

Union Calendar No. 355

108TH CONGRESS
2^D SESSION

H. R. 4600

[Report No. 108-593]

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2004

Mr. UPTON (for himself, Mr. MARKEY, Mr. BARTON of Texas, Mr. DINGELL, Mr. BOUCHER, Mr. TERRY, Mr. TOWNS, Mr. JOHN, Mr. ENGEL, Mr. ROGERS of Michigan, Mr. BUYER, Mrs. CAPPES, Mr. WYNN, Mr. GORDON, Mr. GILLMOR, Mr. GREEN of Texas, Mrs. BONO, Ms. SCHAKOWSKY, Mr. STEARNS, Mr. PICKERING, Mr. DAVIS of Florida, Mr. BURR, Mr. SHIMKUS, and Mr. GONZALEZ) introduced the following bill; which was referred to the Committee on Energy and Commerce

JULY 9, 2004

Additional sponsors: Mr. EHLERS, Mr. ALLEN, Mr. SHAYS, Mr. MEEKS of New York, Mr. LEWIS of Kentucky, Mr. TIBERI, Mr. STRICKLAND, Mr. GOODE, Ms. MCCARTHY of Missouri, Mr. WHITFIELD, Mr. DAVIS of Tennessee, Mr. MORAN of Kansas, Mr. WILSON of South Carolina, Mr. MICHAUD, Mr. ROGERS of Alabama, Mr. NEY, Mr. LAHOOD, and Mr. MANZULLO

JULY 9, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 16, 2004]

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 CON-**
7 **TAINING 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:*

11 *“(C) to use any telephone facsimile ma-*
12 *chine, computer, or other device to send, to a*
13 *telephone facsimile machine, an unsolicited ad-*
14 *vertisement, unless—*

15 *“(i) the unsolicited advertisement is*
16 *from a sender with an established business*
17 *relationship with the recipient, and*

1 “(i) the unsolicited advertisement con-
2 tains a notice meeting the requirements
3 under paragraph (2)(D),
4 except that the exception under clauses (i) and
5 (ii) shall not apply with respect to an unsolic-
6 ited advertisement sent to a telephone facsimile
7 machine by a sender to whom a request has been
8 made not to send future unsolicited advertise-
9 ments to such telephone facsimile machine that
10 complies with the requirements under paragraph
11 (2)(E); or”.

12 (b) *DEFINITION OF ESTABLISHED BUSINESS RELA-*
13 *TIONSHIP.*—Subsection (a) of section 227 of the Commu-
14 *nications Act of 1934 (47 U.S.C. 227(a)) is amended—*

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

17 (2) by inserting after paragraph (1) the fol-
18 lowing new paragraph:

19 “(2) The term ‘established business relationship’,
20 for purposes only of subsection (b)(1)(C)(i), shall have
21 the meaning given the term in section 64.1200 of the
22 Commission’s regulations, as in effect on January 1,
23 2003, except that—

24 “(A) such term shall include a relationship
25 between a person or entity and a business sub-

1 *scriber subject to the same terms applicable*
2 *under such section to a relationship between a*
3 *person or entity and a residential subscriber;*
4 *and*

5 *“(B) an established business relationship*
6 *shall be subject to any time limitation estab-*
7 *lished pursuant to paragraph (2)(G).”.*

8 *(c) REQUIRED NOTICE OF OPT-OUT OPPORTUNITY.—*
9 *Paragraph (2) of section 227(b) of the Communications Act*
10 *of 1934 (47 U.S.C. 227(b)(2)) is amended—*

11 *(1) in subparagraph (B), by striking “and” at*
12 *the end;*

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

15 *(3) by adding at the end the following new sub-*
16 *paragraph:*

17 *“(D) shall provide that a notice contained*
18 *in an unsolicited advertisement complies with*
19 *the requirements under this subparagraph only*
20 *if—*

21 *“(i) the notice is clear and conspicuous*
22 *and on the first page of the unsolicited ad-*
23 *vertisement;*

24 *“(ii) the notice states that the recipient*
25 *may make a request to the sender of the un-*

1 *solicited advertisement not to send any fu-*
2 *ture unsolicited advertisements to a tele-*
3 *phone facsimile machine or machines and*
4 *that failure to comply, within the shortest*
5 *reasonable time, as determined by the Com-*
6 *mission, with such a request meeting the re-*
7 *quirements under subparagraph (E) is un-*
8 *lawful;*

9 “(iii) the notice sets forth the require-
10 ments for a request under subparagraph
11 (E);

12 “(iv) the notice includes—

13 “(I) a domestic contact telephone
14 and facsimile machine number for the
15 recipient to transmit such a request to
16 the sender; and

17 “(II) a cost-free mechanism for a
18 recipient to transmit a request pursu-
19 ant to such notice to the sender of the
20 unsolicited advertisement; the Commis-
21 sion shall by rule require the sender to
22 provide such a mechanism and may,
23 in the discretion of the Commission
24 and subject to such conditions as the
25 Commission may prescribe, exempt

1 *certain classes of small business send-*
2 *ers, but only if the Commission deter-*
3 *mines that the costs to such class are*
4 *unduly burdensome given the revenues*
5 *generated by such small businesses;*

6 “(v) *the telephone and facsimile ma-*
7 *chine numbers and the cost-free mechanism*
8 *set forth pursuant to clause (iv) permit an*
9 *individual or business to make such a re-*
10 *quest during regular business hours; and*

11 “(vi) *the notice complies with the re-*
12 *quirements of subsection (d);”.*

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

18 “(E) *shall provide, by rule, that a request*
19 *not to send future unsolicited advertisements to*
20 *a telephone facsimile machine complies with the*
21 *requirements under this subparagraph only if—*

22 “(i) *the request identifies the telephone*
23 *number or numbers of the telephone fac-*
24 *simile machine or machines to which the re-*
25 *quest relates;*

1 “(ii) the request is made to the tele-
2 phone or facsimile number of the sender of
3 such an unsolicited advertisement provided
4 pursuant to subparagraph (D)(iv) or by
5 any other method of communication as de-
6 termined by the Commission; and

7 “(iii) the person making the request
8 has not, subsequent to such request, pro-
9 vided express invitation or permission to
10 the sender, in writing or otherwise, to send
11 such advertisements to such person at such
12 telephone facsimile machine;”.

13 (e) *AUTHORITY TO ESTABLISH NONPROFIT EXCEP-*
14 *TION.—Paragraph (2) of section 227(b) of the Communica-*
15 *tions Act of 1934 (47 U.S.C. 227(b)(2)), as amended by sub-*
16 *sections (c) and (d) of this section, is further amended by*
17 *adding at the end the following new subparagraph:*

18 “(F) may, in the discretion of the Commis-
19 sion and subject to such conditions as the Com-
20 mission may prescribe, allow professional or
21 trade associations that are tax-exempt nonprofit
22 organizations to send unsolicited advertisements
23 to their members in furtherance of the associa-
24 tion’s tax-exempt purpose that do not contain the
25 notice required by paragraph (1)(C)(ii), except

1 that the Commission may take action under this
2 subparagraph only by regulation issued after
3 public notice and opportunity for public com-
4 ment and only if the Commission determines
5 that such notice required by paragraph
6 (1)(C)(ii) is not necessary to protect the ability
7 of the members of such associations to stop such
8 associations from sending any future unsolicited
9 advertisements; and”.

10 (f) *AUTHORITY TO ESTABLISH TIME LIMIT ON ESTAB-*
11 *LISHED BUSINESS RELATIONSHIP EXCEPTION.*—Para-
12 *graph (2) of section 227(b) of the Communications Act of*
13 *1934 (47 U.S.C. 227(b)(2)), as amended by subsections (c),*
14 *(d), and (e) of this section, is further amended by adding*
15 *at the end the following new subparagraph:*

16 “(G)(i) may, consistent with clause (ii),
17 limit the duration of the existence of an estab-
18 lished business relationship to a period not short-
19 er than 5 years and not longer than 7 years
20 after the last occurrence of an action sufficient to
21 establish such a relationship, but only if—

22 “(I) the Commission determines
23 that the existence of the exception
24 under paragraph (1)(C) relating to an
25 established business relationship has

1 *resulted in a significant number of*
2 *complaints to the Commission regard-*
3 *ing the sending of unsolicited adver-*
4 *tisements to telephone facsimile ma-*
5 *chines;*

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

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

24 *“(IV) the Commission determines*
25 *that, with respect to small businesses,*

1 *the costs are not unduly burdensome,*
2 *given the revenues generated by small*
3 *businesses, and taking into account the*
4 *number of specific complaints to the*
5 *Commission regarding the sending of*
6 *unsolicited advertisements to telephone*
7 *facsimile machines by small businesses;*
8 *and*

9 “(i) may not commence a proceeding to de-
10 *termine whether to limit the duration of the ex-*
11 *istence of an established business relationship be-*
12 *fore the expiration of the 3-year period that be-*
13 *gins on the date of the enactment of the Junk*
14 *Fax Prevention Act of 2004.”.*

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

20 *(h) REGULATIONS.—Except as provided in clause (i)*
21 *of section 227(b)(2)(G) of the Communications Act of 1934*
22 *(as added by subsection (f) of this section), not later than*
23 *270 days after the date of the enactment of this Act, the*
24 *Federal Communications Commission shall issue regula-*
25 *tions to implement 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 following*
5 *new subsection:*

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

22 *“(4) The number of citations issued by the Com-*
23 *mission pursuant to section 503 during the year to*
24 *enforce any law, regulation, or policy relating to*
25 *sending of unsolicited advertisements to telephone fac-*
26 *simile 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 on*
12 *which the complaint was filed and the date on*
13 *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 been*
2 *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 re-*
9 *ferred such an order for recovery—*

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

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

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

1 *cerning unsolicited advertisements sent to telephone fac-*
2 *simile machines, which shall determine—*

3 *(1) the mechanisms established by the Commis-*
4 *sion to receive, investigate, and respond to such com-*
5 *plaints;*

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

8 *(3) whether complainants to the Commission are*
9 *adequately informed by the Commission of the re-*
10 *sponses to their complaints; and*

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

15 *(b) ADDITIONAL ENFORCEMENT REMEDIES.—In con-*
16 *ducting the analysis and making the recommendations re-*
17 *quired under paragraph (7) of subsection (a), the Comp-*
18 *troller General shall specifically examine—*

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

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

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

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

4 (5) *whether establishing penalties and enforce-*
5 *ment actions for repeat violators or abusive violations*
6 *similar to those established by section 4 of the CAN-*
7 *SPAM Act of 2003 (15 U.S.C. 7703) would have a*
8 *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 section*
12 *to Committee on Energy and Commerce of the House of*
13 *Representatives and the Committee on Commerce, Science,*
14 *and Transportation of the Senate.*

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