

would also have to find inadequate state regulation of its insured institutions.

States with large losses and inadequate regulation would become "high risk states" with respect to a particular fund and would become subject to an insurance premium. The amount of this premium would vary according to the losses caused by the state's institutions during the relevant three-year period. The state would pay the premium to the FDIC which, in turn, would deposit it into the federal insurance fund that incurred the losses.

**Eligibility for Insurance.** A state could choose not to pay a premium but, if it did so, its state-chartered institutions would become ineligible for the relevant federal deposit insurance. Terminated insurance could be restored only if the state paid the premium owed, and the FDIC or NCUA determined that the state had taken steps to provide adequate regulation of its state-chartered institutions.

**Special Premiums.** The bill would also impose a special, one-time premium on states whose S&Ls caused disproportionate insurance losses during the five-year period, 1988-1992, resulting in the S&L bailout costs now being paid by federal taxpayers. The amount of this one-time premium would be based upon the amount of losses caused by a particular state's S&Ls during the five-year period.

**Comparison to 1990 Senate Bill.** This bill differs from related legislation introduced in 1990 as S. 2885, the State Thrift Deposit Insurance Premium Act, in three major respects:

(1) **Coverage.** Last year's bill applied only to S&Ls; this bill applies to S&Ls, banks and credit unions.

(2) **Threshold Finding.** Last year's bill did not require a specific finding of inadequate state regulation to trigger a premium; this bill does.

(3) **Base Year.** Last year's bill used 1980 as a base year of determining which states pay premiums and for calculating the premium amounts; this bill relies upon progressive three-year periods instead of a base year for its calculations, except with respect to the one-time premium related to the S&L bailout. ●

By Mr. HOLLINGS (for himself,  
Mr. INOUE, Mr. STEVENS, and  
Mr. BENTSEN):

S. 1462. A bill to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes; to the Committee on Commerce, Science, and Transportation.

AUTOMATED TELEPHONE CALL PROTECTION ACT  
OF 1991

Mr. HOLLINGS. Mr. President, today I am introducing the Automated Telephone Call Protection Act of 1991. This bill will ban computerized telephone calls to the home and so-called junk fax. Computerized calls are the scourge of modern civilization. They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone right out of the wall.

The telephone is a basic necessity of life. You cannot get along in this country if you do not have a telephone in your home. However, owning a telephone does not give the world the right and privilege to assault the con-

sumer with machine-generated telephone calls. These calls are a nuisance and an invasion of our privacy.

Believe it or not, these calls have their defenders. A few months ago, the Chairman of the FCC testified that this was an area where the market would regulate itself. If no one listens to these calls, he said, then telemarketers will stop making them. I know how the free market operates, and in this case it works to the detriment of 99 percent of Americans. Even if 1 percent of the American public actually listens to these calls, that is no justification for allowing these calls to ruin the lives of the rest of us.

Some may argue that there are first amendment problems with this bill. The bill I am introducing today falls well within the scope of the first amendment. The first amendment allows the government every right to place reasonable time, place and manner restrictions on speech when necessary to protect consumers from a nuisance and an invasion of their privacy.

This bill makes no distinction based on the content of the speech. It bans automated calls, regardless of whether they are used for commercial, political, or charitable purposes. The bill does not ban the message; it bans the means used to deliver that message—the computer voice.

Further, the bill does not ban all automated calls. Persons at work do not have the same expectation of privacy as persons at home; therefore, the bill only bans such calls to the home. In addition, if a person consents to receiving such calls, of course, that permission is granted. Finally, this bill does not prohibit the use of computerized calls to notify parents when the school closes early or for other government purposes. This bill is purely targeted at those calls that are the source of the tremendous amount of consumer complaints at the FCC and at the State commissions around the country—the telemarketing calls placed to the home.

The bill also prohibits unsolicited advertisements sent to fax machines, known as junk fax. Advertisements today are sent for cruises, home products, investments, and all kinds of products and services without the consent of the person receiving them. These unsolicited advertisements prevent the owners from using their own fax machines for business purposes. Even worse, these transmissions force the recipient to pay for the cost of the paper used to receive them. These junk fax advertisements can be a severe impediment to carrying out legitimate business practices and ought to be abolished.

The bill also contains protections for emergency telephones and cellular and paging systems from these automated calls. These prohibitions are essential to ensuring that the safety of lives and property are not put at risk by these machines. These computers often call

and then do not hang up the line. In some cases, the computer will ramble on for a full minute or longer after the person called hangs up. This can prevent the person called from using the telephone at all, which is of special concern in emergency situations. As a result, the bill requires automated calls to disconnect the telephone within 5 seconds of the time the machine is notified that the called party has hung up the phone.

Mr. President, it is not often that Congress is required to step in to legislate against certain technologies. This is an unusual case, however, that requires congressional action. These calls are a nuisance and must be controlled. We have given the free market the chance to regulate itself, but it has not. These calls continue to proliferate beyond our control. The FCC will not do anything about these calls; the States have tried to regulate in this area but do not have authority over interstate calls. It is time Congress faced up to its responsibilities to protect the American consumer. I urge my colleagues to support this measure.

Mr. President, I ask unanimous consent that the full text of the bill I am introducing today be printed in the Record following my statement.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1462

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Automated Telephone Consumer Protection Act".

SEC. 2. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

(a) AMENDMENT.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

"SEC. 22A. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.

"(a) DEFINITIONS.—As used in this section—

"(1) The term 'automatic telephone dialing system' means equipment which has the capacity—

"(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

"(B) to dial such numbers.

"(2) The term 'telephone facsimile machine' means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

"(3) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

"(b) RESTRICTIONS.—It shall be unlawful for any person within the United States—

"(1) to make any call using any automatic telephone dialing system, telephone facsimile machine, or an artificial or prerecorded voice—

"(A) to any emergency telephone line of any hospital, medical physician or service

office, health care facility, or fire protection or law enforcement agency; or

"(B) to any telephone number assigned to paging or cellular telephone service;

"(2) to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message without the prior, express, written consent of the called party, unless the call is initiated by a public school or other governmental entity; or

"(3) to send an unsolicited advertisement by a facsimile machine.

"(C) TECHNICAL AND PROCEDURAL STANDARDS.—

"(1) PROHIBITION.—It shall be unlawful for any person within the United States—

"(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system (to make any telephone solicitation) in a manner that does not comply with such standards; or

"(B) to use a computer or other electronic device to send an unsolicited advertisement via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the advertisement, the date and time it is sent and an identification of the business sending the advertisement and the telephone number of the sending machine or of such business.

"(2) TELEPHONE FACSIMILE MACHINES.—The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which—

"(A) is manufactured after 6 months after the date of enactment of this section, and

"(B) is used for the distribution of unsolicited advertising,

clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business sending the advertisement, and the telephone number of the sending machine or of such business. The Commission shall exempt from such standards, for 18 months after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer.

"(3) ARTIFICIAL OR PRERECORDED VOICE SYSTEMS.—The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

"(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address or such business; and

"(B) any such system will automatically release the called party's line within 5 seconds of the time the system receives notification that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

"(d) STATE LAW NOT PREEMPTED.—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, either or both of the following:

"(1) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements; and

"(2) the use of automatic telephone dialing systems to transmit prerecorded telephone solicitations.

"(e) EFFECTIVE DATE OF REQUIREMENTS.—The requirements of subsection (b) shall take effect 30 days after the date of enactment of this section, and all other provisions of this section shall take effect upon such date of enactment."

(b) CONFORMING AMENDMENT.—Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by striking "and 225" and inserting in lieu thereof ", 225, and 228".

By Mr. BREAUX (for himself, Mr. LOTT, Mr. JOHNSTON, Mr. SHELBY, Mr. CRAIG, Mr. INOUE, Mr. NICKLES, Mr. PACKWOOD, Mr. STEVENS, Mr. MURKOWSKI, Mr. SIMPSON, Mr. SYMMS, Mr. WALLOP, Mr. HATCH, Mr. GARN, Mr. BURNS, Mr. HELMS, Mr. COCHRAN, Mr. MCCONNELL, and Mr. BOND):

S. 1463. A bill to amend the Federal Water Pollution Control Act to establish a comprehensive program for conserving and managing wetlands in the United States, and for other purposes; to the Committee on Environment and Public Works.

COMPREHENSIVE WETLANDS CONSERVATION AND MANAGEMENT ACT

Mr. BREAUX. Mr. President, I rise today to introduce the Comprehensive Wetlands Conservation and Management Act of 1991. Joining with me as original cosponsors are Senators JOHNSTON, LOTT, SHELBY, INOUE, CRAIG, NICKLES, PACKWOOD, STEVENS, MURKOWSKI, SIMPSON, SYMMS, WALLOP, HATCH, GARN, BURNS, HELMS, MCCONNELL, and COCHRAN. This bill is identical to H.R. 1330, which was introduced in the House and currently has 150 cosponsors from 38 different States. In addition, the concepts of this bill are supported by over 90 organizations nationwide. I stress that this bill is only a starting point, its concepts of establishing a national wetlands regulatory program through a statutory definition of "wetlands," classification of wetlands by function of value, resolving the respective roles of the Federal agencies, and recognizing private property rights are all key concepts. However, the particulars in this bill will need to be further refined through the regulatory process. The important thing is that we have to start somewhere, we need to establish a national wetlands policy.

Mr. President, this Nation needs a national wetlands policy. As we all know, much has occurred in the last 2 years to raise the wetlands policy issue to a new level of public scrutiny. The Nation is becoming increasingly aware of the problem of wetlands loss; these areas are recognized as vital to the well being of the ecosystem as a whole. At the same time, severe conflicts are occurring with increasing frequency in the administration of the Federal Wetlands Regulatory Program.

While Federal agencies are cracking down on our constituents for dredging and filling wetlands, wetlands are

being converted at a rapid rate by other—not regulated—means such as excavation, channelization, and drainage. Only yesterday, the EPA Administrator, Bill Reilly said that last year 290,000 acres of wetlands were converted, and less than 20 percent were permitted, because less than 20 percent were converted as a result of dredging and filling. This is not because of lack of enforcement, it is because section 404 was not intended to be a wetlands regulatory program. Beating on the Federal agencies for tougher enforcement of this program will not stop wetlands loss; the problem is with the statute. Section 404 of the Clean Water Act was not intended to be a wetlands regulatory program; if it had been, we would have regulated many activities that continue to cause the destruction of wetlands to this day. Congress can no longer keep its head in the sand while the courts and Federal agencies make piecemeal wetlands policy. The heightened frustration of our constituents and rapid wetlands loss demands that Congress take action. We need a national wetlands policy. Established not by unelected bureaucrats, but by the elected representatives of the people—the Congress.

There are several vital interests at issue here: the protection of the Nation's wetlands resource base; continued reasonable economic development—including the provision of infrastructure; and, the obligation in the law and policy of this country to observe private property rights. This bill identifies many key issues facing the regulated community and proposes some potential solutions. These recommendations provide the starting point for a reasoned debate on wetlands policy issues. This bill provides the vehicle—a starting point—for creating a more flexible, responsible, and less intrusive approach to wetlands protection; it challenges us to address the very difficult task of protecting wetlands and protecting property owners.

Important measures, which I supported, have been taken already to restore and enhance wetlands. The 1990 Farm Bill Amendments were passed to help reduce the major cause of wetlands loss in this country according to the OTA—conversion of wetlands to croplands. Legislation I authored last year provided funding for major restoration activities to address another critical problem—coastal erosion nationwide. The North American Wetlands Act also advanced the conservation effort by instituting a broad acquisition program to protect the Nation's highest value wetlands. The problems of loss and restoration, however, clearly are only part of the problem. Losses of future wetlands must be regulated, we must have in place a national wetlands policy.

Such a policy must be reasonable and it must be balanced. We have all heard wetlands permitting "horror