

[STAFF WORKING DRAFT]

APRIL 5, 2005

109TH CONGRESS
1ST SESSION

S. _____

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

APRIL _____, 2005

Mr. SMITH (for himself, Mr. _____, and Mr. _____) introduced the following bill; which was read twice and referred to the Committee on _____

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 2005”.

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, however, before es-
10 tablishing any such limits, the Commission
11 shall—

12 “(I) determine whether the existence
13 of the exception under paragraph (1)(C)
14 relating to an established business relation-
15 ship has resulted in a significant number
16 of complaints to the Commission regarding
17 the sending of unsolicited advertisements
18 to telephone facsimile machines;

19 “(II) determine whether a significant
20 number of any such complaints involve un-
21 solicited advertisements that were sent on
22 the basis of an established business rela-
23 tionship that was longer in duration than
24 the Commission believes is consistent with
25 the reasonable expectations of consumers;

1 “(III) evaluate the costs to senders of
2 demonstrating the existence of an estab-
3 lished business relationship within a speci-
4 fied period of time and the benefits to re-
5 cipients of establishing a limitation on such
6 established business relationship; and

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

10 “(ii) may not commence a proceeding to
11 determine whether to limit the duration of the
12 existence of an established business relationship
13 before the expiration of the 18-month period
14 that begins on the date of the enactment of the
15 Junk Fax Prevention Act of 2005.”.

16 (g) UNSOLICITED ADVERTISEMENT.—Section
17 227(a)(5) of the Communications Act of 1934, as so re-
18 designated by subsection (b)(1), is amended by inserting
19 “, in writing or otherwise” before the period at the end.

20 (h) REGULATIONS.—Except as provided in section
21 227(b)(2)(G)(ii) of the Communications Act of 1934 (as
22 added by subsection (f)), not later than 270 days after
23 the date of enactment of this Act, the Federal Commu-
24 nications Commission shall issue regulations to implement
25 the amendments made by this section.

1 **SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX EN-**
2 **FORCEMENT.**

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

6 “(g) **JUNK FAX ENFORCEMENT REPORT.**—The Com-
7 mission shall submit an annual report to Congress regard-
8 ing the enforcement during the past year of the provisions
9 of this section relating to sending of unsolicited advertise-
10 ments to telephone facsimile machines, which report shall
11 include—

12 “(1) the number of complaints received by the
13 Commission during such year alleging that a con-
14 sumer received an unsolicited advertisement via tele-
15 phone facsimile machine in violation of the Commis-
16 sion’s rules;

17 “(2) the number of citations issued by the Com-
18 mission pursuant to section 503 during the year to
19 enforce any law, regulation, or policy relating to
20 sending of unsolicited advertisements to telephone
21 facsimile machines;

22 “(3) the number of notices of apparent liability
23 issued by the Commission pursuant to section 503
24 during the year to enforce any law, regulation, or
25 policy relating to sending of unsolicited advertise-
26 ments to telephone facsimile machines;

1 “(4) for each notice referred to in paragraph
2 (3)—

3 “(A) the amount of the proposed forfeiture
4 penalty involved;

5 “(B) the person to whom the notice was
6 issued;

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

10 “(D) the status of the proceeding;

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

16 “(6) for each forfeiture order referred to in
17 paragraph (5)—

18 “(A) the amount of the penalty imposed by
19 the order;

20 “(B) the person to whom the order was
21 issued;

22 “(C) whether the forfeiture penalty has
23 been paid; and

24 “(D) the amount paid;

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

5 “(8) for each case in which the Commission re-
6 ferred such an order for recovery—

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

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

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

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

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

1 (1) the mechanisms established by the Commis-
2 sion to receive, investigate, and respond to such
3 complaints;

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

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

9 (4) whether additional enforcement measures
10 are necessary to protect consumers, including rec-
11 ommendations regarding such additional enforce-
12 ment measures.

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

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

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

21 (3) the impact of existing statutory enforcement
22 remedies on senders of facsimiles;

23 (4) whether increasing the amount of financial
24 penalties is warranted to achieve greater deterrent
25 effect; and

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

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

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