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Junk Fax Prevention Act of 2005 (Engrossed as Agreed to or Passed by Senate)

S 714 ES

109th CONGRESS

1st Session

S. 714**AN ACT**

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Junk Fax Prevention Act of 2005'.

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

(a) PROHIBITION- Section 227(b)(1)(C) of the Communications Act of 1934 (47 U.S.C. 227(b)(1)(C)) is amended to read as follows:

(C) to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless--

(i) the unsolicited advertisement is from a sender with an established business relationship with the recipient;

(ii) the sender obtained the number of the telephone facsimile machine through--

(I) the voluntary communication of such number, within the context of such established business relationship, from the recipient of the unsolicited advertisement, or

`(II) a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution,

except that this clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before the date of enactment of the Junk Fax Prevention Act of 2005 if the sender possessed the facsimile machine number of the recipient before such date of enactment; and

`(iii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D),

except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or'.

(b) DEFINITION OF ESTABLISHED BUSINESS RELATIONSHIP- Section 227(a) of the Communications Act of 1934 (47 U.S.C. 227(a)) is amended--

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

(2) by inserting after paragraph (1) the following:

`(2) The term `established business relationship', for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that--

`(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

`(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G)).'.

(c) REQUIRED NOTICE OF OPT-OUT OPPORTUNITY- Section 227(b)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)) is amended--

(1) in subparagraph (B), by striking `and' at the end;

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

(3) by adding at the end the following:

`(D) shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if--

`(i) the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

`(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

`(iii) the notice sets forth the requirements for a request under subparagraph (E);

`(iv) the notice includes--

`(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

`(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

`(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

`(vi) the notice complies with the requirements of subsection (d);'.

(d) REQUEST TO OPT-OUT OF FUTURE UNSOLICITED ADVERTISEMENTS- Section 227(b)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)), as amended by subsection (c), is further amended by adding at the end the following:

`(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if--

`(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

`(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

`(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine;'

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

`(F) may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(iii), except that the Commission may take action under this subparagraph only--

`(i) by regulation issued after public notice and opportunity for public comment; and

`(ii) if the Commission determines that such notice required by paragraph (1)(C)(iii) is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements; and'.

(f) **AUTHORITY TO ESTABLISH TIME LIMIT ON ESTABLISHED BUSINESS RELATIONSHIP EXCEPTION-** Section 227(b)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)), as amended by subsections (c), (d), and (e) of this section, is further amended by adding at the end the following:

`(G)(i) may, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall--

`(I) determine whether the existence of the exception under paragraph (1)(C) relating to an established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

`(II) determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

`(III) evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship; and

`(IV) determine whether with respect to small businesses, the costs would not be unduly burdensome; and

`(ii) may not commence a proceeding to determine whether to limit the duration of the existence of an established business relationship before the expiration of the 3-month period that begins on the date of the enactment of the Junk Fax Prevention Act of 2005.'.

(g) **UNSOLICITED ADVERTISEMENT-** Section 227(a)(5) of the Communications Act of 1934, as so redesignated by subsection (b)(1), is amended by inserting ', in writing or otherwise' before the period at the end.

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

SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX ENFORCEMENT.

Section 227 of the Communications Act of 1934 (47 U.S.C. 227) is amended by adding at the end the following:

`(g) **JUNK FAX ENFORCEMENT REPORT-** The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include--

`(1) the number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules;

`(2) the number of citations issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

`(3) the number of notices of apparent liability issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited

advertisements to telephone facsimile machines;

`(4) for each notice referred to in paragraph (3)--

`(A) the amount of the proposed forfeiture penalty involved;

`(B) the person to whom the notice was issued;

`(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

`(D) the status of the proceeding;

`(5) the number of final orders imposing forfeiture penalties issued pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

`(6) for each forfeiture order referred to in paragraph (5)--

`(A) the amount of the penalty imposed by the order;

`(B) the person to whom the order was issued;

`(C) whether the forfeiture penalty has been paid; and

`(D) the amount paid;

`(7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and

`(8) for each case in which the Commission referred such an order for recovery--

`(A) the number of days from the date the Commission issued such order to the date of such referral;

`(B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and

`(C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.'.

SEC. 4. GAO STUDY OF JUNK FAX ENFORCEMENT.

(a) IN GENERAL- The Comptroller General of the United States shall conduct a study regarding complaints received by the Federal Communications Commission concerning unsolicited advertisements sent to telephone facsimile machines, which study shall determine--

(1) the mechanisms established by the Commission to receive, investigate, and respond to such complaints;

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

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

(4) whether additional enforcement measures are necessary to protect consumers, including recommendations regarding such additional enforcement measures.

(b) **ADDITIONAL ENFORCEMENT REMEDIES-** In conducting the analysis and making the recommendations required under subsection (a)(4), the Comptroller General shall specifically examine--

- (1) the adequacy of existing statutory enforcement actions available to the Commission;
- (2) the adequacy of existing statutory enforcement actions and remedies available to consumers;
- (3) the impact of existing statutory enforcement remedies on senders of facsimiles;
- (4) whether increasing the amount of financial penalties is warranted to achieve greater deterrent effect; and
- (5) whether establishing penalties and enforcement actions for repeat violators or abusive violations similar to those established under section 1037 of title 18, United States Code, would have a greater deterrent effect.

(c) **REPORT-** Not later than 270 days after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study under this section to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

Passed the Senate June 24, 2005.

Attest:

Secretary.

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