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H. R. 4600

IN THE SENATE OF THE UNITED STATES

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Read twice and referred to the Committee on Commerce, Science, and
Transportation

AN ACT

To amend section 227 of the Communications Act of 1934
to clarify 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 2004”.

4 **SEC. 2. PROHIBITION ON FAX TRANSMISSIONS CONTAINING**
5 **UNSOLICITED ADVERTISEMENTS.**

6 (a) PROHIBITION.—Subparagraph (C) of section
7 227(b)(1) of the Communications Act of 1934 (47 U.S.C.
8 227(b)(1)(C)) is 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),

19 except that the exception under clauses (i) and
20 (ii) shall not apply with respect to an unsolic-
21 ited advertisement sent to a telephone facsimile
22 machine by a sender to whom a request has
23 been made not to send future unsolicited adver-
24 tisements to such telephone facsimile machine
25 that complies with the requirements under
26 paragraph (2)(E); or”.

1 (b) DEFINITION OF ESTABLISHED BUSINESS RELA-
2 TIONSHIP.—Subsection (a) of section 227 of the Commu-
3 nications Act of 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 new paragraph:

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 the Commission’s regulations, as in ef-
12 fect 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.—Paragraph (2) of section 227(b) of the Commu-
24 nications Act 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 new sub-
6 paragraph:

7 “(D) shall provide that a notice contained
8 in an unsolicited advertisement complies with
9 the requirements under this subparagraph only
10 if—

11 “(i) the notice is clear and con-
12 spicuous and on the first page of the unso-
13 licited advertisement;

14 “(ii) the notice states that the recipi-
15 ent may make a request to the sender of
16 the unsolicited advertisement not to send
17 any future unsolicited advertisements to a
18 telephone facsimile machine or machines
19 and that failure to comply, within the
20 shortest reasonable time, as determined by
21 the Commission, with such a request meet-
22 ing the requirements under subparagraph
23 (E) is unlawful;

1 “(iii) the notice sets forth the require-
2 ments for a request under subparagraph
3 (E);

4 “(iv) the notice includes—

5 “(I) a domestic contact telephone
6 and facsimile machine number for the
7 recipient to transmit such a request to
8 the sender; and

9 “(II) a cost-free mechanism for a
10 recipient to transmit a request pursu-
11 ant to such notice to the sender of the
12 unsolicited advertisement; the Com-
13 mission shall by rule require the send-
14 er to provide such a mechanism and
15 may, in the discretion of the Commis-
16 sion and subject to such conditions as
17 the Commission may prescribe, ex-
18 empt certain classes of small business
19 senders, but only if the Commission
20 determines that the costs to such class
21 are unduly burdensome given the rev-
22 enues generated by such small busi-
23 nesses;

24 “(v) the telephone and facsimile ma-
25 chine numbers and the cost-free mecha-

nism set forth pursuant to clause (iv) permit an individual or business to make such a request during regular business hours; and

“(vi) the notice complies with the requirements of subsection (d);”.

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

“(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.—Paragraph (2) of section 227(b) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)), as amended by subsections (c) and (d) of this section, is further amended by adding at the end the following new subparagraph:

“(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)(ii), except that the Commission may take action under this subparagraph only by regulation issued after public notice and opportunity for

public comment and only if the Commission determines that such notice required by paragraph (1)(C)(ii) 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.— Paragraph (2) of section 227(b) 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 new subparagraph:

“(G)(i) may, consistent with clause (ii), limit the duration of the existence of an established business relationship to a period not shorter than 5 years and not longer than 7 years after the last occurrence of an action sufficient to establish such a relationship, but only if—

“(I) the Commission determines that 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 regard-

1 ing the sending of unsolicited adver-
2 tisements to telephone facsimile ma-
3 chines;

4 “(II) upon review of such com-
5 plaints referred to in subclause (I),
6 the Commission has reason to believe
7 that a significant number of such
8 complaints involve unsolicited adver-
9 tisements that were sent on the basis
10 of an established business relationship
11 that was longer in duration than the
12 Commission believes is consistent with
13 the reasonable expectations of con-
14 sumers;

15 “(III) the Commission deter-
16 mines that the costs to senders of
17 demonstrating the existence of an es-
18 tablished business relationship within
19 a specified period of time do not out-
20 weigh the benefits to recipients of es-
21 tablishing a limitation on such estab-
22 lished business relationship; and

23 “(IV) the Commission determines
24 that, with respect to small businesses,
25 the costs are not unduly burdensome,

1 given the revenues generated by small
2 businesses, and taking into account
3 the number of specific complaints to
4 the Commission regarding the sending
5 of unsolicited advertisements to tele-
6 phone facsimile machines by small
7 businesses; and

8 “(ii) may not commence a proceeding to
9 determine whether to limit the duration of the
10 existence of an established business relationship
11 before the expiration of the 3-year period that
12 begins on the date of the enactment of the
13 Junk Fax Prevention Act of 2004.”.

14 (g) UNSOLICITED ADVERTISEMENT.—Paragraph (5)
15 of section 227(a) of the Communications Act of 1934 (47
16 U.S.C. 227(a)(4)), as so redesignated by subsection (b)(1)
17 of this section, is amended by inserting “, in writing or
18 otherwise” before the period at the end.

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

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 following
5 new subsection:

6 “(g) **JUNK FAX ENFORCEMENT REPORT.**—The Com-
7 mission shall submit a report to the Congress for each
8 year regarding the enforcement of the provisions of this
9 section relating to sending of unsolicited advertisements
10 to telephone facsimile machines, which shall include the
11 following information:

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 such complaints received
18 during the year on which the Commission has taken
19 action.

20 “(3) The number of such complaints that re-
21 main pending at the end of the year.

22 “(4) The number of citations issued by the
23 Commission pursuant to section 503 during the year
24 to enforce any law, regulation, or policy relating to
25 sending of unsolicited advertisements to telephone
26 facsimile machines.

1 “(5) 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
4 policy relating to sending of unsolicited advertise-
5 ments to telephone facsimile machines.

6 “(6) For each such notice—

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

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

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

14 “(D) the status of the proceeding.

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

20 “(8) For each such forfeiture order—

21 “(A) the amount of the penalty imposed by
22 the order;

23 “(B) the person to whom the order was
24 issued;

1 “(C) whether the forfeiture penalty has
2 been paid; and

3 “(D) the amount paid.

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

8 “(10) For each case in which the Commission
9 referred such an order for recovery—

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

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

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

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

22 (a) IN GENERAL.—The Comptroller General of the
23 United States shall conduct a study regarding complaints
24 received by the Federal Communications Commission con-

cerning unsolicited advertisements sent to telephone fac-
simile machines, which 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 paragraph (7) of subsection (a), 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;

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 by section 4 of the
7 CAN-SPAM Act of 2003 (15 U.S.C. 7703) would
8 have a greater deterrent effect.

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

Passed the House of Representatives July 20, 2004.

Attest:

JEFF TRANDAHL,

Clerk.