

110TH CONGRESS
2D SESSION

S. 3138

To prohibit text message spam.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2008

Mr. SMITH (for himself, Mr. NELSON of Florida, Mr. PRYOR, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit text message spam.

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 “Do-Not-Text Act of
5 2008”.

6 **SEC. 2. EXEMPTION OF CERTAIN QUALIFYING MESSAGES**

7 **FROM THE DEFINITION OF MOBILE SERVICE**

8 **COMMERCIAL MESSAGE.**

9 (a) IN GENERAL.—Section 14(d) of the CAN-SPAM
10 Act of 2003 (15 U.S.C. 7712(d)) is amended to read as
11 follows:

1 “(d) MOBILE SERVICE COMMERCIAL MESSAGE DE-
2 FINED.—In this section, the term ‘mobile service commer-
3 cial message’—

4 “(1) means a commercial electronic mail mes-
5 sage that is transmitted directly to a wireless device
6 that is utilized by a subscriber of commercial mobile
7 service (as such term is defined in section 332(d) of
8 the Communications Act of 1934 (47 U.S.C.
9 332(d))) in connection with such service; and

10 “(2) does not include any such commercial elec-
11 tronic mail message, if the primary purpose of such
12 message is to—

13 “(A) facilitate, complete, or confirm a com-
14 mercial transaction that the recipient of such
15 message has previously agreed to enter into
16 with the sender of such message;

17 “(B) provide warranty information, prod-
18 uct recall information, or safety or security in-
19 formation with respect to a commercial product
20 or service used or purchased by the recipient of
21 such message;

22 “(C) provide, with respect to a subscrip-
23 tion, membership, account, loan, or comparable
24 ongoing commercial relationship involving the
25 ongoing purchase or use by the recipient of

1 such message of products or services offered by
2 the sender of such message—

3 “(i) notice concerning a change in the
4 terms or features of such subscription,
5 membership, account, loan, or comparable
6 ongoing commercial relationship;

7 “(ii) notice of a change in the stand-
8 ing or status of the recipient with respect
9 to such subscription, membership, account,
10 loan, or comparable ongoing commercial
11 relationship; or

12 “(iii) at regular periodic intervals, ac-
13 count balance information or other types of
14 account statements with respect to such
15 subscription, membership, account, loan, or
16 comparable ongoing commercial relation-
17 ship;

18 “(D) provide information directly related
19 to an employment relationship or related benefit
20 plan in which the recipient of such message is
21 currently involved, participating, or enrolled; or

22 “(E) deliver goods or services, including
23 product updates or upgrades, that the recipient
24 of such message is entitled to receive under the
25 terms of a transaction that the recipient has

1 previously agreed to enter into with the sender
2 of such message.”.

3 (b) **RULE OF CONSTRUCTION.**—Section 14 of the
4 **CAN–SPAM Act of 2003 (15 U.S.C. 7712)** is amended
5 by adding at the end the following:

6 “(e) **RULE OF CONSTRUCTION REGARDING SHORT**
7 **MESSAGING SERVICES AND MOBILE SERVICE COMMER-**
8 **CIAL MESSAGES.**—This provisions of this section shall not
9 prohibit—

10 “(1) the sending of phone-to-phone short mes-
11 sages; and

12 “(2) the sending of mobile service commercial
13 messages by a provider of commercial mobile service
14 (as such term is defined in section 332(d) of the
15 Communications Act of 1934) to its subscribers at
16 no cost to its subscribers unless a subscriber has ex-
17 pressed his or her desire not to receive such mes-
18 sages from the provider.”.

19 **SEC. 3. PROHIBITION ON UNAUTHORIZED MOBILE SERVICE**
20 **COMMERCIAL MESSAGES CONTAINING UNSO-**
21 **LICITED ADVERTISEMENTS.**

22 (a) **PROHIBITION.**—Section 227(b)(1) of the Commu-
23 nications Act of 1934 (47 U.S.C. 227(b)(1)) is amended—

24 (1) in subparagraph (C)(iii), by striking “; or”
25 and inserting a semicolon;

1 (2) in subparagraph (D), by striking the period
2 at the end and inserting “; or”; and

3 (3) by adding at the end the following:

4 “(E) to send a mobile service commercial
5 message to any person who has not provided ex-
6 press prior authorization for the receipt of such
7 message to the sender of such message.”.

8 (b) DEFINITIONS.—Section 227(a) of the Commu-
9 nications Act of 1934 (47 U.S.C. 227(a)) is amended—

10 (1) by redesignating paragraphs (3) through
11 (5) as paragraphs (4) through (6), respectively; and

12 (2) by inserting after paragraph (2) the fol-
13 lowing:

14 “(3) The term ‘mobile service commercial mes-
15 sage’ has the same meaning given such term in sec-
16 tion 14(d) of the CAN–SPAM Act of 2003 (15
17 U.S.C. 7712(d)).”.

18 (c) RULE OF CONSTRUCTION.—Section 227(d) of the
19 Communications Act of 1934 (47 U.S.C. 227(d)) is
20 amended by adding at the end the following:

21 “(4) RULE OF CONSTRUCTION REGARDING
22 SHORT MESSAGING SERVICES AND MOBILE SERVICE
23 COMMERCIAL MESSAGES.—The prohibition pre-
24 scribed under subsection (b)(1)(E) shall not pro-
25 hibit—

1 “(A) the sending of phone-to-phone short
2 messages; and

3 “(B) the sending of mobile service com-
4 mercial messages by a provider of commercial
5 mobile service (as such term is defined in sec-
6 tion 332(d)) to its subscribers at no cost to its
7 subscribers unless a subscriber has expressed
8 his or her desire not to receive such messages
9 from the provider.”.

10 **SEC. 4. MOBILE SERVICE COMMERCIAL MESSAGES CON-**
11 **TAINING UNSOLICITED ADVERTISEMENTS**
12 **SENT TO CELLULAR TELEPHONES EXPLIC-**
13 **ITLY PROHIBITED.**

14 (a) IN GENERAL.—Not later than 180 days after the
15 date of the enactment of this Act, the Federal Trade Com-
16 mission shall revise the do-not-call registry provisions of
17 the Telemarketing Sales Rule (16 C.F.R.
18 310.4(b)(1)(iii))—

19 (1) to consider commercial mobile service mes-
20 saging practices that are costly or a nuisance to con-
21 sumers; and

22 (2) to explicitly prohibit, as an abusive tele-
23 marketing act or practice, the sending of any mobile
24 service commercial message to a telephone number
25 that is—

1 (A) assigned to a commercial mobile serv-
2 ice; and

3 (B) listed on the do-not-call registry.

4 (b) DEFINITIONS.—As used in this section—

5 (1) the term “mobile service commercial mes-
6 sage” has the same meaning given such term in sec-
7 tion 14(d) of the CAN–SPAM Act of 2003 (15
8 U.S.C. 7712(d)); and

9 (2) the term “commercial mobile service” has
10 the same meaning given such term in section 332(d)
11 of the Communications Act of 1934 (47 U.S.C.
12 332(d)).

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