

111TH CONGRESS  
1ST SESSION

# H. R. 1391

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2009

Mr. GINGREY of Georgia introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Stop M-Spam Abuse  
5 as a Sales Industry Habit Act of 2009” or as the  
6 “SMASH Act of 2009”.

1 **SEC. 2. TEXT MESSAGES CONTAINING UNSOLICITED AD-**  
2 **VERTISEMENTS SENT TO CELLULAR TELE-**  
3 **PHONES EXPLICITLY PROHIBITED.**

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

11 (1) assigned to a commercial mobile service;  
12 and

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

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

18 (1) ELECTRONIC COMMERCIAL MESSAGE.—The  
19 term “electronic commercial message” means any  
20 type of message, other than a mobile service com-  
21 mercial message (as defined in section 14(d) of the  
22 CAN–SPAM Act of 2003 (15 U.S.C. 7712(d))), sent  
23 to a cellular telephone, including a text message,  
24 multimedia message, or any successor type of mes-  
25 sage.

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

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

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

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

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

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