

NFIB CARRIES THE VOICE OF SMALL BUSINESS TO CAPITOL HILL: Faxing Regulations



Background

- In July of 2003, the FCC determined that it had exceeded its authority provided by Congress in allowing an established business relationship to provide companies with the necessary express permission to send faxes to their members or customers, and the FCC withdrew the established business relationship exception.
- The FCC issued regulations on the do-not-fax provision, which would require businesses, membership organizations and nonprofits to gain signed, written permission from recipients before sending them commercial faxes. (The permission form may not be faxed.) Businesses would no longer be able to fax material based on the common-sense understanding that the recipient is a customer.
- If a business or an organization violates the do-not-fax provision by sending faxed newsletters or announcements containing advertisements, it could be subject to stiff fines and potential judgments ranging from \$500 to \$11,000 per unsolicited fax.
- Due to significant opposition to the rule and expected congressional action, the FCC stayed enforcement of the new fax rule until Jan. 9, 2006.

Burdens Caused by the Do-Not-Fax Rule

- The rule not only interferes with NFIB's ability to communicate with our members but more importantly, it also inhibits our members' ability to communicate with their customers. Compliance will necessitate substantial paperwork and record-keeping, resulting in administrative and financial burdens.
- The rule will only add to the increasing litigation that is taking place over faxing, as some lawyers will take advantage of the rule's new requirements.
- Businesses will be forced to communicate with all of their customers simply to ensure that continued faxing is acceptable -- at a considerable expense and use of time.
- Businesses use a variety of faxes to communicate with their customers: Purchase orders, copies of orders, order confirmation, invoices, copies of invoices, drawings and artwork proofs, sales tax exemptions, among others. It will be difficult for a small-business owner to ensure that all faxes sent out are in compliance with the new regulation.
- Due to their size and small profit margins, small businesses will face significant challenges complying with this new regulatory burden. Regulatory costs rise as business size shrinks. Firms with fewer than 20 employees have regulatory costs roughly 33 percent higher than firms with more than 20 employees.

Action Taken During the 109th Congress

Sen. Gordon Smith introduced the Junk Fax Prevention Act of 2005, S. 714.

- Because the FCC concluded that the established business relationship is no longer sufficient to show that an individual or a business has given their permission to receive unsolicited faxes, a legislative solution was needed.
- The legislation allows businesses to continue to fax to their customers with whom they have an established business relationship, while allowing customers a clear opt-out of future unsolicited faxes.
- If the FCC receives a substantial number of complaints about business faxes after three years, S. 714 would give the FCC the ability to initiate rulemaking on the established business relationship and impose a time limit.
- The bill also contained provisions that would protect small businesses and would require the FCC to take record-keeping and cost burdens on small businesses into account.
- On July 9, 2005, President Bush signed S. 714, the Junk Fax Prevention Act of 2005, into law.

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