

'(C) to send an unsolicited advertisement by a facsimile machine; or

'(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are seized simultaneously.

'(2) PRIVATE RIGHT OF ACTION- A person who has received more than one telephone call from the same entity, or delivering the same or a similar message, in violation of regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State an action in such person's own name to enjoin such calls, an action to recover for actual monetary loss or receive \$500 in damages for each violation, whichever is greater, or both such actions. The court may, in its discretion, increase the award for monetary loss to an amount not to exceed three times the actual monetary loss up to \$1,500 for each violation, or to increase the award of damages to an amount not to exceed \$1,500 for each violation, if the court finds the defendant willfully or knowingly violated such regulations.

'(3) CALLS TO BUSINESSES- In the course of its rulemaking proceeding to prescribe regulations under paragraph (1), the Commission shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice message to which they have not given their prior express consent.

'(4) EXEMPTIONS AND OTHER PROVISIONS- In the course of its rulemaking proceeding to prescribe regulations under paragraph (1), the Commission shall also determine whether and to what extent the regulations should include exemptions and other provisions to address special circumstances, consistent with the public interest, convenience, and necessity.

'(c) Technical and Procedural Standards-

'(1) PROHIBITION- It shall be unlawful for any person within the United States-

'(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

'(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

'(2) TELEPHONE FACSIMILE MACHINES- The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which-

'(A) is manufactural **after** 6 months **after** the date of ~~enactment~~ of **this** section, and

'(B) ~~can~~ be used for the ~~distribution~~ of unsolicited **advertising**,

clearly ~~marks~~, in a ~~margin~~ at the **top** or **bottom** of **each transmitted page** or on the first page of ~~each transmission~~, the **date** and **time sent**, an ~~identification~~ of the **business**, other entity, or individual sending the message, **and the telephone number** of the **reading** machine or of such business, ~~other entity~~, or individual. The ~~Commission shall exempt~~ from such ~~standards~~, for **18 months after** such ~~date~~ of ~~enactment~~, **telephone facsimile** machines **that do not** have the capacity for **automatic dialing and transmissi** on and that are not capable of operation **through an interface** with a **computer**.

'(3) **ARTIFICIAL OR PRERECORDED VOICE SYSTEMS**-The ~~Commission~~ shall prescribe technical and procedural ~~standards~~ for **systems that are** used to transmit any artificial or ~~prerecorded~~ voice message via telephone. ~~Such standards~~ shall require that--

'(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or **after** the message, ~~state~~ clearly the telephone number or ~~address~~ of such business, other ~~entity~~, or individual; and

'(B) **any** such **system** will automatically release the called party's line **within 5 seconds** of the **time** the **system** receives notification that the called party has **hung up**, **to allow** the called party's line **to be used** to make or receive other calls.

'(d) **STATE LAW NOT PREEMPTED**- Nothing in **this** section or in the regulations prescribed under **this** section shall ~~preempt~~ any State law that **imposes** more ~~restrictive~~ intrastate requirements or ~~regulations~~ on, or which prohibits--

'(1) the use of telephone facsimile machines ~~or~~ other electronic devices to send unsolicited ~~advertisements~~;

'(2) the use of automatic telephone dialing ~~systems~~ to transmit prerecorded telephone solicitations; or

'(3) the use of artificial ~~or~~ prerecorded voice messages.

'(e) **ACTIONS BY STATES**-

'(1) **AUTHORITY OF STATES**- Whenever the attorney ~~general~~ of a State, or ~~an~~ official or ~~agency~~ designated by a State, has ~~reason~~ to believe that any pm on has engaged or is **engaging in a pattern** or practice of telephone calls to residents **of that** State in violation of the regulations prescribed **under this** section, the State may bring a civil action on behalf of its residents to enjoin such calls, ~~an~~ action to recover for ~~actual monetary loss~~ ~~or~~ receive **\$500** in damages for each violation. or both such ~~actions~~. The ~~court~~ may, in its discretion, increase the award for monetary ~~loss~~ to an amount not ~~to exceed three~~ times the actual monetary loss up to **\$1,500** for each violation, or to increase the award of damages to an amount not to exceed **\$1,500** for each violation. if the ~~court~~ finds the

defendant willfully or knowingly violated such regulations.

'(2) **EXCLUSIVE JURISDICTION OF FEDERAL COURTS**- The district courts of the united ~~states, the United states courts of my territory, and the District court of the United States~~ for the District of Columbia shall have exclusive **jurisdiction** over **all** civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction **to issue writs** of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of **regulations prescribed under this d o n** , including the requirement **that the defendant take such action as is necessary to m o v e** the danger of violation of my such regulations. Upon a proper showing, a permanent or temporary injunction or restraining order **shall be granted without bond**.

'(3) **RIGHTS OF COMMISSION**- The State shall ~~serve prior written notice~~ of any such civil action upon the **Commission and** provide the **Commission** with a copy of its complaint, except in any case w h m such prior notice is not *feasible*, in which case the State shall ~~serve~~ such notice **immediately** upon **instituting** such action. The Commission shall have the right (A) **to intervene** in the action, (B) upon ~~an~~ **intervening**, **to be heard on** all matters **arising** therein, and (C) to file **petitions** for appeal.

'(4) **VENUE; SERVICE OF PROCESS**- Any civil action brought under this subsection in a district **court** of the **United States** may be brought in **the district** wherein the defendant is found or is **an inhabitant** or **transacts** business or wherein the violation occurred or **is occurring**, and process in such cases may be **served** in any district in which **the defendant is an inhabitant or w h m the defendant may be found**.

'(5) **INVESTIGATORY POWERS**- For purposes of bringing **any** civil action under this subsection, nothing in **this section** shall prevent the attorney **general** of a **State** from **exercising the powers conferred** on the attorney **general** by the laws of such **State** to conduct investigations or **to administer** oaths or **affirmations** or **to compel the attendance** of witnesses or the production of **documentary** and **other** evidence.

'(6) **EFFECT ON STATE COURT PROCEEDINGS**- **Nothing** contained in this subsection shall be **construed** to prohibit an authorized State official from proceeding in State court on **the** basis of **an** alleged violation of any general civil or criminal statute of such State.

'(7) **LIMITATION**- Whenever the Commission has **instituted** a civil action for violation of regulations prescribed **under this section**, no **State** may, during the pendency of such action **instituted** by the Commission, subsequently institute a civil action against **any** defendant **named** in the Commission's complaint for any violation **as alleged in the** Commission's complaint.

'(8) **DEFINITION**- **As used** in this subsection, the term 'attorney general' means the chief legal officer of a **State**.'

(b) **CONFORMING AMENDMENT**- Section 2(b) of the Communications Act of 1934 (47 U.S.C.152(b)) is amended by **striking 'and 225'** and inserting in lieu thereof **' , 225, and 228'**

Attest:

Secretary.

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Bill 2 of 5

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**Automated Telephone Consumer Protection Act (Introduced in the Senate)**

S 1462 IS

102d CONGRESS

1st Session

S. 1462

To amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes.

**IN THE SENATE OF THE UNITED STATES**

**July 11 (legislative day, JULY 8), 1991**

Mr. HOLLINGS (for himself, Mr. INOUE, Mr. STEVENS, and Mr. BENTSEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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**A BILL**

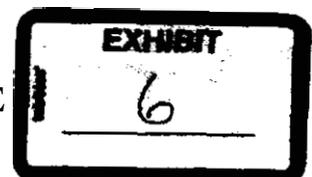
To amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Automated Telephone Consumer Protection Act'.

**SEC. 2. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE**



## EQUIPMENT.

(a) **AMENDMENT-** Title II of the Communications Act of 1934 (47 U.S.C.201 et seq.) is amended by adding at the end the following new section:

### 'SEC.228. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

'(a) **DEFINITIONS-** As used in this section--

'(1) The term 'automatic telephone dialing system' means equipment which has the capacity--

'(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

'(B) to dial such numbers.

'(2) The term 'telephone facsimile machine' means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

'(3) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

'(b) **RESTRICTIONS-** It shall be unlawful for any person within the United States--

'(1) to make any call using any automatic telephone dialing system, telephone facsimile machine, or an artificial or prerecorded voice--

'(A) to any emergency telephone line of any hospital, medical physician or service office, health care facility, or fire protection or law enforcement agency; or

'(B) to any telephone number assigned to paging or cellular telephone service;

'(2) to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message without the prior, express, written consent of the called party, unless the call is initiated by a public school or other governmental entity; or

'(3) to send an unsolicited advertisement by a facsimile machine.

'(c) **Technical and Procedural Standards-**

'(1) **PROHIBITION-** It shall be unlawful for any person within the United States--

'(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system that does not comply with the technical and procedural standards prescribed under this

subsection, or ~~to~~ any telephone facsimile machine or automatic telephone dialing system (to make any telephone solicitation) in a manner that does not comply with such standards; or

(B) to use a computer or ~~other~~ electronic device to send an unsolicited advertisement via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the advertisement, the date and time it is sent and an identification of the business sending the advertisement and the telephone number of the sending machine or of such business.

(2) TELEPHONE FACSIMILE MACHINES- The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which—

(A) is manufactured after 6 months after the date of enactment of this section, and

(B) is used for the distribution of unsolicited advertising,

clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business sending the advertisement, and the telephone number of the sending machine or of such business. The Commission shall exempt from such standards, for 18 months after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer.

(3) ARTIFICIAL OR PRERECORDED VOICE SYSTEMS- The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business; and

(B) any such system will automatically release the called party's line within 5 seconds of the time the system receives notification that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

(d) STATE LAW NOT PREEMPTED- Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits, either or both of the following:

(1) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements; and

(2) the use of automatic telephone dialing systems to transmit prerecorded telephone solicitations

'(e) EFFECTIVE DATE OF REQUIREMENTS- The requirements of subsection (b) shall take effect 30 days after the date of enactment of this section, and all other provisions of this section shall take effect upon such date of enactment.'

(b) CONFORMING AMENDMENT- Section 2(b) of the Communications Act of 1934 (47 U.S.C.152(b)) is amended by striking 'and 225' and inserting in lieu thereof ', 225, and 228.'

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**Bill 3 of 5**

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**Automated Telephone Consumer Protection Act (Reported in the Senate)**

Calendar No. 262

102d CONGRESS

1st Session

S. 1462

[Report No. 102-178]

**A BILL**

To amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes.

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**October 8 (legislative day, SEPTEMBER 19), 1991**

**Reported with an amendment**

S 1462 RS

Calendar No. 262

102d CONGRESS

1st Session

S. 1462

[Report No 102-1781



To amend the Communications Act of 1934 to prohibit certain practices involving the use of

telephone equipment for advertising and solicitation purposes.

IN THE SENATE OF THE UNITED STATES

July 11 (legislative day, JULY 8), 1991

Mr. HOLLINGS (for himself, Mr. INOUE, Mr. STEVENS, Mr. BENTSEN, and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

October 8 (legislative day, SEPTEMBER 19), 1991

Reponed by Mr. HOLLINGS, with amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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A BILL

To amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

[Struck out->] SECTION 1. SHORT TITLE. [<-Struck out]

[Struck out->] This Act may be cited as the 'Automated Telephone Consumer Protection Act'. (<-Struck out)

[Struck out->] SEC. 2. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT. [<-Struck out]

[Struck out->] 1a) AMENDMENT- Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section: [<-Struck out]

[Struck out->] SEC. 228. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT. [<-Struck out]

(Struck out->) .(a) DEFINITIONS- A6 used in thio section-- [<-Struck out]

[Struck out->] (1) The term 'automatic telephone dialing system' means equipment which has the capacity- [<-Struck out]

[Struck out->] .(A) to store or produce telephone numbers to be called, using a random or sequential number generator: and [<-Struck out]

[Struck out->] <sup>(3)</sup> to dial such numbers. [~~Struck out~~]

[Struck out->] <sup>(2)</sup> The term 'telephone facsimile machine' means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line. [~~Struck out~~]

[Struck out->] <sup>(3)</sup> The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to my person without that person's prior express invitation or permission. [~~Struck out~~]

[Struck out->] <sup>(b)</sup> RESTRICTIONS- It shall be unlawful for my person within the United States-- [~~Struck out~~]

[Struck out->] <sup>(1)</sup> to make any call using any automatic telephone dialing system, telephone facsimile machine, or an artificial or prerecorded voice-- [~~Struck out~~]

[Struck out->] <sup>(A)</sup> to any emergency telephone line of any hospital, medical physician or service office, health care facility, or fire protection or law enforcement agency; or [~~Struck out~~]

[Struck out->] <sup>(B)</sup> to any telephone number assigned to paging or cellular telephone service; [~~Struck out~~]

[Struck out->] <sup>(2)</sup> to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message without the prior, express, written consent of the called party, unless the call is initiated by a public school or other governmental entity; or [~~Struck out~~]

[Struck out->] <sup>(3)</sup> to send an unsolicited advertisement by a facsimile machine. [~~Struck out~~]

[Struck out->] <sup>(c)</sup> Technical and Procedural Standards- [~~Struck out~~]

[Struck out->] <sup>(1)</sup> PROHIBITION- It shall be unlawful for any person within the United States-- [~~Struck out~~]

[Struck out->] <sup>(A)</sup> to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system to make any telephone solicitation in a manner that does not comply with such standards; or [~~Struck out~~]

[Struck out->] <sup>(B)</sup> to use a computer or other electronic device to send an unsolicited advertisement via a telephone facsimile

machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the advertisement, the date and time it is sent and an identification of the business sending the advertisement and the telephone number of the sending machine or of such business. [~~Struck out~~]

[~~Struck out->~~] ~~^(2) TELEPHONE FACSIMILE MACHINES-~~ The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machine. to require that *my* such machine which-- [~~Struck out~~]

[~~Struck out->~~] ~~^(A) is manufactured after 6 months after the date of enactment of this section, and~~ [~~Struck out~~]

[~~Struck out->~~] ~~^(B) is used for the distribution of unsolicited advertising,~~ [~~Struck out~~]

[~~Struck out->~~] clearly marks. in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business sending the advertisement, and the telephone number of the sending machine or of such business. The Commission shall exempt from such standards, for 18 months after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer. [~~Struck out~~]

[~~Struck out->~~] ~~^(3) ARTIFICIAL OR PRERECORDED VOICE SYSTEMS-~~ The Commission shall prescribe technical and procedural standard. for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that-- [~~Struck out~~]

[~~Struck out->~~] ~~^(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business; and~~ [~~Struck out~~]

[~~Struck out->~~] ~~^(B) any such system will automatically release the called party's line within 5 second. of the time the system receives notification that the called party has hung up, to allow the called party's line to be used to make or receive other calls.~~ [~~Struck out~~]

[~~Struck out->~~] ~~^(d) STATE LAW NOT PREEMPTED-~~ Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulation. on, or which prohibits, either or both of the following: [~~Struck out~~]

[~~Struck out->~~] ~~^(1) the use of telephone facsimile machine. or other electronic devices to send unsolicited advertisements; and~~ [~~Struck out~~]

[~~Struck out->~~] ~~^(2) the use of automatic telephone dialing systems to~~

transmit prerecorded telephone solicitations. [~~Struck out~~]

[~~Struck out->~~] (e) **EFFECTIVE DATE OF REQUIREMENTS-** The requirements of subsection (b) shall take effect 30 days after the date of enactment of this section, and all other provisions of this section shall take effect upon such date of enactment.' [~~Struck out~~]

[~~Struck out->~~] (b) **CONFORMING AMENDMENT-** Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by striking 'and 225' and inserting in lieu thereof ', 225, and 228'. [~~Struck out~~]

## **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Automated Telephone **Consumer Protection Act**'.

## **SEC. 2. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.**

(a) **AMENDMENT-** Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

### **'SEC. 228. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.**

(a) **DEFINITIONS-** As used in this section—

(1) The term 'automatic telephone dialing system' means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

(2) The term 'telephonofacsimile machine' means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

(3) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

(b) **RESTRICTIONS-** It shall be unlawful for any person within the United States—

(1) to make any call using any automatic telephone dialing system or an artificial or prerecorded voice—

(A) to any emergency telephone line of any hospital, medical physician or service office health care facility, or fire protection or law enforcement agency, or

(B) to any telephone number assigned to paging or cellular telephone service;

(2) to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes; or

(3) to send an unsolicited advertisement by a facsimile machine.

(c) Technical and Procedural Standards-

(1) PROHIBITION- It shall be unlawful for any person within the United States-

(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system (to make any telephone solicitation) in a manner that does not comply with such standards; or

(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly mark, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business sending the message and the telephone number of the sending machine or of such business.

(2) TELEPHONE FACSIMILE MACHINES- The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which-

(A) is manufactured after 6 months after the date of enactment of this section, and

(B) can be used for the distribution of unsolicited advertising.

clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business sending the message, and the telephone number of the sending machine or of such business. The Commission shall exempt from such standards, for 18 months after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer.

(3) ARTIFICIAL OR PRERECORDED VOICE SYSTEMS- The Commission shall prescribe technical and procedural standards for system that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that-

(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of

the message, **state** clearly the identity **of** the business initiating the call, and (ii) shall, during or **after** the message, state **clearly** the telephone number or address **of** such business; and

**(B)** any such system **will** automatically release the called party's line within 5 seconds of the time the system receives notification that the called party has hung up, to allow the **called party's** line to be used to make or receive other call.

**(d) STATE LAW NOT PREEMPTED-** Nothing in this **section** **or** in the regulations prescribed under this section shall preempt any **State law** that imposes more **restrictive intrastate** requirements or regulations on, or which prohibits—

**(1)** the use of telephone facsimile machines or other **electronic devices** to send unsolicited advertisements;

**(2)** the use **of** automatic telephone dialing systems to transmit prerecorded telephone solicitations; or

**(3)** the use **of** artificial or prerecorded voice messages.

**(b) CONFORMING AMENDMENT-** Section 2(b) **of** the Communications Act of 1934 (47 U.S.C. 152(b)) **is** amended by striking 'and 225' and inserting in lieu thereof ', 225, and 228'.

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**Bill 4 of 5**

Final version (Enrolled Bill) as passed by both Houses. There are 4 other versions of this bill.

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**S.1462**

**Telephone Consumer Protect on Act of 1991 (Enrolled Bill)**

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Beginning

SECTION 1 SHORT TITLE,

SEC. 2. FINDINGS.

SEC. 3 RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT.

SEC. 227 RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT

SEC. 4. AM RADIO SERVICE.

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permits legitimate telemarketing practices.

(10) Evidence compiled by the Congress indicates that residential telephone subscribers consider **automated or prerecorded** telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.

(11) Technologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.

(12) Banning such automated or **prerecorded** telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

(13) While the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call, the Federal Communications Commission should have the flexibility to design different rules for those types of automated or **prerecorded** calls that it finds are not considered a nuisance or invasion of privacy, or for noncommercial calls, consistent with the free speech protections embodied in the First Amendment of the Constitution.

(14) Businesses also have complained to the Congress and the Federal Communications Commission that automated or prerecorded telephone calls are a nuisance, are an invasion of privacy, and interfere with interstate commerce.

(15) The Federal Communications Commission should consider adopting reasonable restrictions on automated or prerecorded calls to businesses as well as to the home, consistent with the constitutional protections of free speech.

### SEC. 3. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT.

(a) **AMENDMENT-** Title II of the Communications Act of 1934 (47 U.S.C.201 et seq.) is amended by adding at the end the following new section:

#### 'SEC. 227. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT.

'(a) **DEFINITIONS-** As used in this section-

'(1) The term 'automatic telephone dialing system' means equipment which has the capacity-

'(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

'(B) to dial such numbers

'(2) The term 'telephone facsimile machine' means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to

**transmit** that signal over a regular telephone line, or (B) to **transcribe** text or images (or both) from an **electronic** signal **received over a regular** telephone line onto paper.

'(3) The **term** 'telephone **solicitation**' means the initiation of a telephone call or message for the purpose of **encouraging** the purchase or rental of, or **investment in**, property, goods, or **services**, which is **transmitted** to any **person**, but such term does not include a call or message (A) to any person with **that person's** prior **express invitation or permission**, (B) to any person with whom the caller **has an established business** relationship, or (C) by a **tax** exempt nonprofit **organization**.

'(4) The term 'unsolicited **advertisement**' means **my material** **advertising** the commercial availability or quality of any property, goods, or **services** which is **transmitted** to my p m o n without that person's prior express invitation or **permission**.

'(b) **Restrictions on the Use of Automated Telephone Equipment-**

'(1) **PROHIBITIONS-** It shall be unlawful for any p m o n within the United States—

'(A) to make **any** call (other than a call made for emergency purposes or made with the prior **express** consent of the called party) using any automatic telephone dialing system or an artificial or **prerecorded** voice—

'(i) to any emergency telephone line (including any **'911'** line and any emergency line of a hospital, medical physician or service office, health care facility, **poison** control center, or **fire** protection or law enforcement agency);

'(ii) to the telephone line of any guest **room** or patient **room** of a hospital, health care facility, **elderly** home, or similar establishment; or

'(iii) to any telephone number **assigned** to a paging service, cellular telephone service, **specialized** mobile **radio** service, or **other** radio common carrier service, or any **service** for which the called party is **charged** for the call;

'(B) to initiate **any** telephone call to any residential telephone line using **an** artificial or prerecorded voice to deliver a message without the prior express consent of the called **party**, unless the call is initiated for emergency purposes or is exempted by **rule** or order by the Commission under paragraph (2)(B);

'(C) to **use** any telephone facsimile machine, computer, **or** other device to send **an** unsolicited advertisement to a telephone facsimile machine; or

'(D) to use an automatic telephone dialing system in such a way **that** two or more telephone lines of a multi-line business are engaged **simultaneously**.

'(2) **REGULATIONS; EXEMPTIONS AND OTHER PROVISIONS-** The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection. the Commission—

'(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent; and

'(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe--

'(i) calls that are not made for a commercial purpose; and

'(ii) such classes or categories of calls made for commercial purposes as the Commission determines--

'(iii) not adversely affect the privacy rights that this section is intended to protect; and

'(D) do not include the transmission of any unsolicited advertisement

'(3) PRIVATE RIGHT OF ACTION- A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State--

'(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

'(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

'(C) both such actions

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

'(c) Protection of Subscriber Privacy Rights-

'(1) RULEMAKING PROCEEDING REQUIRED- Within 120 days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall--

'(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific 'do not call' systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

'(B) evaluate the categories of public and private entities that would have the

capacity to **establish** and **administer** such methods and procedures;

'(C) consider whether different **methods and procedures** may **apply** for local telephone solicitations, such **as local** telephone solicitations of **small businesses or holders of second class mail permits**;

'(D) consider whether **there is a need for additional Commission authority to further** restrict telephone solicitations, including **those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and**

'(E) develop **proposed** regulations to implement **the methods and procedures** that the Commission **determines are most effective and efficient to accomplish** the purposes of **this** section.

'(2) **REGULATIONS**-Not later than **9 months after the date of enactment of this section,** the Commission shall conclude the **rulemaking** proceeding initiated under **paragraph (1)** and shall prescribe regulations to implement **methods and procedures** for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional **charge** to telephone subscribers

'(3) **USE OF DATABASE PERMITTED**- The regulations **required** by paragraph **(2)** may **require** the **establishment** and operation of **a single national database to compile** a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and **parts thereof** available for purchase. If the **Commission** determines to **require** such a database, such regulations shall--

'(A) specify a method by which the Commission will select an entity to administer such **database**;

'(B) require each common **carrier** providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the **opportunity** to provide notification, in accordance with regulations established under **this** paragraph, that such subscriber objects to receiving telephone solicitations;

'(C) specify the methods by which each telephone subscriber shall **be informed,** by the common **carrier** that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph **(A),** and (ii) the methods by which such right may be exercised by **the** subscriber;

'(D) specify **the** methods by which such objections shall be collected and added to the database;

'(E) **prohibit any** residential subscriber **from** being charged for giving or revoking such notification or for being included in a database compiled **under this section**;

'(F) **prohibit any** person **from** making or transmitting a telephone solicitation to the

telephone number of my **subscriber** included in **such database**;

**(G) specify (i) the methods** by which **my person desiring** to make or transmit telephone solicitations will **obtain access** to the **database**, by **area code** or local **exchange prefix**, as required to avoid calling the telephone numbers of **subscribers** included in such **database**; and **(ii) the costs** to be recovered from such persons;

**(H) specify the methods for recovering, from persons accessing such database, the costs** involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the **database that are incurred** by the entities carrying out those activities;

**(I) specify the frequency with which such database** will be updated and specify the method by which such updating will **take effect** for purposes of compliance with the regulations prescribed under this subsection;

**(J) be designed to enable States to use the database** mechanism selected by the Commission for purposes of administering or enforcing State law;

**(K) prohibit the use of such database** for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

**(L) require each common carrier** providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

**(4) CONSIDERATIONS REQUIRED FOR USE OF DATABASE METHOD-** If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall--

**(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers** conducting business on a national, regional, State, or local level;

**(B) develop a fee schedule or price structure** for recouping the cost of such database that recognizes such differences and--

**(i) reflect the relative costs** of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

**(ii) reflect the relative costs** of providing such lists on paper or electronic media; and

**(iii) not place an unreasonable financial burden on small businesses;** and

**(C) consider (i) whether the needs of telemarketers** operating on a local basis

could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

'(5) PRIVATE RIGHT OF ACTION- A person who has received more than one telephone call within my 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State--

'(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

'(B) an action to recover for actual monetary loss from such a violation, or to receive up to \$500 in damages for each such violation, whichever is greater, or

'(C) both such actions.

It shall be an affirmative defense in my action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

'(6) RELATION TO SUBSECTION (B)- The provisions of this subsection shall not be construed to permit a communication prohibited by subsection (b).

'(d) Technical and Procedural Standards-

'(1) PROHIBITION- It shall be unlawful for my person within the United States--

'(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system, that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

'(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

'(2) TELEPHONE FACSIMILE MACHINES- The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after one year after the date of enactment of this section clearly marks, in a margin at the top or bottom of each