

# Junk Faxes - New California Law Challenged

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I hate junk faxes. You hate junk faxes. We all hate junk faxes! California legislators passed a law banning them, but it has been delayed to a legal challenge.

## Junk Fax Prevention Act

In 2005, the State of California passed the Junk Fax Prevention Act. Legislators were reacting to the bevy of businesses screaming about the junk faxes being received daily. The problem with junk faxes, besides being annoying, is they put wear and tear on fax machines as well as using up paper and toner. In passing the new law, legislators sought to help businesses. In truth, I imagine they just wanted to free up their own faxes, but I digress.

The Junk Fax Prevention Act was set to go into force on January 1, 2006. In a rather shocking move, the U.S. Chamber of Commerce filed for an injunction, which was granted. Joining the Chamber of Commerce is Xpedite Systems, a fax company. Filed in federal court, the injunction was granted and the law stayed from being enforced. A hearing on the matter will be held January 23, 2006 with the earliest resolution of the matter being January 30, 2006.

At the heart of the dispute is an exemption to the law known as the previous business relationship exemption. Under federal law, a person may send a fax to a person or business with which they have had a previous business relationship. The problem, however, is there is no particular test for determining a previous business relationship. The California law seeks to require proof of such a business relationship.

Ironically, the U.S. Chamber of Commerce was one of the biggest and boisterous supporters of the federal junk fax law. In a mysterious change of position, the Chamber of Commerce is now taking the position the California law is unduly burdensome on medium and small businesses.

This position is so much hogwash, a typical stance for the Chamber of Commerce. When evaluating such bland statement positions, it is always important to use common sense. In this case, a business sending faxes to clients is easily going to have proof of such relationships. Indeed, most businesses now communicate by email with their clients in lieu of a fax. If something written needs to go out, it is typically done by snail mail.

Intentionally or not, the only parties the U.S. Chamber of Commerce is protecting are the junk fax senders. What a shame. Let's hope the court puts the Chamber in its place. Richard A. Chapo is a San Diego business lawyer with <http://www.sandiegobusinesslawfirm.com> - a San Diego business law firm in San Diego, California providing business incorporation services.