



*Independent Insurance Agents*



*Brokers of America, Inc.*



**Office of the General Counsel**

**EXECUTIVE SUMMARY OF THE JUNK FAX PREVENTION ACT OF 2005**

**June 29, 2005**

This Executive Summary regarding the Junk Fax Prevention Act of 2005 is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely for use as a guide, and is not a recommendation that a particular course of action be followed. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.

**Executive Summary of the Junk Fax Prevention Act**

The Junk Fax Prevention Act of 2005 (“Act”) has passed both the United States Senate and House of Representatives and is expected to be signed by the President within the next few days. The Act, when signed into law, will amend and clarify prior law concerning the sending of unsolicited faxes advertising goods or services (“commercial faxes”).

Under regulations due to become effective July 1, 2005, commercial faxes cannot be sent without a recipient’s prior written, signed consent, even in the case of an established business relationship (“EBR”) between the sender and recipient. This week, the Federal Communications Commission (“FCC”) granted a six-month stay postponing the effective date of those regulations until January 9, 2006. In the event the President does not sign the Act into law by Friday, July 1, 2005, the stay will go into effect until the President signs the Act, and the stay will remain in effect until January 9, 2006 if the President does not sign the Act. However, if and when the President signs the Act, the Act will control and the regulations stayed until January 9, 2006 will have no further effect.

The Act allows businesses to send unsolicited commercial faxes to anyone with whom the sender has an EBR, unless the recipient has requested not to receive such faxes from the sender. Businesses will be allowed to continue to send unsolicited commercial faxes to recipients (unless the recipient has opted not to receive such faxes) if the sender had the fax number prior to the date the Act becomes law. Businesses also may send unsolicited commercial faxes to recipients if the fax number is obtained either directly from the recipient or from a public source to which the recipient gave the number for publication (e.g., website or published directory).

Regardless of whether the unsolicited commercial fax is sent to someone with a new or prior EBR with the sender, the Act will require that all unsolicited commercial faxes include an opt-out provision. This opt-out will need to:

- Be clear and conspicuous;
- Be on the first page of the fax;
- Clearly state that the recipient may request the sender of the unsolicited advertisement not send any future unsolicited advertisements to a particular fax/telephone number(s);
- Provide a cost-free mechanism for the recipient to request to be removed from the fax distribution list (e.g., an e-mail address to which a recipient can reply or a toll-free number);
- Provide a contact telephone and facsimile machine number in the United States for the recipient to transmit an opt-out request to the sender; and
- Ensure that the telephone and facsimile machine numbers and the cost-free mechanism for opt-outs are available 24 hours per day, 7 days per week.

In short, when the Act is signed into law, insurance agents and brokers, and state associations (and their subsidiaries) can send unsolicited commercial faxes provided they have an EBR with the recipient. Businesses may want to add an opt-out message on the first page of their fax advertisements as soon as possible. (See the sample language at the end of the memorandum.)

The FCC is required by the Act to issue new rules for the cost-free mechanism and opt-out notice within 270 days after the Act is signed into law. The FCC also can establish rules on the duration of an EBR (e.g., the recipient must have made a purchase through the sender within X months of the unsolicited commercial fax being sent). When signed into law, this Act **will not** preempt state laws on the sending of unsolicited faxes. All businesses, including those of agents and brokers, must not only comply with the Act once it becomes law, but also must comply with applicable state laws that are more restrictive than the Act. In other words, compliance with the Act does not create a safe harbor if state law does not allow the sending of unsolicited commercial faxes, even involving an EBR.

The Office of the General Counsel will be updating its Frequently Asked Questions on Do Not Fax when the Act is signed into law and when any final regulations or rules implementing it are issued. The FAQ will be posted in the Legal Advocacy section of [www.independentagent.com](http://www.independentagent.com). For further information on the Act's passage, please contact Patrick O'Brien at Patrick.O'Brien@iiaba.net, 202-863-7000. For further information on the interpretation of the new law once it is signed, please contact either Amy Hendricks at [Amy.Hendricks@iiaba.net](mailto:Amy.Hendricks@iiaba.net) or Kathleen Graber at [Kathleen.Graber@iiaba.net](mailto:Kathleen.Graber@iiaba.net), both at 800-221-7917.

## SAMPLE OPT-OUT NOTICE

You may request not to receive future faxes advertising goods or services from [*insert business entity name*]. To stop receiving such faxes, please call [*insert phone number*] or send a fax to [*insert fax number*] at any time. You may also send an e-mail to [*insert e-mail address*] or call [*insert number, using a toll-free number if available*]. Your fax or communication must include the specific telephone number of the fax machine at which you do not wish to receive faxes from us. We will remove your fax number from our lists and will not send you additional faxes advertising goods or services unless you request that we do so.