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107TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 107–13

KNOW YOUR CALLER ACT OF 2001

MARCH 12, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 90]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 90) to amend the Communications Act of 1934 to prohibit telemarketers from interfering with the caller identification service of any person to whom a telephone solicitation is made, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 90 is to prevent telemarketers from interfering with or circumventing caller identification information from being transmitted to consumers. This bill specifically prevents tele-

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marketers from blocking caller identification information and requires telemarketers to provide that information when they have the capability to do so. If a telemarketer's telecommunications service or equipment is incapable of transmitting caller identification information, it will not constitute a violation of the bill if that information is not transmitted. The bill also prohibits telemarketers from using information on "do-not-call" lists for any other marketing purpose.

BACKGROUND AND NEED FOR LEGISLATION

Telemarketing has been, and continues to be, a controversial marketing practice. Telemarketing can provide huge benefits for consumers. In many instances, consumers are introduced to new opportunities or products through telemarketing. Telemarketing can also promote the availability of competitive alternatives to incumbent providers and help facilitate a competitive marketplace. Unfortunately, certain telemarketing practices can be a significant and intrusive nuisance for consumers, as well as a source of consumer confusion. In some instances, rogue telemarketers can take advantage of this confusion to commit fraud against consumers.

To protect against these abuses, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA) (P.L. 102–243; 47 U.S.C. § 227). Regulated by the Federal Communications Commission (FCC), the TCPA, among other things, requires telemarketers to follow "do not call" requests from consumers, restricts telemarketing calling hours to 8:00 a.m.–9:00 p.m., mandates that telemarketers provide the name of the solicitor, name of the entity calling, and the telephone number or address where that person may be contacted, and includes a private right of action. Established business relationships and tax-exempt non-profit organizations are specifically exempted under the TCPA.

The Federal Trade Commission (FTC) has implemented the Telemarketing Sales Rule which requires telemarketers to make certain disclosures and prohibits certain misrepresentations. These rules give the consumer the power to stop unwanted telemarketing calls, requires solicitors to identify the seller, their purpose and the nature of what is being sold, limits commercial telephone solicitations to between 8:00 a.m. and 9:00 p.m., and gives State law enforcement officers the authority to prosecute fraudulent telemarketers who operate across State lines.

Despite these restrictions, telemarketing complaints continue to rise. According to the FTC, telemarketing complaints have increased significantly from 1997–1999. In 1997, the FTC received 2,260 complaints, in 1998 complaints rose to 8,667, and in 1999 complaints totaled 17,423. In light of these concerns, H.R. 3100 was drafted to create additional consumer protections.

HEARINGS

The Committee on Energy and Commerce has not held hearings on H.R. 90.

COMMITTEE CONSIDERATION

On February 28, 2001, the Full Committee met in open markup session and ordered H.R. 90 reported to the House, by a voice vote, a quorum being present.

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 in connection with ordering H.R. 90 reported. A motion by Mr. Tauzin to order H.R. 90 reported to the House passed by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

The Committee did not hold a legislative or oversight hearing on H.R. 90 in the 107th Congress.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 90 will enhance current consumer protection law by giving consumers better information about the telemarketers that are calling them.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 90, the Know Your Caller Act of 2001, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate 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 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 7, 2001.

Hon. W.J. "BILLY" TAUZIN,
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. 90, the Know Your Caller Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson (for federal

costs), Shelley Finlayson (for the state and local impact), and Jean Talarico (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 90—Know Your Caller Act of 2001

H.R. 90 would require the Federal Communications Commission (FCC) to issue regulations prohibiting telephone solicitors from purposefully blocking their name, phone number, and other identifying information from appearing on caller identification systems. In addition, the bill would establish a private right of action in state courts to punish violations of these provisions. Finally, the bill would require the FCC to study issues surrounding the transmission of caller identification information and report to the Congress within one year of the bill's enactment.

Based on information from the FCC, CBO estimates that the FCC would spend less than $500,000 a year to implement H.R. 90, assuming the availability of appropriated funds. Under current law, the FCC is authorized to collect fees from the telecommunications industry sufficient to offset the cost of its enforcement programs. Therefore, CBO assumes that the additional costs of enforcing H.R. 90 would be offset by an increase in collections credited to the FCC's annual appropriations.

Under current law, the FCC has the authority to assess forfeiture penalties for violations of regulations such as those that would be promulgated under H.R. 90. Based on information from the FCC, CBO estimates that implementation of H.R. 90 would increase the forfeiture penalties collected by the agency by about $1 million annually. Because such penalties are classified as governmental receipts, pay-as-you-go procedures would apply.

H.R. 90 contains an intergovernmental mandate as defined in Unfunded Mandates Reform Act (UMRA). The bill would preempt caller identification provisions of some state telemarketing statutes, which could affect the associated fines and penalties. Because states vary significantly in their regulation of telephone solicitors, CBO cannot determine precisely the total revenue loss they would experience as a result of this bill. However, based on our estimate of the number of states regulating in this area, the size of the fines assessed, and the amount of fine revenue generated, CBO estimates that state revenue losses would not exceed the threshold established by UMRA ($55 million in 2000, adjusted annually for inflation).

H.R. 90 would impose private-sector mandates, as defined by UMRA, on telephone solicitors. A company that has telecommunication services or equipment that is capable of transmitting its name and phone number would be required to do so. The bill also would prohibit those companies from using a person's name and number for telemarketing, mail marketing, or any other marketing purposes when that person has requested to be placed on a "do-not-call" list. Based on information from the FCC and industry representatives, CBO estimates that the cost of the mandates would be well below the threshold established by UMRA for private-sector mandates ($109 million in 2000, adjusted annually for inflation).

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Shelley Finlayson (for the state and local impact), and Jean Talarico (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates 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 this legislation.

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.

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.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1. Short title

Section 1 establishes the short title of the legislation, the "Know Your Caller Act of 2001".

Sec. 2. Prohibition of interference with caller identification services

Section 2 amends section 227 of the Communications Act of 1934 (47 U.S.C. §227) by making it unlawful for any person making a telephone solicitation to interfere with or circumvent the transmission of caller identification information. If a person making a telephone solicitation has the ability to provide caller identification information, that person must provide such information. The use of telecommunications service or equipment that is incapable of transmitting such information does not constitute interference or circumvention pursuant to the bill.

Section 2 also directs the FCC to prescribe regulations implementing the subsection. The regulations must direct the person making the telemarketing call to disclose the following caller identification information: the name of the person placing the telephone solicitation, the name of the person on whose behalf the solicitation is being made, and a valid working telephone number of the person or entity on whose behalf the telephone solicitation is being made. This section also provides that the names and telephone numbers compiled as part of a "do-not-call" list may not be used for any marketing purpose.

Section 2 further allows a person or entity to bring a private right of action for an injunction, actual monetary damages or $500 per violation, or both. If a court finds the defendant acted willfully or knowingly, the court may award treble damages.

Section 2 also defines a "caller identification service" and "telephone call."

Sec. 3. Effect on State law and State actions

Section 3 makes it clear that any State may bring an action for blocking caller identification information during a telephone solicitation or telephone call. This section also preempts State laws that deal with the same subject matter, although it allows States to set fines higher than the $500 fine set forth in section 2(e)(3)(B).

Sec. 4. Study regarding transmission of caller identification information

Section 4 requires that the FCC, within one year, conduct a study to determine the capability of the public switched network to transmit caller identification information; the types of equipment being used by the telemarketing industry and the capability of such equipment to transmit caller identification information; the changes necessary to the public switched network and telemarketing equipment to allow for the transmission of caller identification information in all instances; and the cost related to those changes.

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):

SECTION 227 OF THE COMMUNICATIONS ACT OF 1934

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

(a) * * *

* * * * * * *

(e) PROHIBITION ON INTERFERENCE WITH CALLER IDENTIFICATION SERVICES.—

(1) IN GENERAL.—It shall be unlawful for any person within the United States, in making any telephone solicitation—

(A) to interfere with or circumvent the capability of a caller identification service to access or provide to the recipient of the telephone call involved in the solicitation any information regarding the call that such service is capable of providing; and

(B) to fail to provide caller identification information in a manner that is accessible by a caller identification service, if such person has capability to provide such information in such a manner.

For purposes of this section, the use of a telecommunications service or equipment that is incapable of transmitting caller identification information shall not, of itself, constitute inter-

ference with or circumvention of the capability of a caller identification service to access or provide such information.

(2) REGULATIONS.—Not later than 6 months after the enactment of the Know Your Caller Act of 2001, the Commission shall prescribe regulations to implement this subsection, which shall—

(A) specify that the information regarding a call that the prohibition under paragraph (1) applies to includes—

(i) the name of the person or entity who makes the telephone call involved in the solicitation;

(ii) the name of the person or entity on whose behalf the solicitation is made; and

(iii) a valid and working telephone number at which the person or entity on whose behalf the telephone solicitation is made may be reached during regular business hours for the purpose of requesting that the recipient of the solicitation be placed on the do-not-call list required under section 64.1200 of the Commission's regulations (47 CFR 64.1200) to be maintained by such person or entity; and

(B) provide that any person or entity who receives a request from a person to be placed on such do-not-call list may not use such person's name and telephone number for telemarketing, mail marketing, or other marketing purpose (including transfer or sale to any other entity for marketing use) other than enforcement of such list.

(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.

(4) DEFINITIONS.—For purposes of this subsection:

(A) CALLER IDENTIFICATION SERVICE.—The term "caller identification service" means any service or device designed to provide the user of the service or device with the telephone number of an incoming telephone call.

(B) TELEPHONE CALL.—The term "telephone call" means any telephone call or other transmission which is made to or received at a telephone number of any type of telephone service and includes telephone calls made using the Internet (irrespective of the type of customer premises equipment used in connection with such services). Such term also includes calls made by an automatic telephone dialing system, an integrated services digital network, and a commercial mobile radio source.

[(e)] *(f)* EFFECT ON STATE LAW.—

(1) STATE LAW NOT PREEMPTED.—Except for the standards prescribed under subsection (d) *and the prohibition under paragraphs (1) and (2) of subsection (e),* and subject to paragraph (2) of this subsection, 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—

(A) * * *

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[(f)] *(g)* 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 person has engaged or is engaging in a pattern or practice of [telephone calls] *telephone solicitations, telephone calls, or* or other transmissions to residents of that State in violation of this section or 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. If the court finds the defendant willfully or knowingly violated such regulations, 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 the preceding sentence.

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