

111TH CONGRESS
1ST SESSION

S. 788

To prohibit unsolicited mobile text message spam.

IN THE SENATE OF THE UNITED STATES

APRIL 2, 2009

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

A BILL

To prohibit unsolicited mobile text message spam.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “m-SPAM Act of
5 2009”.

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

7 **FROM THE DEFINITION OF MOBILE SERVICE**

8 **COMMERCIAL MESSAGE.**

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

1 “(d) DEFINITIONS.—In this section:

2 “(1) COMMERCIAL MOBILE SERVICE.—The term
3 ‘commercial mobile service’ has the same meaning
4 given such term in section 332(d) of the Commu-
5 nications Act of 1934 (47 U.S.C. 332(d)).

6 “(2) MOBILE SERVICE COMMERCIAL MES-
7 SAGE.—The term ‘mobile service commercial mes-
8 sage’—

9 “(A) means—

10 “(i) a commercial electronic mail mes-
11 sage that is transmitted directly to a wire-
12 less device that is utilized by a subscriber
13 of commercial mobile service in connection
14 with such service; and

15 “(ii) an unsolicited short message or a
16 short message where the recipient of such
17 message has not previously agreed to enter
18 or exercised an option to enter into an
19 agreement with the sender of such message
20 to receive such messages; and

21 “(B) does not include any such commercial
22 electronic mail message or short message, if the
23 primary purpose of such message is to—

24 “(i) facilitate, complete, or confirm a
25 commercial transaction that the recipient

1 of such message has previously agreed to
2 enter into with the sender of such message;

3 “(ii) provide warranty information,
4 product recall information, or safety or se-
5 curity information with respect to a com-
6 mercial product or service used or pur-
7 chased by the recipient of such message;

8 “(iii) provide, with respect to a sub-
9 scription, membership, account, loan, or
10 comparable ongoing commercial relation-
11 ship involving the ongoing purchase or use
12 by the recipient of such message of prod-
13 ucts or services offered by the sender of
14 such message—

15 “(I) notice concerning a change
16 in the terms or features of such sub-
17 scription, membership, account, loan,
18 or comparable ongoing commercial re-
19 lationship;

20 “(II) notice of a change in the
21 standing or status of the recipient
22 with respect to such subscription,
23 membership, account, loan, or com-
24 comparable ongoing commercial relation-
25 ship; or

1 “(III) at regular periodic inter-
2 vals, account balance information or
3 other types of account statements
4 with respect to such subscription,
5 membership, account, loan, or com-
6 parable ongoing commercial relation-
7 ship;

8 “(iv) provide information directly re-
9 lated to an employment relationship or re-
10 lated benefit plan in which the recipient of
11 such message is eligible for, currently in-
12 volved, participating, or enrolled; or

13 “(v) deliver goods or services, includ-
14 ing product updates or upgrades, that the
15 recipient of such message is entitled to re-
16 ceive under the terms of a transaction that
17 the recipient has previously agreed to enter
18 into with the sender of such message.

19 “(3) SHORT MESSAGE.—The term ‘short mes-
20 sage’ means a text or other message sent to a tele-
21 phone number or an identifier other than an elec-
22 tronic mail address assigned to a wireless device.

23 “(4) WIRELESS DEVICE.—The term ‘wireless
24 device’ means a phone or other device utilized by a

1 user of commercial mobile service in connection with
2 such service.”.

3 (b) CERTAIN MESSAGES.—

4 (1) APPLICABILITY OF ACT.—Section 14 of the
5 CAN–SPAM Act of 2003 (15 U.S.C. 7712) is
6 amended by adding at the end the following:

7 “(e) APPLICABILITY REGARDING SHORT MESSAGING
8 SERVICES AND MOBILE SERVICE COMMERCIAL MES-
9 SAGES.—This section shall not prohibit—

10 “(1) the sending of short messages—

11 “(A) from one wireless device to another;

12 or

13 “(B) from a provider of commercial mobile
14 service to its subscribers at no charge to its
15 subscribers; and

16 “(2) the sending of mobile service commercial
17 messages by a provider of commercial mobile service
18 to its subscribers at no charge to its subscribers un-
19 less a subscriber has expressed his or her desire not
20 to receive such messages from the provider.”.

21 (2) CONFORMING AMENDMENT.—Section 14(b)
22 of the CAN–SPAM Act of 2003 (15 U.S.C. 7712(b))
23 is amended—

1 (A) in paragraph (1), by striking “para-
 2 graph (3)” and inserting “subsection (e)(2)”;
 3 and

4 (B) in paragraph (3), by striking “take
 5 into consideration” and all that follows through
 6 “such providers,” and inserting “shall require
 7 providers of commercial mobile service.”.

8 **SEC. 3. PROHIBITION ON UNAUTHORIZED MOBILE SERVICE**
 9 **COMMERCIAL MESSAGES CONTAINING UNSO-**
 10 **LICITED ADVERTISEMENTS.**

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

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

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

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

18 “(E) to send a mobile service commercial
 19 message to any person who has not provided ex-
 20 press prior authorization for the receipt of such
 21 message to the sender of such message.”.

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

24 (1) by redesignating paragraphs (3) through
 25 (5) as paragraphs (5) through (7), respectively; and

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

3 “(3) The term ‘commercial mobile service’ has
4 the same meaning given such term in section
5 332(d).

6 “(4) The terms ‘mobile service commercial mes-
7 sage’, ‘short message’, and ‘wireless device’ have the
8 same meanings given such terms, respectively, in
9 section 14(d) of the CAN–SPAM Act of 2003 (15
10 U.S.C. 7712(d)).”.

11 (c) APPLICABILITY.—Section 227(d) of the Commu-
12 nications Act of 1934 (47 U.S.C. 227(d)) is amended by
13 adding at the end the following:

14 “(4) APPLICABILITY OF PROHIBITION ON MO-
15 BILE SERVICE COMMERCIAL MESSAGES.—The prohi-
16 bition prescribed under subsection (b)(1)(E) shall
17 not prohibit—

18 “(A) the sending of short messages—

19 “(i) from one wireless device to an-
20 other; or

21 “(ii) from a provider of commercial
22 mobile service to its subscribers at no
23 charge to its subscribers; and

24 “(B) the sending of mobile service com-
25 mercial messages by a provider of commercial

1 mobile service to its subscribers at no charge to
 2 its subscribers unless a subscriber has ex-
 3 pressed his or her desire not to receive such
 4 messages from the provider.”.

5 (d) EFFECT ON STATE LAW.—Nothing in this Act
 6 or the amendments made by this Act shall be construed
 7 to give a State any greater authority over mobile service
 8 commercial messages than the authority accorded to the
 9 States with respect to commercial electronic mail messages
 10 or the information attached thereto under the CAN-
 11 SPAM Act of 2003 (15 U.S.C. 7701 et seq.).

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

16 (a) IN GENERAL.—Not later than 180 days after the
 17 date of the enactment of this Act, the Federal Trade Com-
 18 mission shall revise the do-not-call registry provisions of
 19 the Telemarketing Sales Rule (16 C.F.R.
 20 310.4(b)(1)(iii))—

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

24 (2) to explicitly prohibit, as an abusive tele-
 25 marketing act or practice, the sending of any mobile

1 service commercial message to a telephone number
2 that is—

3 (A) assigned to a commercial mobile serv-
4 ice; and

5 (B) listed on the do-not-call registry,
6 except for such messages sent by a provider of com-
7 mercial mobile service to its subscribers at no charge
8 to the subscriber.

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

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

14 (2) the term “commercial mobile service” has
15 the same meaning given such term in section 332(d)
16 of the Communications Act of 1934 (47 U.S.C.
17 332(d)).

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