

108TH CONGRESS
2D SESSION

S. 2569

To amend section 227 of the Communications Act of 1934 to clarify the prohibition on junk fax transmissions.

IN THE SENATE OF THE UNITED STATES

JUNE 23 (legislative day, JUNE 22), 2004

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Junk Fax Prevention
5 Act of 2004”.

6 **SEC. 2. PROHIBITION ON FAX TRANSMISSIONS CONTAINING**
7 **UNSOLICITED ADVERTISEMENTS.**

8 (a) PROHIBITION.—Subparagraph (C) of section
9 227(b)(1) of the Communications Act of 1934 (47 U.S.C.
10 227(b)(1)(C)) is amended to read as follows:

1 “(C) to use any telephone facsimile ma-
2 chine, computer, or other device to send, to a
3 telephone facsimile machine, an unsolicited ad-
4 vertisement—

5 “(i) to a person who has made a re-
6 quest to such sender that complies with
7 the requirements under paragraph (2)(D),
8 not to send future unsolicited advertise-
9 ments to a telephone facsimile machine; or

10 “(ii) to a person not described in
11 clause (i), unless—

12 “(I) the sender has an estab-
13 lished business relationship (which
14 term, for purposes of this subclause,
15 shall have the meaning given the term
16 in section 64.1200 of the Commis-
17 sion’s regulations, as in effect on Jan-
18 uary 1, 2003, except that such term
19 shall apply to a business subscriber in
20 the same manner in which it applies
21 to a residential subscriber) with such
22 person; and

23 “(II) the unsolicited advertise-
24 ment contains a conspicuous notice on

1 the first page of the unsolicited adver-
2 tisement that—

3 “(aa) states that the recipi-
4 ent may make a request to the
5 sender of the unsolicited adver-
6 tisement not to send any future
7 unsolicited advertisements to
8 such telephone facsimile machine
9 and that failure to comply, within
10 the shortest reasonable time, as
11 determined by the Commission,
12 with such a request meeting the
13 requirements under paragraph
14 (2)(D) is unlawful;

15 “(bb) sets forth the require-
16 ments for a request under para-
17 graph (2)(D); and

18 “(cc) includes a domestic
19 contact telephone and facsimile
20 number for the recipient to
21 transmit such a request to the
22 sender, neither of which may be
23 a number for a pay-per-call serv-
24 ice (as such term is defined in
25 section 228(i)); any number sup-

1 plied shall permit an individual
 2 or business to make a do-not-fax
 3 request during regular business
 4 hours; or”.

5 (b) REQUEST TO OPT-OUT OF FUTURE UNSOLIC-
 6 ITED ADVERTISEMENTS.—Paragraph (2) of section
 7 227(b) of the Communications Act of 1934 (47 U.S.C.
 8 227(b)(2)) is amended—

9 (1) in subparagraph (B), by striking “and” at
 10 the end;

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

13 (3) by adding at the end the following new sub-
 14 paragraphs:

15 “(D) shall provide, by rule, that a request
 16 not to send future unsolicited advertisements to
 17 a telephone facsimile machine complies with the
 18 requirements under this subparagraph only if—

19 “(i) the request identifies the tele-
 20 phone number of the telephone facsimile
 21 machine to which the request relates;

22 “(ii) the request is made to the tele-
 23 phone or facsimile number of the sender of
 24 such an unsolicited advertisement provided
 25 pursuant to paragraph (1)(C)(ii)(II)(cc) or

1 by any other method of communication as
2 determined by the Commission; and

3 “(iii) the person making the request
4 has not, subsequent to such request, pro-
5 vided express invitation or permission to
6 the sender, in writing or otherwise, to send
7 such advertisements to such person at such
8 telephone facsimile machine; and

9 “(E) may, in the discretion of the Commis-
10 sion and subject to such conditions as the Com-
11 mission may prescribe, allow professional trade
12 associations that are tax-exempt nonprofit orga-
13 nizations to send unsolicited advertisements to
14 their members in furtherance of the associa-
15 tion’s tax-exempt purpose that do not contain
16 the notice required by paragraph (1)(C)(ii)(II),
17 except that the Commission may take action
18 under this subparagraph only by regulation
19 issued after notice and opportunity for public
20 comment in accordance with section 553 of title
21 5, United States Code, and only if the Commis-
22 sion determines that such notice is not necessary
23 to protect the right of the members of such trade
24 associations to make a request to their trade as-

1 sociations not to send any future unsolicited ad-
2 vertisements.”.

3 (c) UNSOLICITED ADVERTISEMENT.—Paragraph (4)
4 of section 227(a) of the Communications Act of 1934 (47
5 U.S.C. 227(a)(4)) is amended by inserting “, in writing
6 or otherwise” before the period at the end.

7 (d) REGULATIONS.—Not later than 270 days after
8 the date of the enactment of this Act, the Federal Commu-
9 nications Commission shall issue regulations to implement
10 the amendments made by this section.

11 **SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX EN-**
12 **FORCEMENT.**

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

16 “(g) JUNK FAX ENFORCEMENT REPORT.—The Com-
17 mission shall submit a report to the Congress for each
18 year regarding the enforcement of the provisions of this
19 section relating to sending of unsolicited advertisements
20 to telephone facsimile machines, which shall include the
21 following information:

22 “(1) The number of complaints received by the
23 Commission during such year alleging that a con-
24 sumer received an unsolicited advertisement via tele-

1 phone facsimile machine in violation of the Commis-
2 sion's rules.

3 “(2) The number of such complaints received
4 during the year on which the Commission has taken
5 action.

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

8 “(4) The number of citations issued by the
9 Commission pursuant to section 503 during the year
10 to enforce any law, regulation, or policy relating to
11 sending of unsolicited advertisements to telephone
12 facsimile machines.

13 “(5) The number of notices of apparent liability
14 issued by the Commission pursuant to section 503
15 during the year to enforce any law, regulation, or
16 policy relating to sending of unsolicited advertise-
17 ments to telephone facsimile machines.

18 “(6) For each such notice—

19 “(A) the amount of the proposed forfeiture
20 penalty involved;

21 “(B) the person to whom the notice was
22 issued;

23 “(C) the length of time between the date
24 on which the complaint was filed and the date
25 on which the notice was issued; and

1 “(D) the status of the proceeding.

2 “(7) The number of final orders imposing for-
3 feiture penalties issued pursuant to section 503 dur-
4 ing the year to enforce any law, regulation, or policy
5 relating to sending of unsolicited advertisements to
6 telephone facsimile machines.

7 “(8) For each such forfeiture order—

8 “(A) the amount of the penalty imposed by
9 the order;

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

12 “(C) whether the forfeiture penalty has
13 been paid; and

14 “(D) the amount paid.

15 “(9) For each case in which a person has failed
16 to pay a forfeiture penalty imposed by such a final
17 order, whether the Commission referred such matter
18 to the Attorney General for recovery of the penalty.

19 “(10) For each case in which the Commission
20 referred such an order to the Attorney General—

21 “(A) the number of days from the date the
22 Commission issued such order to the date of
23 such referral;

24 “(B) whether the Attorney General has
25 commenced an action to recover the penalty,

1 and if so, the number of days from the date the
2 Commission referred such order to the Attorney
3 General to the date of such commencement; and
4 “(C) whether the recovery action resulted
5 in collection of any amount, and if so, the
6 amount collected.”.

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

8 (a) IN GENERAL.—The Comptroller General of the
9 United States shall conduct a study regarding complaints
10 received by the Federal Communications Commission con-
11 cerning unsolicited advertisements sent to telephone fac-
12 simile machines, which shall determine—

13 (1) the number and nature of such complaints;

14 (2) the number of such complaints that result
15 in final agency actions by the Commission;

16 (3) the length of time taken by the Commission
17 in responding to such complaints;

18 (4) the mechanisms established by the Commis-
19 sion to receive, investigate, and respond to such
20 complaints;

21 (5) the level of enforcement success achieved by
22 the Commission and the Attorney General regarding
23 such complaints;

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

4 (7) whether additional enforcement measures
5 are necessary to protect consumers, including rec-
6 ommendations regarding such additional enforce-
7 ment measures.

8 (b) **ADDITIONAL ENFORCEMENT REMEDIES.**—In
9 conducting the analysis and making the recommendations
10 required under paragraph (7) of subsection (a), the Comp-
11 troller General shall specifically examine—

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

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

16 (3) the impact of existing statutory enforcement
17 remedies on senders of facsimiles;

18 (4) whether increasing the amount of financial
19 penalties is warranted to achieve greater deterrent
20 effect; and

21 (5) whether establishing penalties and enforce-
22 ment actions for repeat violators or abusive viola-
23 tions similar to those established by section 4 of the
24 CAN-SPAM Act of 2003 (15 U.S.C. 7703) would
25 have a greater deterrent effect.

1 (c) REPORT.—Not later than 270 days after the date
2 of the enactment of this Act, the Comptroller General shall
3 submit a report on the results of the study under this sec-
4 tion to Committee on Energy and Commerce of the House
5 of Representatives and the Committee on Commerce,
6 Science, and Transportation of the Senate.

