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109TH CONGRESS
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S. 714

[Report No. 109–76]

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 6, 2005

Mr. SMITH (for himself, Mr. INOUE, Ms. SNOWE, Mr. DORGAN, Mr. SUNUNU, Mr. BURNS, Mr. LAUTENBERG, Mr. STEVENS, and Mr. ALLEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JUNE 7, 2005

Reported by Mr. STEVENS, with amendments

[Omit the part struck through and insert the part printed in *italic*]

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 2005”.

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 solicited 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; at~~
 2 *any time on any day of the week; 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, however, before es-
 13 tablishing any such limits, the Commission
 14 shall—

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

22 “(II) determine whether a significant
 23 number of any such complaints involve un-
 24 solicited advertisements that were sent on
 25 the basis of an established business rela-

tionship 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 ~~18-month period~~ *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

1 added by subsection (f)), not later than 270 days after
 2 the date of enactment of this Act, the Federal Commu-
 3 nications Commission shall issue regulations to implement
 4 the amendments made by this section.

5 **SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX EN-**
 6 **FORCEMENT.**

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

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

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

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

1 “(3) the number of notices of apparent liability
2 issued by the Commission pursuant to section 503
3 during the year to enforce any law, regulation, or pol-
4 icy relating to sending of unsolicited advertisements
5 to telephone facsimile machines;

6 “(4) for each notice referred to in paragraph
7 (3)—

8 “(A) the amount of the proposed forfeiture
9 penalty involved;

10 “(B) the person to whom the notice was
11 issued;

12 “(C) the length of time between the date
13 on which the complaint was filed and the date
14 on which the notice was issued; and

15 “(D) the status of the proceeding;

16 “(5) the number of final orders imposing for-
17 feiture penalties issued pursuant to section 503 dur-
18 ing the year to enforce any law, regulation, or policy
19 relating to sending of unsolicited advertisements to
20 telephone facsimile machines;

21 “(6) for each forfeiture order referred to in
22 paragraph (5)—

23 “(A) the amount of the penalty imposed by
24 the order;

1 “(B) the person to whom the order was
2 issued;

3 “(C) whether the forfeiture penalty has
4 been paid; and

5 “(D) the amount paid;

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

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

12 “(A) the number of days from the date the
13 Commission issued such order to the date of
14 such referral;

15 “(B) whether an action has been com-
16 menced to recover the penalty, and if so, the
17 number of days from the date the Commission
18 referred such order for recovery to the date of
19 such commencement; and

20 “(C) whether the recovery action resulted
21 in collection of any amount, and if so, the
22 amount collected.”.

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

24 (a) IN GENERAL.—The Comptroller General of the
25 United States shall conduct a study regarding complaints

1 received by the Federal Communications Commission con-
2 cerning unsolicited advertisements sent to telephone fac-
3 simile machines, which study shall determine—

4 (1) the mechanisms established by the Commis-
5 sion to receive, investigate, and respond to such
6 complaints;

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

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

12 (4) whether additional enforcement measures
13 are necessary to protect consumers, including rec-
14 ommendations regarding such additional enforce-
15 ment measures.

16 (b) ADDITIONAL ENFORCEMENT REMEDIES.—In
17 conducting the analysis and making the recommendations
18 required under subsection (a)(4), the Comptroller General
19 shall specifically examine—

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

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

24 (3) the impact of existing statutory enforcement
25 remedies on senders of facsimiles;

1 (4) whether increasing the amount of financial
2 penalties is warranted to achieve greater deterrent
3 effect; and

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

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

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