

108TH CONGRESS  
1ST SESSION

# S. 1661

To require the Federal Trade Commission to establish a list of consumers who request not to receive telephone sales calls.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2003

Mr. DODD 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 require the Federal Trade Commission to establish a list of consumers who request not to receive telephone sales calls.

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 “Telemarketing Intrusive Practices Act of 2003”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) CALLER IDENTIFICATION SERVICE OR DE-  
9       VICE.—The term “caller identification service or de-  
10      vice” means a telephone service or device that per-

1 mits a consumer to see the telephone number of an  
2 incoming call.

3 (2) CHAIRMAN.—The term “Chairman” means  
4 the Chairman of the Federal Trade Commission.

5 (3) COMMISSION.—The term “Commission”  
6 means the Federal Trade Commission.

7 (4) CONSUMER.—The term “consumer” means  
8 an individual who is an actual or prospective pur-  
9 chaser, lessee, or recipient of consumer goods or  
10 services.

11 (5) CONSUMER GOODS OR SERVICES.—The  
12 term “consumer good or service” means an article or  
13 service that is purchased, leased, exchanged, or re-  
14 ceived primarily for personal, family, or household  
15 purposes, including stocks, bonds, mutual funds, an-  
16 nnuities, credit cards, and other financial products.

17 (6) MARKETING OR SALES SOLICITATION.—

18 (A) IN GENERAL.—The term “marketing  
19 or sales solicitation” means the initiation of a  
20 telephone call or message to encourage the pur-  
21 chase of, rental of, or investment in, property,  
22 goods, or services, that is transmitted to a per-  
23 son.

24 (B) EXCEPTION.—The term does not in-  
25 clude a call or message—

1 (i) to a person with the prior express  
2 invitation or permission of that person;

3 (ii) by a tax-exempt nonprofit organi-  
4 zation;

5 (iii) on behalf of a political candidate  
6 or political party; or

7 (iv) to promote the success or defeat  
8 of a referendum question.

9 (7) STATE.—The term “State” means each of  
10 the several States of the United States and the Dis-  
11 trict of Columbia.

12 (8) TELEPHONE SALES CALL.—

13 (A) IN GENERAL.—The term “telephone  
14 sales call” means a call made by a telephone so-  
15 licitor to a consumer for the purpose of—

16 (i) engaging in a marketing or sales  
17 solicitation, including a solicitation for a  
18 new consumer good or service where the  
19 consumer and the telephone solicitor had a  
20 prior relationship;

21 (ii) soliciting an extension of credit for  
22 consumer goods or services; or

23 (iii) obtaining information that will or  
24 may be used for the direct marketing or  
25 sales solicitation or exchange of or exten-

1                   sion of credit for consumer goods or serv-  
2                   ices.

3                   (B) EXCEPTION.—The term does not in-  
4                   clude a call made—

5                   (i) in response to an express request  
6                   of the person called; or

7                   (ii) primarily in connection with an  
8                   existing debt or contract, payment, or per-  
9                   formance that has not been completed at  
10                  the time of the call.

11                 (9) TELEPHONE SOLICITOR.—The term “tele-  
12                 phone solicitor” means an individual, association,  
13                 corporation, partnership, limited partnership, limited  
14                 liability company or other business entity, or a sub-  
15                 sidiary or affiliate thereof, that does business in the  
16                 United States and makes or causes to be made a  
17                 telephone sales call.

18 **SEC. 3. FEDERAL TRADE COMMISSION NO CALL LIST.**

19                 (a) IN GENERAL.—The Commission shall—

20                   (1) establish and maintain a list for each State,  
21                   of consumers who request not to receive telephone  
22                   sales calls; and

23                   (2) provide notice to consumers of the establish-  
24                   ment of the lists.

1 (b) STATE CONTRACT.—The Commission may con-  
2 tract with a State to establish and maintain the lists.

3 (c) PRIVATE CONTRACT.—The Commission may con-  
4 tract with a private vendor to establish and maintain the  
5 lists if the private vendor has maintained a national listing  
6 of consumers who request not to receive telephone sales  
7 calls, for not less than 2 years, or is otherwise determined  
8 by the Commission to be qualified.

9 (d) CONSUMER RESPONSIBILITY.—

10 (1) INCLUSION ON LIST.—Except as provided in  
11 subsection (d)(2), a consumer who wishes to be in-  
12 cluded on a list established under subsection (a)  
13 shall notify the Commission in such manner as the  
14 Chairman may prescribe to maximize the consumer's  
15 opportunity to be included on that list.

16 (2) DELETION FROM LIST.—Information about  
17 a consumer shall be deleted from a list upon the  
18 written request of the consumer.

19 (e) UPDATE.—The Commission shall—

20 (1) update the lists maintained by the Commis-  
21 sion not less than quarterly with information the  
22 Commission receives from consumers; and

23 (2) annually request a no call list from each  
24 State that maintains a no call list and update the  
25 lists maintained by the Commission at that time to

1 ensure that the lists maintained by the Commission  
2 contain the same information contained in the no  
3 call lists maintained by individual States.

4 (f) FEES.—The Commission may charge a reasonable  
5 fee for providing a list.

6 (g) AVAILABILITY.—

7 (1) IN GENERAL.—The Commission shall make  
8 a list available only to a telephone solicitor.

9 (2) FORMAT.—The list shall be made available  
10 in printed or electronic format, or both, at the dis-  
11 cretion of the Chairman.

12 **SEC. 4. TELEPHONE SOLICITOR NO CALL LIST.**

13 (a) IN GENERAL.—A telephone solicitor shall main-  
14 tain a list of consumers who request not to receive tele-  
15 phone sales calls from that particular telephone solicitor.

16 (b) PROCEDURE.—If a consumer receives a telephone  
17 sales call and requests to be placed on the do not call list  
18 of that telephone solicitor, the solicitor shall—

19 (1) place the consumer on the no call list of the  
20 solicitor; and

21 (2) provide the consumer with a confirmation  
22 number which shall provide confirmation of the re-  
23 quest of the consumer to be placed on the no call list  
24 of that telephone solicitor.

1 **SEC. 5. TELEPHONE SOLICITATIONS.**

2 (a) TELEPHONE SALES CALL.—A telephone solicitor  
3 may not make or cause to be made a telephone sales call  
4 to a consumer—

5 (1) if the name and telephone number of the  
6 consumer appear in the then current quarterly lists  
7 made available by the Commission under section 3;

8 (2) if the consumer previously requested to be  
9 placed on the do not call list of the telephone solici-  
10 ator pursuant to section 4;

11 (3) to be received between the hours of nine  
12 o'clock p.m. and nine o'clock a.m. and between five  
13 o'clock p.m. and seven o'clock p.m., local time, at  
14 the location of the consumer;

15 (4) in the form of an electronically transmitted  
16 facsimile; or

17 (5) by use of an automated dialing or recorded  
18 message device.

19 (b) CALLER IDENTIFICATION DEVICE.—A telephone  
20 solicitor shall not knowingly use any method to block or  
21 otherwise circumvent the use of a caller identification serv-  
22 ice or device by a consumer.

23 (c) SALE OF CONSUMER INFORMATION TO TELE-  
24 PHONE SOLICITORS.—

25 (1) IN GENERAL.—A person who obtains the  
26 name, residential address, or telephone number of a

1 consumer from a published telephone directory or  
2 from any other source and republishes or compiles  
3 that information, electronically or otherwise, and  
4 sells or offers to sell that publication or compilation  
5 to a telephone solicitor for marketing or sales solici-  
6 tation purposes, shall exclude from that publication  
7 or compilation, and from the database used to pre-  
8 pare that publication or compilation, the name, ad-  
9 dress, and telephone number of a consumer if the  
10 name and telephone number of the consumer appear  
11 in the then current quarterly list made available by  
12 the Commission under section 3.

13 (2) EXCEPTION.—This subsection does not  
14 apply to a publisher of a telephone directory when  
15 a consumer is called for the sole purpose of com-  
16 piling, publishing, or distributing a telephone direc-  
17 tory intended for use by the general public.

18 **SEC. 6. REGULATIONS.**

19 The Chairman may adopt regulations to carry out  
20 this Act that shall include—

21 (1) provisions governing the availability and  
22 distribution of the lists established under section 3;

23 (2) notice requirements for a consumer who re-  
24 quests to be included on the lists established under  
25 section 3; and

1           (3) a schedule for the payment of fees to be  
2           paid by a person who requests a list made available  
3           under section 3.

4 **SEC. 7. CIVIL CAUSE OF ACTION.**

5           (a) ACTION BY COMMISSION.—

6           (1) UNFAIR OR DECEPTIVE TRADE PRACTICE.—

7           A violation of section 4 or 5 is an unfair or deceptive  
8           trade practice under section 5 of the Federal Trade  
9           Commission Act (15 U.S.C. 45).

10           (2) CUMULATIVE DAMAGES.—In a civil action  
11           brought by the Commission under section 5 of the  
12           Federal Trade Commission Act (15 U.S.C. 45) to  
13           recover damages arising from more than one alleged  
14           violation, the damages shall be cumulative.

15           (b) PRIVATE RIGHT OF ACTION.—

16           (1) IN GENERAL.—A person or entity may, if  
17           otherwise permitted by the laws or the rules of court  
18           of a State, bring in an appropriate court of that  
19           State—

20                   (A) an action based on a violation of sec-  
21                   tion 4, 5, or 6 to enjoin the violation;

22                   (B) an action to recover for actual mone-  
23                   etary loss from a violation of section 4, 5, or 6,  
24                   or to receive \$500 in damages for each viola-  
25                   tion, whichever is greater; or

1 (C) an action under paragraphs (1) and  
2 (2).

3 (2) WILLFUL VIOLATION.—If the court finds  
4 that the defendant willfully or knowingly violated  
5 section 4, 5, or 6, the court may, in the discretion  
6 of the court, increase the amount of the award to an  
7 amount equal to not more than 3 times the amount  
8 available under paragraph (1)(B) of this subsection  
9 and to include reasonable attorney's fees.

10 **SEC. 8. EFFECT ON STATE LAW.**

11 Nothing in this Act shall be construed to prohibit a  
12 State from enacting or enforcing more stringent legisla-  
13 tion in the regulation of telephone solicitors.

14 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated such sums  
16 as necessary to carry out the provisions of this Act.

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