

DO-NOT-CALL REGISTRY FEE EXTENSION ACT OF 2007

DECEMBER 11, 2007.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 2601]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2601) to extend the authority of the Federal Trade Commission to collect fees to administer and enforce the provisions relating to the “Do-not-call” registry of the Telemarketing Sales Rule, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Do-Not-Call Registry Fee Extension Act of 2007”.

SEC. 2. FEES FOR ACCESS TO REGISTRY.

Section 2, of the Do-Not-Call Implementation Act (15 U.S.C. 6101 note) is amended to read as follows:

“SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL REGISTRY FEES.

“(a) **IN GENERAL.**—The Federal Trade Commission shall assess and collect an annual fee pursuant to this section in order to implement and enforce the ‘do-not-call’ registry as provided for in section 310.4(b)(1)(iii) of title 16, Code of Federal Regulations, or any other regulation issued by the Commission under section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102).

“(b) ANNUAL FEES.—

“(1) **IN GENERAL.**—The Commission shall charge each person who accesses the ‘do-not-call’ registry an annual fee that is equal to the lesser of—

“(A) \$54 for each area code of data accessed from the registry; or

“(B) \$14,850 for access to every area code of data contained in the registry.

“(2) **EXCEPTION.**—The Commission shall not charge a fee to any person—

“(A) for accessing the first 5 area codes of data; or

“(B) for accessing area codes of data in the registry if the person is permitted to access, but is not required to access, the ‘do-not-call’ registry under section 310 of title 16, Code of Federal Regulations, section 64.1200 of title 47, Code of Federal Regulations, or any other Federal regulation or law.

“(3) **DURATION OF ACCESS.—**

“(A) **IN GENERAL.**—The Commission shall allow each person who pays the annual fee described in paragraph (1), each person excepted under paragraph (2) from paying the annual fee, and each person excepted from paying an annual fee under section 310.4(b)(1)(iii)(B) of title 16, Code of Federal Regulations, to access the area codes of data in the ‘do-not-call’ registry for which the person has paid during that person’s annual period.

“(B) **ANNUAL PERIOD.**—In this paragraph, the term ‘annual period’ means the 12-month period beginning on the first day of the month in which a person pays the fee described in paragraph (1).

“(c) ADDITIONAL FEES.—

“(1) **IN GENERAL.**—The Commission shall charge a person required to pay an annual fee under subsection (b) an additional fee for each additional area code of data the person wishes to access during that person’s annual period.

“(2) **RATES.**—For each additional area code of data to be accessed during the person’s annual period, the Commission shall charge—

“(A) \$54 for access to such data if access to the area code of data is first requested during the first 6 months of the person’s annual period; or

“(B) \$27 for access to such data if access to the area code of data is first requested after the first 6 months of the person’s annual period.

“(d) ADJUSTMENT OF FEES.—

“(1) **IN GENERAL.—**

“(A) **FISCAL YEAR 2009.**—The dollar amount described in subsection (b) or (c) is the amount to be charged for fiscal year 2009.

“(B) **FISCAL YEARS AFTER 2009.**—For each fiscal year beginning after fiscal year 2009, each dollar amount in subsection (b)(1) and (c)(2) shall be increased by an amount equal to—

“(i) the dollar amount in paragraph (b)(1) or (c)(2), whichever is applicable, multiplied by

“(ii) the percentage (if any) by which the CPI for the most recently ended 12-month period ending on June 30 exceeds the baseline CPI.

“(2) **ROUNDING.**—Any increase under subparagraph (B) shall be rounded to the nearest dollar.

“(3) **CHANGES LESS THAN 1 PERCENT.**—The Commission shall not adjust the fees under this section if the change in the CPI is less than 1 percent.

“(4) **PUBLICATION.**—Not later than September 1 of each year the Commission shall publish in the Federal Register the adjustments to the applicable fees, if any, made under this subsection.

“(5) **DEFINITIONS.**—In this subsection:

“(A) **CPI.**—The term ‘CPI’ means the average of the monthly consumer price index (for all urban consumers published by the Department of Labor).

“(B) **BASELINE CPI.**—The term ‘baseline CPI’ means the CPI for the 12-month period ending June 30, 2008.

“(e) PROHIBITION AGAINST FEE SHARING.—No person may enter into or participate in an arrangement (as such term is used in section 310.8(c) of the Commission’s regulations (16 C.F.R. 310.8(c))) to share any fee required by subsection (b) or (c), including any arrangement to divide the costs to access the registry among various clients of a telemarketer or service provider.

“(f) HANDLING OF FEES.—

“(1) IN GENERAL.—The commission shall deposit and credit as offsetting collections any fee collected under this section in the account ‘Federal Trade Commission—Salaries and Expenses’, and such sums shall remain available until expended.

“(2) LIMITATION.—No amount shall be collected as a fee under this section for any fiscal year except to the extent provided in advance by appropriations Acts.”.

SEC. 3. REPORT.

Section 4 of the Do-Not-Call Implementation Act (15 U.S.C. 6101 note) is amended to read as follows:

“SEC. 4. REPORTING REQUIREMENTS.

“(a) BIENNIAL REPORTS.—Not later than December 31, 2009, and biennially thereafter, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

“(1) the number of consumers who have placed their telephone numbers on the registry;

“(2) the number of persons paying fees for access to the registry and the amount of such fees;

“(3) the impact on the ‘do-not-call’ registry of—

“(A) the 5-year reregistration requirement;

“(B) new telecommunications technology; and

“(C) number portability and abandoned telephone numbers; and

“(4) the impact of the established business relationship exception on businesses and consumers.

“(b) ADDITIONAL REPORT.—Not later than December 31, 2009, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

“(1) the effectiveness of do-not-call outreach and enforcement efforts with regard to senior citizens and immigrant communities;

“(2) the impact of the exceptions to the do-not-call registry on businesses and consumers, including an analysis of the effectiveness of the registry and consumer perceptions of the registry’s effectiveness; and

“(3) the impact of abandoned calls made by predictive dialing devices on do-not-call enforcement.”.

SEC. 4. RULEMAKING.

The Federal Trade Commission may issue rules, in accordance with section 553 of title 5, United States Code, as necessary and appropriate to carry out the amendments to the Do-Not-Call Implementation Act (15 U.S.C. 6101 note) made by this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 2601, the Do-Not-Call Registry Fee Extension Act of 2007, is to authorize the Federal Trade Commission (FTC) to continue to collect and spend fees to operate and enforce the National Do-Not-Call Registry (Registry), contingent on approval of the fees in annual appropriations acts. The authority to collect those fees expired at the end of fiscal year 2007. The bill also would require the FTC to prepare two reports about the use and effectiveness of the Registry.

BACKGROUND AND NEED FOR LEGISLATION

In 1994, Congress enhanced the enforcement arsenal of the FTC by enacting the Telemarketing and Consumer Fraud and Abuse

Prevention Act (the Telemarketing Act), 15 U.S.C. secs. 6101–6108. This legislation directed the FTC to issue a trade regulation rule defining and prohibiting deceptive or abusive telemarketing acts or practices. The FTC promulgated the Telemarketing Sales Rule (TSR) in 1995. The Telemarketing Act mandated that the TSR include prohibitions against any pattern of unsolicited telemarketing calls “which the reasonable consumer would consider coercive or abusive of such consumer’s right to privacy,” as well as restrictions on the hours that unsolicited telephone calls may be made to consumers.

In 2003, the FTC amended its TSR to, among other things, establish the Registry. The Registry, which allows consumers to express their wish not to receive telemarketing calls by entering their numbers in the Registry, currently includes more than 145 million telephone numbers and enjoys a reputation of being one of the most popular Federal programs in history.

Pursuant to this program, consumers can register their telephone numbers by calling a toll-free number from the telephone number that they wish to register, or over the Internet. Telemarketers and sellers can access registered telephone numbers through an Internet web site dedicated to that purpose, in order to remove those numbers from their call lists, and to pay the applicable fees for such access. Consumers who receive unwanted telemarketing calls can register a complaint via either a toll-free telephone number or the Internet. To conduct investigations, law enforcement officials also can access data in the Registry, including consumer registration information, telemarketer access information, and consumer complaints. Such access is provided through Consumer Sentinel, a secure Internet web site maintained by the FTC, to the law enforcement community throughout the United States, Canada, and Australia.

The Do-Not-Call Implementation Act, passed by Congress in 2003, gave the FTC specific authority to “promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the ‘Do-Not-Call’ Registry of the TSR.” The Implementation Act further stated that “[f]ees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission—Salaries and Expenses, and shall remain available until expended.” It also provided that “[n]o amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available . . . to offset the costs of activities and services related to the implementation and enforcement of the [TSR], and other activities resulting from such implementation and enforcement.” Pursuant to the Implementation Act and appropriations Acts, the FTC has conducted annual rulemaking proceedings to establish the appropriate level of fees to charge telemarketers for access to the Registry.

The fees collected are intended to offset costs in three areas. First, funds are required for direct operation of the Registry. Second, funds are required for law enforcement efforts, including identifying targets, coordinating domestic and international initiatives, challenging alleged violators, and engaging in consumer and business education efforts, which are critical to securing compliance

with the TSR. The FTC testified in October 2007 that, to date, it had initiated 27 cases alleging Do Not Call violations, that have resulted in orders totaling \$8.8 million in civil penalties and \$8.6 million in redress or disgorgement. Third, funds are required to cover ongoing FTC costs associated with the operation and enforcement of the Registry, including substantial investments in technology and infrastructure in response to the significantly increased capacity required by the Registry.

Under the current fee structure, telemarketers are charged \$62 per area code of data, starting with the sixth area code, up to a maximum of \$17,050 for the entire Registry. Telemarketers receive the first five area codes of data at no cost. The FTC allows such free access to limit the burden on small businesses that only require access to a small portion of the Registry. The Registry also allows organizations exempt from the Registry requirements to access the Registry voluntarily at no cost in order to avoid calling consumers who have expressed a preference not to receive telemarketing calls. These organizations include entities that make telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys. They also include entities making calls to persons with whom they have an established business relationship or from whom they have obtained express written consent, as defined by the TSR, and who do not access the Registry for any other purpose. While the Committee is aware of consumer complaints regarding alleged abuses by this latter group, see e.g., "Marketers Use Trickery To Evade No-Call Lists," Wall Street Journal, Friday, October 26, 2007, it intends to address these matters separately after an appropriate inquiry.

As discussed above, the FTC's Do-Not-Call fee-setting authority expired on September 30, 2007. The Committee believes that it is imperative that this authority be reauthorized in order to continue protecting consumers from unwanted intrusions into the privacy of their homes. To that end, this legislation will make permanent the authority of the FTC to collect fees in an amount sufficient to enable the FTC to adequately implement and enforce the TSR on an ongoing basis.

HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on Tuesday, October 23, 2007, entitled "Enhancing FTC Consumer Protection in Financial Dealings, with Telemarketers, and on the Internet," which examined 3 bills: H.R. 2601, H.R. 3461, and H.R. 3526. Testimony was received from Ms. Lydia B. Parnes, Director, Bureau of Consumer Protection, U.S. Federal Trade Commission.

COMMITTEE CONSIDERATION

On Tuesday, October 23, 2007, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and favorably forwarded H.R. 2601, amended, to the full Committee for consideration, by a voice vote. On Tuesday, October 30, 2007, the full Committee met in open markup session and ordered H.R. 2601 favorably reported to the House, as amended by the Subcommittee,

by a voice vote. No amendments were adopted during full Committee consideration.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 2601 reported. A motion by Mr. Dingell to order H.R. 2601 favorably reported to the House, amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee on H.R. 2601 are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 2601 is to reduce the harm to individuals from telemarketing fraud and abuse by authorizing the FTC to continue to collect fees to enable the agency to operate and enforce the popular “do-not-call” registry.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 2601 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2601 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 2601 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 2601 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

NOVEMBER 28, 2007.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2601, the Do-Not-Call Registry Fee Extension Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 2601—Do-Not-Call Registry Fee Extension Act of 2007

Summary: H.R. 2601 would authorize the Federal Trade Commission (FTC) to continue to collect and spend fees to operate and enforce the “do-not-call” registry. The registry contains a list of consumers whom telemarketers are prohibited from calling. The bill also would require FTC to prepare two reports for the Congress about the use and effectiveness of the registry.

Based on information from the FTC, CBO estimates that the agency would collect a total of \$107 million under the bill over the 2008–2012 period and spend \$105 million over that period, assuming appropriation actions consistent with the bill. Over the five-year period, CBO estimates that implementing H.R. 2601 would decrease net spending subject to appropriation by \$2 million. Enacting H.R. 2601 would not affect direct spending or revenues.

H.R. 2601 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 2601 would impose a private-sector mandate, as defined in UMRA, by making permanent the authority of the FTC to collect fees from telemarketers. CBO expects that the cost of that mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$131 million, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2601 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
FTC Spending for the Do-Not-Call Registry:					
Estimated Authorization Level	21	21	21	22	22
Estimated Outlays	19	21	21	22	22
Offsetting Collections from Telemarketers:					
Estimated Authorization Level	–21	–21	–21	–22	–22
Estimated Outlays	–21	–21	–21	–22	–22
Net Changes to FTC Spending:					
Estimated Authorization Level	0	0	0	0	0
Estimated Outlays	–2	0	0	0	0

Basis of estimate: H.R. 2601 would authorize the FTC to collect fees sufficient to operate and enforce the “do-not-call” registry, con-

tingent on approval of the fees in annual appropriation acts. For this estimate, CBO assumes that H.R. 2601 and the necessary appropriation provisions will be enacted near the beginning of fiscal year 2008. In fiscal year 2007, the FTC incurred costs of about \$25 million and collected fees of approximately \$22 million to operate and enforce the “do-not-call” registry.

The bill would set fees for firms that subscribe to the registry at rates lower than the FTC is currently charging. Based on information from the commission, CBO expects that the lower fees authorized by the bill would still be sufficient to cover the costs of operating the registry. CBO estimates that the FTC would collect \$107 million and spend \$105 million over the 2008–2012 period, assuming the necessary appropriation actions. Thus, over the five-year period, implementing H.R. 2601 would result in a reduction of \$2 million in net spending subject to appropriation.

CBO estimates that the cost of preparing two reports for the Congress regarding the effectiveness of the registry would be less than \$500,000, subject to the availability of appropriated funds.

Estimated impact on state, local, and tribal governments: H.R. 2601 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: The requirement that telemarketers pay fees to use the “do-not-call” registry would constitute a private-sector mandate as defined in UMRA. CBO estimates that those fees would amount to \$107 million over the next five years. Consequently, the cost of the mandate would fall below the annual threshold established in UMRA (\$131 million, adjusted annually for inflation).

Previous CBO estimate: On September 27, 2007, CBO transmitted an estimate for S. 781, the Do-Not-Call Registry Fee Extension Act of 2007, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on August 2, 2007. H.R. 2601 and S. 781 are identical, as are the cost estimates.

Estimate prepared by: Federal costs: Susan Willie; Impact on state, local, and tribal governments: Elizabeth Cove; Impact on the private sector: MarDestinee Perez.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 2601 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by H.R. 2601.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause

3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes, and in the provisions of Article I, section 8, clause 1, that relate to expending funds to provide for the general welfare of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill as the “Do-Not-Call Registry Fee Extension Act of 2007”.

Section 2. Fees for access to registry

Section 2(a) provides that the Federal Trade Commission shall assess and collect an annual fee pursuant to this section in order to implement and enforce the Registry.

Section 2(b) mandates that the FTC charge each person who accesses the Registry an annual fee that is equal to the lesser of (A) \$54 for each area code of data accessed from the Registry, or (B) \$14,850 for access to every area code of data contained in the Registry.

Additionally, Section 2(b) contains two exceptions from this requirement. The FTC may not charge a fee to any person for accessing the first five area codes of data. The FTC also may not charge a fee to any person for accessing area codes of data in the Registry if the person is permitted access, but is not required to access, the Registry. This maintains the current treatment for small businesses and for charitable, political, and other organizations expressly exempted from the Registry. Section 2(b) would require the FTC to allow each person who pays the annual fee and each person excepted from paying the annual fee either under paragraph (2) of this subsection or under section 310.4(b)(1)(iii)(B) of title 16, Code of Federal Regulations, to access the area codes of data in the Registry for which the person has paid during that person’s annual period. The term “annual period” means the 12-month period beginning on the first day of the month in which a person pays the fee described above.

Section 2(c) provides that the FTC shall charge a person required to pay an annual fee under subsection (b) an additional fee for each additional area code of data that the person wishes to access during that person’s annual period. The rates for each additional area code of data to be accessed during the person’s annual period shall be (A) \$54 for access to such data if access to the area code of data is first requested during the first 6 months of the person’s annual period, or (B) \$27 for access to such data if access to the area code of data is first requested after the first 6 months of the person’s annual period.

Section 2(d) addresses adjustment of the fees. The bill indicates that the dollar amount described in subsection (b) or (c) is the

amount to be charged for fiscal year 2009. For each fiscal year beginning after fiscal year 2009, each dollar amount in subsection (b)(1) and (c)(2) shall be increased by an amount equal to the applicable dollar amount multiplied by the percentage, if any, by which the consumer price index (CPI) for the most recently ended 12-month period ending on June 30 exceeds the baseline CPI. The bill provides that any such increase shall be rounded to the nearest dollar, and that the FTC shall not adjust the fees under this section if the change in the CPI is less than 1 percent. To foster transparency and accountability, the legislation requires the FTC, not later than September 1 of each year, to publish in the Federal Register the adjustments to the applicable fees, if any, made under this section. Section 2(d) defines “CPI” as the average of the monthly consumer price index for all urban consumers published by the Department of Labor. The term “baseline CPI” means the CPI for the 12-month period ending June 30, 2008.

Section 2(e) prohibits fee sharing arrangements, including any arrangement to divide the costs to access the Registry among various clients of a telemarketer or service provider.

Section 2(f) requires the FTC to deposit and credit as offsetting collections any fee collected under the section in the account “Federal Trade Commission—Salaries and Expenses”, and provides that such sums shall remain available until expended. The bill further provides that no amount shall be collected as a fee under this section for any fiscal year except to the extent provided in advance by appropriations Acts.

Section 3. Reports

Section 3 requires the FTC, in consultation with the Federal Communications Commission, to submit two reports to Congress not later than December 31, 2009, and biennially thereafter. The first report shall include (1) the number of consumers who have placed their telephone numbers on the registry; (2) the number of persons paying fees for access to the registry and the amount of such fees; (3) the impact on the Registry of the five-year registration requirement, new telecommunications technology, and number portability and abandoned telephone numbers; and (4) the impact of the established business relationship exception on businesses and consumers.

The second report shall include (1) the effectiveness of the Do-Not-Call outreach and enforcement efforts with regard to senior citizens and immigrant communities; (2) the impact of the exceptions to the Registry on businesses and consumers, including an analysis of the effectiveness of the Registry and consumer perceptions of the Registry’s effectiveness; and (3) the impact of abandoned calls made by predictive dialing devices on Do-Not-Call enforcement. This report should, among other things, calculate and discuss the complaints received from consumers since the inception of the Registry. The Committee is concerned about allegations of abuses surrounding the exceptions, particularly recent reports regarding so-called “lead generators”—unsolicited advertisements used to establish business relationships or trick recipients, mostly seniors, into waiving their do-not-call rights. State regulators indicate that insurers are using lead generator cards to peddle investments unsuitable for seniors, including living trusts that may pro-

vide no benefit and come with steep surrender charges and lengthy payout deferrals.

The reports shall include recommendations, if any, for any legislation or regulatory actions necessary for the protection of consumers.

Section 4. Rulemaking

Section 4 would authorize the FTC to issue rules, in accordance with section 553 of title 5, United States Code, as necessary and appropriate to carry out the amendments to the Implementation Act (15 U.S.C. 6101 note) made by this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DO-NOT-CALL IMPLEMENTATION ACT

* * * * *

[SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL REGISTRY FEES.

[The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the “do-not-call” registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission—Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement.**]**

SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL REGISTRY FEES.

(a) *IN GENERAL.*—*The Federal Trade Commission shall assess and collect an annual fee pursuant to this section in order to implement and enforce the “do-not-call” registry as provided for in section 310.4(b)(1)(iii) of title 16, Code of Federal Regulations, or any other regulation issued by the Commission under section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102).*

(b) *ANNUAL FEES.*—

(1) *IN GENERAL.*—*The Commission shall charge each person who accesses the “do-not-call” registry an annual fee that is equal to the lesser of—*

(A) \$54 for each area code of data accessed from the registry; or

(B) \$14,850 for access to every area code of data contained in the registry.

(2) *EXCEPTION.*—The Commission shall not charge a fee to any person—

(A) for accessing the first 5 area codes of data; or

(B) for accessing area codes of data in the registry if the person is permitted to access, but is not required to access, the “do-not-call” registry under section 310 of title 16, Code of Federal Regulations, section 64.1200 of title 47, Code of Federal Regulations, or any other Federal regulation or law.

(3) *DURATION OF ACCESS.*—

(A) *IN GENERAL.*—The Commission shall allow each person who pays the annual fee described in paragraph (1), each person excepted under paragraph (2) from paying the annual fee, and each person excepted from paying an annual fee under section 310.4(b)(1)(iii)(B) of title 16, Code of Federal Regulations, to access the area codes of data in the “do-not-call” registry for which the person has paid during that person’s annual period.

(B) *ANNUAL PERIOD.*—In this paragraph, the term “annual period” means the 12-month period beginning on the first day of the month in which a person pays the fee described in paragraph (1).

(c) *ADDITIONAL FEES.*—

(1) *IN GENERAL.*—The Commission shall charge a person required to pay an annual fee under subsection (b) an additional fee for each additional area code of data the person wishes to access during that person’s annual period.

(2) *RATES.*—For each additional area code of data to be accessed during the person’s annual period, the Commission shall charge—

(A) \$54 for access to such data if access to the area code of data is first requested during the first 6 months of the person’s annual period; or

(B) \$27 for access to such data if access to the area code of data is first requested after the first 6 months of the person’s annual period.

(d) *ADJUSTMENT OF FEES.*—

(1) *IN GENERAL.*—

(A) *FISCAL YEAR 2009.*—The dollar amount described in subsection (b) or (c) is the amount to be charged for fiscal year 2009.

(B) *FISCAL YEARS AFTER 2009.*—For each fiscal year beginning after fiscal year 2009, each dollar amount in subsection (b)(1) and (c)(2) shall be increased by an amount equal to—

(i) the dollar amount in paragraph (b)(1) or (c)(2), whichever is applicable, multiplied by

(ii) the percentage (if any) by which the CPI for the most recently ended 12-month period ending on June 30 exceeds the baseline CPI.

(2) *ROUNDING.*—Any increase under subparagraph (B) shall be rounded to the nearest dollar.

(3) *CHANGES LESS THAN 1 PERCENT.*—The Commission shall not adjust the fees under this section if the change in the CPI is less than 1 percent.

(4) *PUBLICATION.*—Not later than September 1 of each year the Commission shall publish in the Federal Register the adjustments to the applicable fees, if any, made under this subsection.

(5) *DEFINITIONS.*—In this subsection:

(A) *CPI.*—The term “CPI” means the average of the monthly consumer price index (for all urban consumers published by the Department of Labor).

(B) *BASELINE CPI.*—The term “baseline CPI” means the CPI for the 12-month period ending June 30, 2008.

(e) *PROHIBITION AGAINST FEE SHARING.*—No person may enter into or participate in an arrangement (as such term is used in section 310.8(c) of the Commission’s regulations (16 C.F.R. 310.8(c))) to share any fee required by subsection (b) or (c), including any arrangement to divide the costs to access the registry among various clients of a telemarketer or service provider.

(f) *HANDLING OF FEES.*—

(1) *IN GENERAL.*—The commission shall deposit and credit as offsetting collections any fee collected under this section in the account “Federal Trade Commission—Salaries and Expenses”, and such sums shall remain available until expended.

(2) *LIMITATION.*—No amount shall be collected as a fee under this section for any fiscal year except to the extent provided in advance by appropriations Acts.

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SEC. 4. REPORTING REQUIREMENTS.

[(a) *REPORT ON REGULATORY COORDINATION.*—Within 45 days after the promulgation of a final rule by the Federal Communications Commission as required by section 3, the Federal Trade Commission and the Federal Communications Commission shall each transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

[(1) an analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

[(2) any inconsistencies between the rules promulgated by each such Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

[(3) proposals to remedy any such inconsistencies.

[(b) *ANNUAL REPORT.*—For each of fiscal years 2003 through 2007, the Federal Trade Commission and the Federal Communications Commission shall each transmit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

[(1) an analysis of the effectiveness of the “do-not-call” registry as a national registry;

[(2) the number of consumers who have placed their telephone numbers on the registry;

【(3) the number of persons paying fees for access to the registry and the amount of such fees;

【(4) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with similar registries established and maintained by the various States;

【(5) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and

【(6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission, and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.), in the case of the Federal Communications Commission.】

SEC. 4. REPORTING REQUIREMENTS.

(a) *BIENNIAL REPORTS.*—Not later than December 31, 2009, and biennially thereafter, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

(1) the number of consumers who have placed their telephone numbers on the registry;

(2) the number of persons paying fees for access to the registry and the amount of such fees;

(3) the impact on the “do-not-call” registry of—

(A) the 5-year reregistration requirement;

(B) new telecommunications technology; and

(C) number portability and abandoned telephone numbers; and

(4) the impact of the established business relationship exception on businesses and consumers.

(b) *ADDITIONAL REPORT.*—Not later than December 31, 2009, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

(1) the effectiveness of do-not-call outreach and enforcement efforts with regard to senior citizens and immigrant communities;

(2) the impact of the exceptions to the do-not-call registry on businesses and consumers, including an analysis of the effectiveness of the registry and consumer perceptions of the registry’s effectiveness; and

(3) the impact of abandoned calls made by predictive dialing devices on do-not-call enforcement.

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