

110TH CONGRESS
2D SESSION

H. R. 5769

To direct the Federal Trade Commission to revise the Telemarketing Sales Rule to explicitly prohibit the sending of a text message containing an unsolicited advertisement to a cellular telephone number listed on the national do-not-call registry.

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2008

Mr. GINGREY (for himself, Mr. ADERHOLT, Mr. AKIN, Mrs. BACHMANN, Mr. BARTLETT of Maryland, Mr. BILIRAKIS, Mrs. BLACKBURN, Mr. BROUN of Georgia, Mr. CAMPBELL of California, Mr. CONAWAY, Mr. DEAL of Georgia, Mrs. DRAKE, Mr. FEENEY, Mr. FORTENBERRY, Ms. FOXX, Mr. GOHMERT, Mr. GOODE, Mr. HALL of Texas, Mr. KING of Iowa, Mr. KINGSTON, Mr. LEWIS of Kentucky, Mr. LINDER, Mr. MCCOTTER, Ms. MOORE of Wisconsin, Mr. PITTS, Mr. PRICE of Georgia, Mr. PEARCE, Mr. ROSKAM, Mr. SHIMKUS, Mr. SENSENBRENNER, Mr. WESTMORELAND, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To direct the Federal Trade Commission to revise the Telemarketing Sales Rule to explicitly prohibit the sending of a text message containing an unsolicited advertisement to a cellular telephone number listed on the national do-not-call registry.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Stop M-Spam Abuse
3 as a Sales industry Habit Act of 2008” or as the
4 “SMASH Act of 2008”.

5 **SEC. 2. TEXT MESSAGES CONTAINING UNSOLICITED AD-**
6 **VERTISEMENTS SENT TO CELLULAR TELE-**
7 **PHONES EXPLICITLY PROHIBITED.**

8 (a) IN GENERAL.—Not later than 180 days after the
9 date of the enactment of this Act, the Federal Trade Com-
10 mission shall issue regulations to revise the Telemarketing
11 Sales Rule to explicitly prohibit, as an abusive tele-
12 marketing act or practice, the sending of any electronic
13 commercial message containing an unsolicited advertise-
14 ment to a telephone number that is—

15 (1) assigned to a commercial mobile service;

16 and

17 (2) listed on the “do-not-call” registry estab-
18 lished by the Federal Trade Commission pursuant to
19 the Telemarketing Sales Rule (16 C.F.R.
20 310.4(b)(1)(iii)).

21 (b) DEFINITIONS.—For purposes of this section:

22 (1) ELECTRONIC COMMERCIAL MESSAGE.—The
23 term “electronic commercial message” means any
24 type of message, other than a mobile service com-
25 mercial message (as defined in section 14(d) of the
26 CAN-SPAM Act of 2003 (15 U.S.C. 7712(d))), sent

1 to a cellular telephone, including a text message,
2 multimedia message, or any successor type of mes-
3 sage.

4 (2) CELLULAR TELEPHONE.—The term “cel-
5 lular telephone” means any type of wireless device
6 used to access commercial mobile services.

7 (3) COMMERCIAL MOBILE SERVICE.—The term
8 “commercial mobile service” has the meaning given
9 in section 332(d) of the Communications Act of
10 1934 (47 U.S.C. 332(d)).

11 (4) UNSOLICITED ADVERTISEMENT.—The term
12 “unsolicited advertisement” has the meaning given
13 in section 227(a)(5) of the Communications Act of
14 1934 (47 U.S.C. 227(a)(5)).

15 **SEC. 3. EFFECT ON OTHER LAWS.**

16 Nothing in this Act shall be interpreted to preclude
17 or override the applicability of section 227 of the Commu-
18 nications Act of 1934 (47 U.S.C. 227), section 14 of the
19 CAN–SPAM Act of 2003 (15 U.S.C. 7712), or the rules
20 prescribed under section 3 of the Telemarketing and Con-
21 sumer Fraud and Abuse Prevention Act (15 U.S.C. 6102).

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