

I am writing because I am quite concerned that the Junk Fax Prevention Act of 2005 might pass, which would be disastrous to most businesses and all consumers.

The fundamental problem with the JFPA is the newly created Existing Business Relationship (EBR) exemption for sending unsolicited faxes. The language is so poorly crafted that it will, without doubt, lead to an explosion of unwanted faxes. Although supporters of the bill may deny the following points, a reading of the plain language of the bill will show the obvious side effects.

By the proposed JFPA, an EBR is established by ANY voluntary two-way communication, and no "directionality" is implied. Thus, the junk faxer can establish the EBR by calling any target and having a conversation about anything. If I call your office and have a conversation with a staffer, that staffer has automatically granted me permission to send unlimited unsolicited faxes advertising anything I want to every fax machine in the U.S. government. Further, what chance would there be that anyone could challenge that an EBR had been established somewhere, sometime.

To stop receiving these faxes, the U.S. Government would have to (1) receive and pay for at least one fax on each fax machine from each entity with an EBR that it wished to opt out, (2) take 10-15 minutes for each machine and junk faxer to opt out (you have to follow their rules to do so), and (3) set up and maintain a database system to record the opt-out (otherwise, you wouldn't be able to enforce newly modified TCPA). Further, the bill places no limitations on what is faxed or when. Thus, the same junk faxer could now legally fax ads for mortgages, travel, stocks, cell phones, and pharmaceuticals to every fax number owned by the State.

A business' or consumer's telephone company, newspaper, utility company, etc., could turn into a giant junk faxer (obviously they have an EBR with you) and start faxing mortgage ads, etc., to your home at 3 AM.

These are all legal under the purposefully misnamed Junk Fax Prevention Act.

Worse yet, it is clear that a new junk faxing industry will develop, selling the fact that the junk faxer has established EBRs. All it takes is 1000 brief phone calls, one to each of the Fortune 1000 companies, to establish an EBR with all 1000 companies--no need to mention anything about faxes. Thereafter, the junk faxer can legally send faxes advertising ANYTHING to any fax machine in America's largest 1000 companies.

The net result is that it is trivially easy to establish an EBR and both time consuming and prohibitively expensive to opt out. The result, which the supporters of the bill want, is that consumers and businesses will not be able to afford to opt-out and do the record keeping required to enforce the opt-outs.

Supporters give examples of a real estate agent getting sued for faxing a requested listing or a restaurant getting sued for faxing a menu. Aside from the fact that this has NEVER happened, the ONLY change required to solve this problem is to direct the FCC to allow verbal express permission for faxes--which the consumer should be able to limit to faxes to answer the specific request.

The TCPA currently requires express permission without saying how such permission is granted. The FCC has issued a pending order to require WRITTEN permission (this was done because so many junk faxers were lying about having gotten verbal permission). There never has been an EBR exception for junk faxing (despite what proponents say).

Please oppose this onerous bill. Both my business and I will be overwhelmed with unsolicited faxes if it passes. The expense of maintaining databases of opt-out actions will be orders of

magnitude higher than the costs to advertisers of maintaining opt-in databases. Why should the unwilling recipients of junk faxes suffer trespass and conversion by having their private fax machines, ink, paper, electricity, etc., used without permission to receive faxes we don't want.

Ask yourself: "How many constituents have called your office complaining that they don't receive enough unsolicited faxes?"

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