

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 868**

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**AMENDMENT**



1           (2) “Commission” means the Federal Trade  
2 Commission;

3           (3) “State” means any State of the United  
4 States, the District of Columbia, Puerto Rico, the  
5 Northern Mariana Islands, and any territory or pos-  
6 session of the United States;

7           (4) “telemarketing” means a plan, program, or  
8 campaign which is conducted to induce purchases of  
9 goods or services by significant use of one or more  
10 telephones and which has involved interstate telephone  
11 calls; the term does not include other use of a tele-  
12 phone in connection with business or personal trans-  
13 actions, nor does the term include the solicitation of  
14 sales through the mailing of a catalog which—

15                 (A) contains a written description or illus-  
16 tration of the goods or services offered for sale;

17                 (B) includes the business address of the sell-  
18 er;

19                 (C) includes multiple pages of written mate-  
20 rial or illustrations;

21                 (D) is issued not less frequently than once  
22 a year; and

23                 (E) is at least the third catalog satisfying  
24 the requirements of subparagraphs (A) through

1           (D) that has been issued by the seller within the  
2           last 5 years,

3           where the seller does not place calls to customers but  
4           only receives calls initiated by customers in response  
5           to the catalog and during those calls takes orders only  
6           without further solicitation; and

7           (5) “credit card laundering” means—

8                   (A) the act or practice by a person engaged  
9                   in telemarketing (other than an act or practice  
10                  permitted in a valid agreement with a member  
11                  of a credit card system or the member’s agent)  
12                  of transferring to another person to be presented  
13                  to a member of a credit card system or the mem-  
14                  ber’s agent, for payment, one or more evidences  
15                  or records of transactions involving goods or  
16                  services offered by telemarketing and paid for by  
17                  credit card;

18                   (B) the act or practice by a person acting  
19                   on behalf of a person engaged in telemarketing  
20                   (other than an act or practice permitted in a  
21                   valid agreement with a member of a credit card  
22                   system or the member’s agent) of causing or ar-  
23                   ranging for a third person to present to a mem-  
24                   ber of a credit card system or the member’s  
25                   agent, for payment, one or more evidences or



1           (2) *where practicable, authority for a person who*  
2           *orders a good or service through telemarketing to can-*  
3           *cel the order within a specified period;*

4           (3) *restrictions on the hours of the day when un-*  
5           *solicited telephone calls can be made to consumers;*

6           (4) *a prohibition of telemarketing generated by*  
7           *computers on equipment that does not permit the in-*  
8           *dividual called to terminate the telephone call; and*

9           (5) *recordkeeping requirements.*

10          (b) *PROHIBITION OF FRAUDULENT TELEMARKETING*  
11 *ACTS OR PRACTICES.—The Commission also shall prescribe*  
12 *rules prohibiting fraudulent telemarketing acts or practices*  
13 *and shall include in such rules a definition of the term*  
14 *“fraudulent telemarketing acts or practices”, which may in-*  
15 *clude activities of entities or individuals that assist or fa-*  
16 *cilitate fraudulent telemarketing. Credit card laundering*  
17 *shall be a fraudulent telemarketing act or practice. Such*  
18 *rules shall also require that, in each telemarketing call, any*  
19 *person engaged in telemarketing shall promptly and clearly*  
20 *disclose to the prospective purchaser that the purpose of the*  
21 *call is to sell goods or services and shall make such other*  
22 *disclosures as the Commission deems appropriate, including*  
23 *the nature and price of the goods and services.*

24          (c) *DEADLINE; ADMINISTRATIVE PROCEDURE.—The*  
25 *Commission shall prescribe the rules under subsections (a)*

1 *and (b) of this section within 180 days after the date of*  
2 *enactment of this Act. Such rules shall be prescribed in ac-*  
3 *cordance with section 553 of title 5, United States Code.*

4 *(d) TREATMENT OF RULE VIOLATIONS.—Any viola-*  
5 *tion of any rule prescribed under subsection (a) or (b) of*  
6 *this section shall be treated as a violation of a trade regula-*  
7 *tion rule promulgated under section 18 of the Federal Trade*  
8 *Commission Act (15 U.S.C. 57a) regarding unfair or decep-*  
9 *tive acts or practices (subject to any remedy or penalty ap-*  
10 *plicable to any violation thereof).*

11 *(e) EFFECT ON STATE LAW.—The rules promulgated*  
12 *under this section shall not be construed as preempting*  
13 *State law.*

14 *ACTIONS BY STATE ATTORNEYS GENERAL*

15 *SEC. 4. (a) AUTHORITY OF STATES.—Whenever the at-*  
16 *torney general of any State has reason to believe that the*  
17 *interests of the residents of that State have been or are being*  
18 *threatened or adversely affected because any person has en-*  
19 *gaged or is engaging in a pattern or practice of*  
20 *telemarketing which violates any rule, regulation, or order*  
21 *of the Commission under this Act, the State may bring a*  
22 *civil action on behalf of its residents to enjoin such*  
23 *telemarketing, to enforce compliance with any rule, regula-*  
24 *tion, or order of the Commission under this Act, to obtain*  
25 *damages on behalf of their residents, or to obtain such fur-*  
26 *ther and other relief as the court may deem appropriate.*

1           (b) *COURT JURISDICTION.*—The district courts of the  
2 United States, the United States courts of any territory,  
3 and the District Court of the United States for the District  
4 of Columbia shall have exclusive jurisdiction over all civil  
5 actions brought under this section to enforce any liability  
6 or duty created by any rule, regulation, or order of the Com-  
7 mission under this Act, or to obtain damages or other relief  
8 with respect thereto. Upon proper application, such courts  
9 shall also have jurisdiction to issue writs of mandamus, or  
10 orders affording like relief, commanding the defendant to  
11 comply with the provisions of any rule, regulation, or order  
12 of the Commission under this Act, including the require-  
13 ment that the defendant take such action as is necessary  
14 to remove the danger of violation of any such rule, regula-  
15 tion, or order. Upon a proper showing, a permanent or tem-  
16 porary injunction or restraining order shall be granted  
17 without bond.

18           (c) *RIGHTS OF COMMISSION.*—The State shall serve  
19 prior written notice of any such civil action upon the Com-  
20 mission and provide the Commission with a copy of its  
21 complaint, except in any case where such prior notice is  
22 not feasible, in which case the State shall serve such notice  
23 immediately upon instituting such action. The Commission  
24 shall have the right (1) to intervene in the action, (2) upon

1 *so intervening, to be heard on all matters arising therein,*  
2 *and (3) to file petitions for appeal.*

3       (d) *VENUE; SERVICE OF PROCESS.*—Any civil action  
4 *brought under this section in a district court of the United*  
5 *States may be brought in the district wherein the defendant*  
6 *is found or is an inhabitant or transacts business or wher-*  
7 *ever venue is proper under section 1391 of title 28, United*  
8 *States Code, and process in such cases may be served in*  
9 *any district in which the defendant is an inhabitant or*  
10 *wherever the defendant may be found.*

11       (e) *EFFECT ON STATE POWERS OF ATTORNEYS GEN-*  
12 *ERAL.*—For purposes of bringing any civil action under  
13 *this section, nothing in this Act shall prevent the attorney*  
14 *general from exercising the powers conferred on the attorney*  
15 *general by the laws of such State to conduct investigations*  
16 *or to administer oaths or affirmations or to compel the at-*  
17 *tendance of witnesses or the production of documentary and*  
18 *other evidence.*

19       (f) *EFFECT ON ACTIONS UNDER STATE STATUTE.*—  
20 *Nothing contained in this section shall prohibit an author-*  
21 *ized State official from proceeding in State court on the*  
22 *basis of an alleged violation of any general civil or criminal*  
23 *statute of such State.*

24       (g) *CIVIL ACTION BY COMMISSION.*—Whenever the  
25 *Commission has instituted a civil action for violation of*

1 *any rule prescribed under this Act, no State may, during*  
2 *the pendency of such action instituted by the Commission,*  
3 *subsequently institute a civil action against any defendant*  
4 *named in the Commission’s complaint for violation of any*  
5 *rule as alleged in the Commission’s complaint.*

6 *ACTIONS BROUGHT BY PRIVATE PERSONS*

7 *SEC. 5. (a) DEFINITION.—As used in this section, the*  
8 *term “person adversely affected by telemarketing” means—*

9 *(1) any person who has incurred loss or damage*  
10 *in connection with telemarketing and who actually*  
11 *purchased goods or services through telemarketing, or*  
12 *paid or is obligated to pay for goods or services pur-*  
13 *chased through telemarketing;*

14 *(2) any financial institution that has incurred*  
15 *loss or damage in connection with telemarketing; or*

16 *(3) any member organization comprised of fi-*  
17 *nancial institution members, or any parent organiza-*  
18 *tion of such member organization, if one or more of*  
19 *the financial institution members is eligible to bring*  
20 *a civil action under this subsection.*

21 *Such term does not include a governmental entity.*

22 *(b) PRIVATE RIGHT OF ACTION.—(1) Any person ad-*  
23 *versely affected by any pattern or practice of telemarketing*  
24 *which violates any rule, regulation, or order of the Commis-*  
25 *sion under this Act may, within 3 years after discovery of*  
26 *the violation, bring a civil action against a person who has*

1 *engaged or is engaging in such pattern or practice of*  
2 *telemarketing if the amount in controversy exceeds the sum*  
3 *or value of \$50,000 in actual damages for each person ad-*  
4 *versely affected by such telemarketing. Such an action may*  
5 *be brought to enjoin such telemarketing, to enforce compli-*  
6 *ance with any rule, regulation, or order of the Commission*  
7 *under this Act, to obtain damages, or to obtain such further*  
8 *and other relief as the court may deem appropriate.*

9       (2) *The district courts of the United States, the United*  
10 *States courts of any territory, and the District Court of the*  
11 *United States for the District of Columbia shall have exclu-*  
12 *sive jurisdiction over all civil actions brought under this*  
13 *section to enforce any liability or duty created by any rule,*  
14 *regulation, or order of the Commission under this Act, or*  
15 *to obtain damages or other relief with respect thereto. Upon*  
16 *proper application, such courts shall also have jurisdiction*  
17 *to issue writs of mandamus, or orders affording like relief,*  
18 *commanding the defendant to comply with the provisions*  
19 *of any rule, regulation, or order of the Commission under*  
20 *this Act, including the requirement that the defendant take*  
21 *such action as is necessary to remove the danger of violation*  
22 *or of any such rule, regulation, or order. Upon a proper*  
23 *showing, a permanent or temporary injunction or restrain-*  
24 *ing order shall be granted without bond.*

1       (3) *The plaintiff shall serve prior written notice of the*  
2 *action upon the Commission and provide the Commission*  
3 *with a copy of its complaint, except in any case where such*  
4 *prior notice is not feasible, in which case the person shall*  
5 *serve such notice immediately upon instituting such action.*

6 *The Commission shall have the right (A) to intervene in*  
7 *the action, (B) upon so intervening, to be heard on all mat-*  
8 *ters arising therein, and (C) to file petitions for appeal.*

9       (4) *Whenever the Commission has instituted a civil ac-*  
10 *tion for violation of any rule prescribed under this Act, no*  
11 *person may, during the pendency of such action instituted*  
12 *by the Commission, subsequently institute a civil action*  
13 *against any defendant named in the Commission's com-*  
14 *plaint for violation of any rule as alleged in the Commis-*  
15 *sion's complaint.*

16       (5) *Any civil action brought under this section in a*  
17 *district court of the United States may be brought in the*  
18 *district wherein the defendant is found or is an inhabitant*  
19 *or transacts business or wherever venue is proper under sec-*  
20 *tion 1391 of title 28, United States Code, and process in*  
21 *such cases may be served in any district in which the de-*  
22 *fendant is an inhabitant or wherever the defendant may*  
23 *be found.*

24       (c) *AWARD OF COSTS AND FEES.—The court, in issu-*  
25 *ing any final order in any action brought under subsection*

1 *(b), may award costs of suit and reasonable fees for attor-*  
2 *neys and expert witnesses to the prevailing party.*

3 *(d) RIGHTS UNDER STATUTE OR COMMON LAW.—*  
4 *Nothing in this section shall restrict any right which any*  
5 *person may have under any statute or common law.*

6 *VENUE*

7 *SEC. 6. Any suit brought against a person, partner-*  
8 *ship, or corporation under section 13(b) of the Federal*  
9 *Trade Commission Act (15 U.S.C. 53(b)) may be brought*  
10 *where the defendant resides or transacts business, or wher-*  
11 *ever venue is proper under section 1391 of title 28, United*  
12 *States Code. In such a suit, if the court determines that*  
13 *the interests of justice require that any other person, part-*  
14 *nership, or corporation should be a party in such suit, the*  
15 *court may cause such person, partnership, or corporation*  
16 *to be summoned without regard to whether they reside or*  
17 *transact business in the district in which the suit is*  
18 *brought. In any suit under this section, process may be*  
19 *served on any person, partnership, or corporation, wherever*  
20 *they may be found.*

21 *SUBPOENA*

22 *SEC. 7. (a) PHYSICAL EVIDENCE DEFINED.—Section*  
23 *20(a) of the Federal Trade Commission Act (15 U.S.C. 57b–*  
24 *1(a)) is amended—*

25 *(1) by redesignating paragraph (7) as para-*  
26 *graph (8); and*

1           (2) by inserting immediately after paragraph (6)  
2           the following new paragraph:

3           “(7) The term ‘physical evidence’ means any ob-  
4           ject or device.”.

5           (b) *ISSUANCE OF DEMAND*.—Section 20(c)(1) of the  
6           Federal Trade Commission Act (15 U.S.C. 57b–1(c)(1)) is  
7           amended—

8           (1) by inserting “physical evidence or” imme-  
9           diately after “any” the second time it appears;

10          (2) by inserting “to produce such physical evi-  
11          dence for inspection,” immediately before “to  
12          produce”;

13          (3) by inserting “physical evidence,” imme-  
14          diately after “concerning”; and

15          (4) by inserting “evidence,” immediately before  
16          “material, answers,”.

17          (c) *CONTENTS OF DEMAND*.—Section 20(c)(3) of the  
18          Federal Trade Commission Act (15 U.S.C. 57b–1(c)(3)) is  
19          amended—

20          (1) by inserting “physical evidence or” imme-  
21          diately before “documentary material” the first time  
22          it appears;

23          (2) in subparagraph (A)—

24                  (A) by inserting “physical evidence or” im-  
25                  mediately before “documentary”; and

1           (B) by inserting “evidence or” immediately  
2           after “permit such”;

3           (3) in subparagraph (B), by inserting “evidence  
4           or ” immediately before “material”; and

5           (4) in subparagraph (C), by inserting “evidence  
6           or” immediately before “material”.

7           (d) *PRODUCTION OF EVIDENCE IN RESPONSE TO DE-*  
8 *MAND.*—Section 20(c)(10) of the Federal Trade Commission  
9 Act (15 U.S.C. 57b–1(c)(10)) is amended by inserting  
10 “physical evidence or” immediately before “documentary  
11 material” each place it appears.

12           *FALSE ADVERTISEMENTS CONCERNING SERVICES*

13           *SEC. 8.* Section 12(a) of the Federal Trade Commis-  
14 sion Act (15 U.S.C. 52(a)) is amended by inserting “serv-  
15 ices,” immediately after “devices,” each place it appears.

16           *CLEARINGHOUSE*

17           *SEC. 9.* The Commission shall establish a clearinghouse  
18 for inquiries made to Federal agencies concerning  
19 telemarketing. The clearinghouse will provide information  
20 (other than information which may not be disclosed under  
21 section 552(b) of title 5, United States Code, or under regu-  
22 lations prescribed by the Commission to implement section  
23 552(b) of title 5, United States Code) to anyone making  
24 inquiries respecting persons engaged in telemarketing or di-  
25 rect such inquiries to the appropriate Federal or State  
26 agency.

## FINANCIAL DATA

1  
2       *SEC. 10. Section 1109(a)(3) of the Right to Financial*  
3 *Privacy Act of 1978 (12 U.S.C. 3409(a)(3)) is amended—*

4           *(1) by redesignating subparagraph (E) as sub-*  
5 *paragraph (F);*

6           *(2) by striking “or” at the end of subparagraph*  
7 *(D); and*

8           *(3) by inserting immediately after subparagraph*  
9 *(D) the following new subparagraph:*

10                   *“(E) dissipation, removal, or destruction of*  
11 *assets that are subject to forfeiture, seizure, re-*  
12 *dress, or restitution under any law of the United*  
13 *States by reason of having been obtained in vio-*  
14 *lation of law; or”.*

## CRIMINAL CONTEMPT AUTHORITY

15  
16       *SEC. 11. Section 16(a)(1) of the Federal Trade Com-*  
17 *mission Act (15 U.S.C. 56(a)(1)) is amended—*

18           *(1) in subparagraph (A) by striking “civil” the*  
19 *first place it appears and inserting in lieu thereof*  
20 *“Federal court”; and*

21           *(2) by adding at the end the following: “The*  
22 *Commission may bring a criminal contempt action*  
23 *for violations of orders obtained in cases brought*  
24 *under section 13(b) of this Act in the same manner*  
25 *as civil penalty and other Federal court actions to*  
26 *which this subsection applies. Such cases may be ini-*

1        *tiated by the Commission on its own complaint, or*  
2        *pursuant to its acceptance of an appointment by a*  
3        *court to assist it in enforcing such orders pursuant to*  
4        *Rule 42(b) of the Federal Rules of Criminal Proce-*  
5        *dure.”.*

6                *ADMINISTRATION AND APPLICABILITY OF ACT*

7        *SEC. 12. (a) ENFORCEMENT.—Except as otherwise*  
8        *provided in sections 4 and 5 of this Act, this Act shall be*  
9        *enforced by the Commission under the Federal Trade Com-*  
10        *mission Act (15 U.S.C. 41 et seq.).*

11        *(b) APPLICABILITY OF FTCA.—The Commission shall*  
12        *prevent any person from violating a rule, regulation, or*  
13        *order of the Commission under this Act in the same man-*  
14        *ner, by the same means, and with the same jurisdiction,*  
15        *powers, and duties as though all applicable terms and pro-*  
16        *visions of the Federal Trade Commission Act (15 U.S.C.*  
17        *41 et seq.) were incorporated into and made a part of this*  
18        *Act. Any person who violates such a rule, regulation, or*  
19        *order shall be subject to the penalties and entitled to the*  
20        *privileges and immunities provided in the Federal Trade*  
21        *Commission Act in the same manner, by the same means,*  
22        *and with the same jurisdiction, powers, and duties as*  
23        *though all applicable terms and provisions of the Federal*  
24        *Trade Commission Act were incorporated into and made*  
25        *a part of this Act.*

1       (c) *EXEMPTION.*—(1) *No provision of this Act shall*  
2 *apply to any person exempt from the jurisdiction of the*  
3 *Commission under section 5(a)(2) of the Federal Trade*  
4 *Commission Act (15 U.S.C. 45(a)(2)), and nothing in this*  
5 *Act shall be construed to vest the Commission, or the attor-*  
6 *ney general of any State or any person, with jurisdiction*  
7 *or authority over any person not otherwise subject to the*  
8 *jurisdiction or authority of the Commission.*

9       (2)(A) *No provision of this Act shall apply—*

10           (i) *to a broker, dealer, municipal securities deal-*  
11 *er, government securities broker, government securities*  
12 *dealer, or investment company in connection with the*  
13 *offer, sale, or purchase of any security, or to an issuer*  
14 *in connection with the offer, sale, or purchase of any*  
15 *security which that issuer has issued, or to any in-*  
16 *vestment adviser providing investment advice relating*  
17 *to any security; or*

18           (ii) *to the solicitation, acceptance, confirmation,*  
19 *or execution of orders for the entry into, purchase of,*  
20 *or sale of any contract, account, agreement, or trans-*  
21 *action subject to the exclusive jurisdiction of the Com-*  
22 *modity Futures Trading Commission under the Com-*  
23 *modity Exchange Act (7 U.S.C. 1 et seq.) by a person*  
24 *registered under the Commodity Exchange Act in*  
25 *order to engage in such activity, including as a fu-*

1     *tures commission merchant, introducing broker, com-*  
2     *modity trading advisor, commodity pool operator, le-*  
3     *verage transaction merchant, floor broker, or floor*  
4     *trader, or as a person associated with any such*  
5     *person.*

6     *(B) For purposes of subparagraph (A)(i)—*

7         *(1) the terms “broker”, “dealer”, “municipal se-*  
8         *curities dealer”, “government securities broker”, and*  
9         *“government securities dealer” have the meanings*  
10        *given them in section 3(a) (4), (5), (30), (43), and*  
11        *(44), respectively, of the Securities Exchange Act of*  
12        *1934 (15 U.S.C. 78c(a) (4), (5), (30), (43), and (44));*

13        *(2) the term “investment adviser” has the mean-*  
14        *ing given it in section 202(a)(11) of the Investment*  
15        *Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));*

16        *(3) the term “investment company” has the*  
17        *meaning given it in section 3(a) of the Investment*  
18        *Company Act of 1940 (15 U.S.C. 80a-3(a));*

19        *(4) the term “issuer” has the meaning given it*  
20        *in section 2(4) of the Securities Act of 1933 (15*  
21        *U.S.C. 77b(4)); and*

22        *(5) the term “security” has the meaning given to*  
23        *it in section 2(1) of the Securities Act of 1933 (15*  
24        *U.S.C. 77b(1)), section 3(a)(10) of the Securities Ex-*  
25        *change Act of 1934 (15 U.S.C. 78c(a)(10)), and sec-*



1       *commodations and related services in a life care*  
2       *home, including nursing care services, medical serv-*  
3       *ices, and other health-related services, which is condi-*  
4       *tioned upon the transfer of an entrance fee to the pro-*  
5       *vider and which may be further conditioned upon the*  
6       *payment of periodic service fees.*

7                               *SUNSET*

8       *SEC. 14. The provisions of sections 3, 4, and 5 shall*  
9       *cease to have force and effect on and after the date that*  
10       *is five years following the date of enactment of this Act.*

Attest:

*Secretary.*

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