they please. Under the PRESENT law, ALL junk fax ads are ILLEGAL unless I give my "EXPRESS CONSENT" to receive them. I currently do not give my express consent to receive fax ads from anyone, yet I still receive plenty, anyway.

I believe that HR 4600 - S 2603 will aggravate the problem my business is facing, hurting me, my clients, and my business relationships. If I have to spend more time and energy responding to every junk fax by “OPTING OUT”, I can not operate a productive business.

At a minimum, I ask that you vote FOR the following amendments:

- Change the EBR (Existing Business Relationship) to 18 months bringing it in line with the “Do not call” list that Congress approved (Hollings amendment)
- Allow the FCC to study and determine the length of the EBR if needed (McCain amendment)
- Require that companies that consistently violate the law be required to obtain prior express consent (Nelson amendment)

Sincerely yours,
Belinda Bickelmann   cell: 818.636.2673       EncoreLA@aol.com
Dear Senator:

VOTE NO ON SB 2603

This misnamed bill is a BAD piece of legislation. It purportedly will fix a problem with the Telephone Consumer Protection Act (TCPA) that was enacted in 1991. IT WILL DO NO SUCH THING.

The proponents of this act wish to add an Existing Business Relationship (EBR) clause into the TCPA. The present law has no such exception. The FCC had mis-interpreted the law and stated that there is an EBR exception to the existing law. They now realize that they had misinterpreted the law (Courts have always found that no EBR exception applies to unsolicited fax ads).

Unfortunately, the FCC proposed a stringent requirement requiring SIGNED permission to send advertisements by fax. The FCC has delayed implementation of this part of its new regulations. There is a good chance that the FCC will change this requirement or never enact it.

No one should be allowed to use SOMEONE ELSE’S paper, ink, and telecommunications lines in order to print their own ads without the recipient’s consent. Maybe the FCC’s (proposed) requirement of SIGNED consent is too harsh. (In my view, it is not since there are a number of ways of obtaining the consent before sending fax ads.) I do, agree that requiring businesses to obtain the required written consent for all existing fax recipients before sending new faxes could be daunting.

In short, there are ways to resolve the present situation with the suspended FCC regulations which will not open the floodgates to millions, if not billions of faxes that will clog up the fax machines and telephone lines of this nation’s small, middle and large businesses.

SB 2603, as it is now written MUST NOT BE ALLOWED TO BECOME LAW.

If you or an aide or someone else in your office would like to discuss this bill, I can be reached at (440) 237-6765 or by e-mail at tmp2536-tcpa@yahoo.com, or at the above address.

Yours truly,

Thomas M. Pechnik
July 21, 2004

Re: Please vote to AMEND Junk Fax Prevention Bill of 2004 (S. 2603)

Dear Senator,

We are drowning in junk faxes - so much so that today legitimate faxes get LOST in all the junk faxes. I, and every other consumer with a fax machine, have to pay for all these unwanted messages: paper, toner, and lost communications.

S.2603 as introduced is a very bad bill and could dramatically INCREASE the number of junk faxes being sent. This is because a business can send 10 junk faxes for less than the cost of a single direct mail piece. No one who actively is involved in fighting junk faxes today is in favor of this bill as written. No state Attorney General or consumer advocacy organization that I’m aware of supports it either.

Consumers today can still get the commercial faxes that they want under existing law. This bill will create a new loophole that would allow businesses to unfairly shift the cost burden to the consumer who will have no say in the matter before the damage is done. It will force people to spend their time trying to get off of lists that they never asked to be put on in the first place.

The current laws and FCC rules are pro-consumer and pro-legitimate marketing. They do not need to be “fixed.” No consumer who has asked for information from a business and received that information via fax has ever sued and won. This bill is trying to fix a problem that simply does not exist.

At a minimum, on I ask that you vote FOR the following amendments:

- Change the EBR (Existing Business Relationship) to 18 months bringing it in line with the “Do not call” list that Congress approved (Hollings amendment)
- Allow the FCC to study and determine the length of the EBR if needed (McCain amendment)
- Require that companies that consistently violate the law be required to obtain prior express consent (Nelson amendment)

Unless these amendments are enacted, this bill will lead to consumers getting more unwanted faxes at their expense. We urge you to OPPOSE S. 2603 unless it is amended as above.

Sincerely yours,

Harris H. Hall

cell: 626-622-2790
Dear Senator,

As a consumer and privacy advocate I am dismayed to see that the inaptly named “Junk Fax Prevention Act” is being considered for passage. Contrary to what the name implies, this bill will do little, if anything, to stem the flow of junk faxes. While I have currently been blessed in that I receive little in the way of facsimile advertising, should this bill become law I fear my own personal fax machine will become virtually worthless with the limited number of legitimate faxes I receive being drowned out by the sea of advertising from others.

Current law, which has been in effect for over a dozen years, prohibits facsimile advertising without the “express permission” of the recipient. This proposed amendment would not stop any faxes that are currently prohibited; yet it will allow anyone who I have done business with in the past to use my facilities to print their advertising. Should this bill pass every restaurant I’ve ever eaten in will be free to fax me their daily special, every supermarket can send me an inexpensive flier with that week’s special, and every hardware store will jump at the opportunity to tell me about the latest gadget they now have on sale. And due to the massive databases being compiled by various organizations within the U.S., the odds of any of these businesses being able to obtain the fax numbers of patrons grows with each and every day.

Unlike traditional advertising, every fax will require me, the recipient, to pay a portion of the cost in the form of paper, toner, and wear and tear on my equipment. Due to this cost shifting, the expense for the advertiser is limited. We have seen an incredible proliferation of spam primarily due to one single factor: there is virtually no cost to the advertiser. While facsimile advertising does bear a modest cost to the sender, it is a fraction of that from other marketing methods. The only thing that is keeping the junk fax problem marginally under control is the existing law, which this bill will decimate.

There are better solutions to the problems raised by industry about the proposed FCC requirements for written permission beginning on January 1st, 2004. At a very minimum I urge you to consider the Hollings, McCain and Nelson Amendments that would at least offer a modicum of protection to consumers and businesses. A far better solution would be to send this back to committee where a solution, which truly benefits ALL parties, could be found.

-John Vanderlippe
July 21, 2004

Re: Please vote to AMEND Junk Fax Prevention Bill of 2004 (S. 2603)

Dear Senator,

S.2603 as introduced is a very bad bill and could dramatically INCREASE the number of junk faxes being sent. This is because a business can send 10 junk faxes for less than the cost of a single direct mail piece. No one who actively is involved in fighting junk faxes today is in favor of this bill as written. No state Attorney General or consumer advocacy organization that I’m aware of supports it either.

Consumers today can still get the commercial faxes that they want under existing law. This bill will create a new loophole that would allow businesses to unfairly shift the cost burden to the consumer who will have no say in the matter before the damage is done. It will force people to spend their time trying to get off of lists that they never asked to be put on in the first place.

The current laws and FCC rules are pro-consumer and pro-legitimate marketing. They do not need to be "fixed." No consumer who has asked for information from a business and received that information via fax has ever sued and won. This bill is trying to fix a problem that simply does not exist.

At a minimum, on behalf of our membership, I ask that you vote FOR the following amendments:

- Change the EBR (Existing Business Relationship) to 18 months bringing it in line with the "Do not call" list that Congress approved (Hollings amendment)
- Allow the FCC to study and determine the length of the EBR if needed (McCain amendment)
- Require that companies that consistently violate the law be required to obtain prior express consent (Nelson amendment)

Unless these amendments are enacted, this bill will lead to consumers getting more unwanted faxes at their expense. We urge you to OPPOSE S. 2603 unless it is amended as above.

Sincerely yours,

Todd C. Bank
Re: Please vote to AMEND Junk Fax Prevention Bill of 2004 (S. 2603)

July 21, 2004

Dear Senator,

I work from a small home office. Before I began using my private right to action against junk faxers, I would receive dozens of junk faxes a week. I need a fax line for my work, but the cost of receiving these junk faxes was large. I recently installed a second fax line for my business, and it, too, is being inundated with junk faxes.

After suing two junk faxers and settling, the junk faxes stopped to my primary fax line. Yet these two, and other, businesses continue to send illegal junk faxes. Since installing my second fax line, I have received faxes from these business again. One has even been cited by the FCC for their illegal actives. If businesses are willing to flaunt the law under the current circumstances, a weakening of the law will only make the problem worse.

S. 2063 will likely increase the number of junk faxes being sent. It establishes existing business relationship (EBR) exceptions that will allow anyone I have done business with to send me faxes. In the case of telemarketing phone calls, this is an annoyance, but with junk faxes it shifts the cost of the advertisements to the recipients, costing millions of consumers real money.

Under the current law, consumers can still get the commercial faxes they want. Business that operate legally do not have any problems with being sued, nor are they ever likely to.

I see that it is likely this bill will pass. However, I request that at a minimum you vote FOR the following amendments:

- Change the EBR (Existing Business Relationship) to 18 months bringing it in line with the “Do not call” list that Congress approved (Hollings amendment)
- Allow the FCC to study and determine the length of the EBR if needed (McCain amendment)
- Require that companies that consistently violate the law be required to obtain prior express consent (Nelson amendment)

The bill as it stands now will undo the work myself and others have done to try and stop the junk fax problem. Consumers do not want more unwanted faxes at their own expense. I urge you to oppose S. 2603 unless it is amended as above.

Sincerely,

Dennis S. Hennen
Subject: Please amend or oppose Junk Fax Prevention Bill of 2004 (S. 2603)

Dear Senator:

I have been inundated at my home and at my business with junk faxes. I receive dozens of junk faxes for every legitimate fax I receive in spite of the fact that these are all illegal and I have never provided my fax number to anyone for marketing purposes. In addition to the actual faxes received, I regularly receive fax calls on my voice line at all hours looking for fax machines to receive junk faxes.

I have gone so far as to take 2 companies to court to put a stop to this and received judgments in my favor. Both of these companies were repeat violators and I had to pose as a potential customer to even determine the identities of these companies. The proposed law provides a dangerous loophole for this situation and makes it nearly impossible to enforce against the most egregious offenders.

I have also already had to make clear to my mortgage company, my insurance company, my local telephone company, my long-distance company, my cell-phone company, cable company, bank, broker, power company, etc.... that they are not to use my private information for marketing purposes nor share it with others.

The S2603 makes it legal for every company that has the remotest of connections to a consumer to deluge them with junk faxes at the consumer’s expense until the consumer contacts them to insist they stop. It does not just do this for companies to whom the consumer has provided a fax number. It places the burden on the consumer to prove that they never have done business with the company. It is unreasonable to interpret my purchase of gasoline from Exxon/Mobil or a roll of tape at Staples as implied permission for them to call me at home and send me faxes at my expense. Can anyone honestly say they have never been to WalMart?

Nobody gets sued under the current law for sending fax advertisements or information to willing recipients. Companies who get sued are those who buy or build a list of unwilling recipients and begin to spam them.

I ask you to oppose this bill. At a minimum, please vote FOR the following amendments:

- Change the EBR (Existing Business Relationship) to 18 months bringing it in line with the “Do not call” list that Congress approved (Hollings amendment)
- Allow the FCC to study and determine the length of the EBR if needed (McCain amendment)
- Require that companies that consistently violate the law be required to obtain prior express consent (Nelson amendment)

Thank you,

Joel Peshkin
July 21, 2004

Re: Please vote to AMEND Junk Fax Prevention Bill of 2004 (S. 2603)

Dear Senator,

I am a consumer attorney in Texas who gets an unending stream of calls from people wanting to know if they can stop people from sending them junk faxes. This includes many small businesses. I try to help some of them, but most of them can’t afford to pay an attorney to chase after a $500 claim when the perpetrators hide behind incomplete/incorrect generic corporate names, “lead generating” telemarketers, and assertions that the complainant has asked to receive the faxes. Because attorney fees are unrecoverable even if a complainant is successful, the legal fees in tracking down and suing the guilty party usually exceed the amount of the claim.

Some victims have tried pursuing their fight in small claims court themselves, but the web of deception put on by the worst offenders is difficult to unravel. Because it is their business, the perpetrators are able to spread this cost out over all of their defense cases, whereas each complainant must spend a significant amount of their own time (and money) on each case, or face defeat because they can’t prove who is to blame.

The recipients are also tired of rooting through the junk faxes to find the legitimate ones, and calling “removal numbers” which are busy or disconnected. Nor do calls asking to cease receiving faxes prevent the telemarketer from using a new corporate name to continue sending the same ads to the same people.

The new bill will make the situation worse by removing the consumer’s best defense: a fax advertisement is presumptively illegal unless the SENDER proves he had prior express permission. It allows tenuous “existing business relationships” to permit the sending of ads that almost NOBODY wants to receive. Shifting the burden back to the consumer, by forcing people to spend their time trying to get off of lists that they never asked to be put on in the first place, does not help the consumer, or legitimate business. It hurts both. Let the entity sending the fax prove that there was a RECENT communication, or that it got express permission, before sending unwanted junk.

I will repeat Steve Kirsch’s assertions because they are absolutely on point:

The current laws and FCC rules are pro-consumer and pro-legitimate marketing. They do not need to be “fixed.” No consumer who has asked for information from a business and received that information via fax has ever sued and won. **This bill is trying to fix a problem that simply does not exist.**

I ask that you vote **FOR** the following amendments:

- Change the EBR (Existing Business Relationship) to 18 months bringing it in line with the “Do not call” list that Congress approved (Hollings amendment)
- Allow the FCC to study and determine the length of the EBR if needed (McCain amendment)
- Require that companies that consistently violate the law be required to obtain prior express consent (Nelson amendment)
Unless these amendments are enacted, this bill will lead to consumers getting more unwanted faxes at their expense. We urge you to OPPOSE S. 2603 unless it is amended as above.

Sincerely yours,

Mark R. Lee
RE: S2603: The Junk Fax Prevention Act of 2004

Dear Senator Chambliss:

Arguing before the Georgia Court of Appeals, Governor Roy Barnes recently stated that two of "the greatest irritants in modern life are the unwanted telephone call at dinner and the junk fax."

Unfortunately, the provisions of the just-introduced S2603 will allow one of those modern irritants, the junk fax, to plague consumers on an unprecedented level. Appropriately misnamed the "Junk Fax Prevention Act of 2004," the effect of this bill will be to increase drastically the number of junk faxes received by ordinary Americans, turning their fax machines into endless fountains of advertising, all at their own expense. S2603 is a poorly-drafted and poorly-reasoned bill, based on deception and misconception, and should be opposed.

Under the present law in place since 1992, all junk faxes are prohibited unless there is express consent to their receipt. Simply put, a junk fax is illegal unless specifically requested by the consumer. Under S2603, however, any junk fax sent by any entity with whom a consumer has done business, or even inquired about doing business, within a five-year period will be legal unless the consumer specifically requests not to receive such junk faxes. Rather than preventing junk faxes, the effect of the "Junk Fax Prevention Act of 2004" will be to legalize untold new faxes and shift the burden onto the individual consumer to keep his or her fax machine free of unwanted junk advertising.

Think of it: Under the proposed language of S2603, any restaurant, drugstore, or gas station that a consumer has visited within five years will be able to flood that consumer’s fax machine with junk advertisements. Any department store, movie theater, or newsstand at which a consumer shopped will legally be able to send that consumer an unlimited number of junk faxes. The stream of junk faxes will become a deluge of epic proportions as the fax machine spits out unwanted advertisement after unwanted advertisement, with the costs of that advertisement borne by the consumer himself in the form of the consumer’s own paper, toner, time and electricity. Clearly, S2603, ostensibly intended to reduce the number of junk faxes received by everyday Americans, will only result in those Americans receiving even more junk faxes.

Additionally, under the "Junk Fax Prevention Act of 2004," the only way for a consumer actually to prevent junk faxes, as intended by the bill, is for that consumer specifically to request that they not be received. This is a complete reversal of the current law, under which junk faxes are illegal unless specifically requested. Under S2603, on the other hand, such junk faxes would be entirely legal unless objected to. This places the undue and Herculean burden on the individual consumer, who actually wants to prevent junk faxes, of contacting every single entity with whom they have done business for the past five years and specifically requesting that they not be sent any junk faxes.
It has been suggested that the “Junk Fax Prevention Act of 2004” merely preserves the status quo concerning the FCC’s twelve-year regulation of junk faxes. To say so is disingenuous at best, and outright deception at worst. Far from maintaining the current law by which junk faxes are illegal except when affirmatively requested, S2603, for all intents and purposes, legalizes unlimited junk faxes. It creates new exemptions to the current law, which the junk fax industry will exploit fully, rendering our fax machines into nothing but a source of unwanted and unsolicited advertising.

The people of America do not want more junk faxes. They want the tide of unsolicited advertisements emitted by their fax machines to stop. They do not want to pay for the paper, or the toner, just to print someone else’s advertisement. They do not want their fax lines tied up by junk fax after junk fax, preventing the receipt of legitimate and wanted faxes. However, under the current proposed bill, this is exactly what will happen: consumers will be set upon by an ever-increasing number of junk faxes, with no effective way to prevent their receipt. For these reasons, I strongly urge you to vote against S2603.

Sincerely,

Stephen A. Harlan, Esq.
1401 Johnson Ferry Road, Suite 328-F18
Marietta, Georgia 30062
July 21, 2004

Hon. Senator Mike DeWine
600 East Superior Avenue
Room 2450
Cleveland, OH  44114

RE:  Senate Bill 2603

Dear Senator:

My name is Eric Moore and I own and run two small businesses in addition to my law practice. It is my understanding you will be asked to vote on Senate Bill 2603, also known as the Junk Fax Prevention Act of 2004. I want you to know my opinion of this Bill.

The direct marketing industry is telling you that this new bill just preserves the “status quo” and prevents the new, onerous regulations from going into effect. Simply, this is not true. The only “onerous” regulation is that permission for junk faxes now be in writing. Actually this Bill goes much farther than that, and creates new exemptions for those marketers that steal my paper, toner, and tie up my machines.

The Federal Telephone Consumer Protection Act has been in place for over 13 years. It is a good law, and stopped my fax machine from being used as a printing press for other people’s advertisements. The FCC has had 13 years experience with junk fax problems and their knowledge should be deferred to.

In the days before the TCPA was passed, I would come into my office only to find half of my fax paper spewed on the floor, offering me $99 Cancun vacations and “cheap” healthcare for my employees. If this Bill passes, this is what I will have again.

I am sure there are businesses that want this Bill passed. These are the same people who use my paper, toner, and electricity to print their advertising. There are, however, many other legitimate businesses like my own, that do not want this Act passed. We are tired of being victims. If this Bill passes, consumer outrage over the creation of the new “loopholes” for junk-faxers will be like the consumer response when the national DO NOT CALL registry was initially struck down by the courts.
I have litigated a number of TCPA cases for my office and my clients. I can assure you that those who choose to advertise via fax need no more protection than they already have. Parties that enjoy an established business relationship are not going to be dragging legitimate faxers into court. Rather, it is the party who thumbs his nose at the law who will hide behind the new loopholes and exploit the loopholes contained therein.

Please help out small business by not creating new loopholes for junk-faxers to steal from us. I should not have to ask someone to stop using my property for their advertising message.

**DO NOT VOTE FOR THIS BILL.**

Sincerely,

Eric J. Moore