

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2831

To reauthorize the Federal Trade Commission, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 8, 2008

Mr. DORGAN (for himself and Mr. INOUE) introduced the following bill;  
which was read twice and referred to the Committee on Commerce,  
Science, and Transportation

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## A BILL

To reauthorize the Federal Trade Commission, and for other  
purposes.

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; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Federal Trade Commission Reauthorization Act of  
6       2008”.

7       (b) **TABLE OF CONTENTS.**—The table of contents for  
8       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Authorization of appropriations.
- Sec. 3. Independent litigation authority.
- Sec. 4. Specialized administrative law judges.
- Sec. 5. Civil penalties for violations of the Federal Trade Commission Act.

- Sec. 6. Application of Federal Trade Commission Act to tax-exempt organizations.
- Sec. 7. Aiding and abetting a violation.
- Sec. 8. Permissive administrative procedure for consumer protection rules.
- Sec. 9. Rulemaking procedure for subprime lending mortgages and nontraditional mortgage loans.
- Sec. 10. Harmonizing FTC rules with banking agency rulemaking.
- Sec. 11. Enforcement by State attorneys general.
- Sec. 12. Harmonization of national do-not-call registry and effect on State laws.
- Sec. 13. FTC study of alcoholic beverage marketing practices.
- Sec. 14. Common carrier exception.

**1 SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

2 The text of section 25 of the Federal Trade Commis-  
3 sion Act (15 U.S.C. 57c) is amended to read as follows:

4 “(a) IN GENERAL.—There are authorized to be ap-  
5 propriated to carry out the functions, powers, and duties  
6 of the Commission—

7 “(1) \$264,000,000 for fiscal year 2009;

8 “(2) \$290,400,000 for fiscal year 2010;

9 “(3) \$319,400,000 for fiscal year 2011;

10 “(4) \$351,400,000 for fiscal year 2012;

11 “(5) \$386,500,000 for fiscal year 2013;

12 “(6) \$425,200,000 for fiscal year 2014; and

13 “(7) \$467,700,000 for fiscal year 2015.

14 “(b) LITIGATION AND INTERNET COMMERCE TECH-  
15 NOLOGY.—There are authorized to be appropriated to the  
16 Commission \$20,000,000 for each of fiscal years 2009  
17 through 2015 to be used by the Commission to improve  
18 technology in support of the Commission’s competition  
19 and consumer protection missions.

1       “(c) INTERNATIONAL TECHNICAL ASSISTANCE.—  
2 From amounts appropriated pursuant to subsection (a),  
3 the Commission may spend up to \$10,000,000 for each  
4 of fiscal years 2009 through 2015 to continue and enhance  
5 its provision of international technical assistance with re-  
6 spect to foreign consumer protection and competition re-  
7 gimes.”.

8 **SEC. 3. INDEPENDENT LITIGATION AUTHORITY.**

9       Section 16(a) of the Federal Trade Commission Act  
10 (15 U.S.C. 56(a)) is amended—

11           (1) by striking paragraph (1) and inserting  
12       “(1) The Commission may commence, defend, or in-  
13       tervene in, and supervise the litigation of any civil  
14       action involving this Act (including an action to col-  
15       lect a civil penalty) and any appeal of such action  
16       in its own name by any of its attorneys designated  
17       by it for such purpose. The Commission shall notify  
18       the Attorney General of any such action and may  
19       consult with the Attorney General with respect to  
20       any such action or request the Attorney General on  
21       behalf of the Commission to commence, defend, or  
22       intervene in any such action.”;

23           (2) by striking subparagraph (A) of paragraph  
24       (3) and inserting “(A) The Commission may rep-  
25       resent itself through any of its attorneys designated

1 by it for such purpose before the Supreme Court in  
2 any civil action in which the Commission represented  
3 itself pursuant to paragraph (1) or (2) or may re-  
4 quest the Attorney General to represent the Com-  
5 mission before the Supreme Court in any such ac-  
6 tion.”; and

7 (3) by striking paragraph (4) and redesignating  
8 paragraph (5) as paragraph (4).

9 **SEC. 4. SPECIALIZED ADMINISTRATIVE LAW JUDGES.**

10 (a) IN GENERAL.—In appointing administrative law  
11 judges under section 3105 of title 5, United States Code,  
12 to conduct hearings and render initial decisions in formal  
13 adjudicative matters before it, the Federal Trade Commis-  
14 sion may give preference to administrative law judges who  
15 have experience with antitrust or trade regulation litiga-  
16 tion and who are familiar with the kinds of economic anal-  
17 ysis associated with such litigation.

18 (b) DETAILS.—If the Commission asks the Office of  
19 Personnel Management to assign an administrative law  
20 judge under section 3344 of title 5, United States Code,  
21 to conduct a hearing or render an initial decision in a for-  
22 mal adjudicative matter before it, the Commission may re-  
23 quest the assignment of an administrative law judge who  
24 has experience with antitrust or trade regulation litigation  
25 and is familiar with the kinds of economic analysis associ-

1 ated with such litigation and the Office of Personnel Man-  
2 agement shall comply with the request to the maximum  
3 extent feasible.

4 **SEC. 5. CIVIL PENALTIES FOR VIOLATIONS OF THE FED-**  
5 **ERAL TRADE COMMISSION ACT.**

6 Section 5(m)(1)(A) of the Federal Trade Commission  
7 Act (15 U.S.C. 45(m)(1)(A)) is amended—

8 (1) by inserting “this Act, or” after “violates”  
9 the first place it appears; and

10 (2) by inserting “a violation of this Act or such  
11 act is” after “such act is”.

12 **SEC. 6. APPLICATION OF FEDERAL TRADE COMMISSION**  
13 **ACT TO TAX-EXEMPT ORGANIZATIONS.**

14 Section 4 of the Federal Trade Commission Act (15  
15 U.S.C. 44) is amended by striking “members.” in the sec-  
16 ond full paragraph and inserting “members, and includes  
17 an organization described in section 501(c)(3) of the In-  
18 ternal Revenue Code of 1986 that is exempt from taxation  
19 under section 501(a) of such Code.”.

20 **SEC. 7. AIDING AND ABETTING A VIOLATION.**

21 Section 10 of the Federal Trade Commission Act (15  
22 U.S.C. 50) is amended by adding at the end thereof the  
23 following:

1 “It is unlawful for any person to aid or abet another  
2 in violating any provision of this Act or any other Act en-  
3 forceable by the Commission.”.

4 **SEC. 8. PERMISSIVE ADMINISTRATIVE PROCEDURE FOR**  
5 **CONSUMER PROTECTION RULES.**

6 (a) IN GENERAL.—Section 18 of the Federal Trade  
7 Commission Act (15 U.S.C. 57a) is amended by adding  
8 at the end thereof the following:

9 “(k) ALTERNATIVE RULEMAKING PROCEDURE.—The  
10 Commission may, by majority vote of the full Commission,  
11 dispense with the requirements of other provisions of this  
12 section and of section 22 of this Act with respect to rule-  
13 making involving a consumer protection matter (as deter-  
14 mined by the Commission). If the Commission dispenses  
15 with such requirements with respect to such a rulemaking,  
16 it shall conduct such rulemaking in accordance with sec-  
17 tion 553 of title 5, United States Code, and in such case  
18 the provisions for judicial review of rules promulgated  
19 under section 553 of title 5 shall apply.”.

20 **SEC. 9. RULEMAKING PROCEDURE FOR SUBPRIME LEND-**  
21 **ING MORTGAGES AND NONTRADITIONAL**  
22 **MORTGAGE LOANS.**

23 Section 18 of the Federal Trade Commission Act (15  
24 U.S.C. 57a), as amended by section 8, is further amended  
25 by adding at the end thereof the following:

1 “(1) SPECIAL RULE FOR CERTAIN MORTGAGE-RE-  
2 LATED RULEMAKINGS.—Notwithstanding any other provi-  
3 sion of this section, section 22 of this Act, or any other  
4 provision of law, the Commission shall conduct rulemaking  
5 proceedings with respect to subprime mortgage lending  
6 and nontraditional mortgage loans in accordance with sec-  
7 tion 553 of title 5, United States Code, and the provisions  
8 for judicial review of rules promulgated under section 553  
9 of title 5 shall apply.”.

10 **SEC. 10. HARMONIZING FTC RULES WITH BANKING AGENCY**  
11 **RULEMAKING.**

12 (a) IN GENERAL.—The second sentence of section  
13 18(f)(1) of the Federal Trade Commission Act (15 U.S.C.  
14 57a(f)(1)) is amended—

15 (1) by striking “The Board of Governors of the  
16 Federal Reserve System (with respect to banks) and  
17 the Federal Home Loan Bank Board (with respect  
18 to savings and loan institutions described in para-  
19 graph (3))” and inserting “Each Federal banking  
20 agency (with respect to the depository institutions  
21 each such agency supervises)”; and

22 (2) by inserting “in consultation with the Com-  
23 mission” after “shall prescribe regulations”.

24 (b) FTC CONCURRENT RULEMAKING.—Section  
25 18(f)(1) of such Act is further amended by inserting after

1 the second sentence the following: “Such regulations shall  
2 be prescribed jointly by such agencies to the extent prac-  
3 ticable. Notwithstanding any other provision of this sec-  
4 tion, whenever such agencies commence such a rulemaking  
5 proceeding, the Commission, with respect to the entities  
6 within its jurisdiction under this Act, may commence a  
7 rulemaking proceeding and prescribe regulations in ac-  
8 cordance with section 553 of title 5, United States Code.  
9 If the Commission commences such a rulemaking pro-  
10 ceeding, the Commission, the Federal banking agencies,  
11 and the National Credit Union Administration Board shall  
12 consult and coordinate with each other so that the regula-  
13 tions prescribed by each such agency are consistent with  
14 and comparable to the regulations prescribed by each  
15 other such agency to the extent practicable.”.

16 (c) GAO STUDY AND REPORT.—Not later than 18  
17 months after the date of enactment of this Act, the Comp-  
18 troller General shall transmit to Congress a report on the  
19 status of regulations of the Federal banking agencies and  
20 the National Credit Union Administration regarding un-  
21 fair and deceptive acts or practices by the depository insti-  
22 tutions.

23 (d) TECHNICAL AND CONFORMING AMENDMENTS.—  
24 Section 18(f) of the Federal Trade Commission Act (15  
25 U.S.C. 57a(f)) is amended—

1 (1) in the first sentence of paragraph (1)—

2 (A) by striking “banks or savings and loan  
3 institutions described in paragraph (3), each  
4 agency specified in paragraph (2) or (3) of this  
5 subsection shall establish” and inserting “de-  
6 pository institutions and Federal credit unions,  
7 the Federal banking agencies and the National  
8 Credit Union Administration Board shall each  
9 establish”; and

10 (B) by striking “banks or savings and loan  
11 institutions described in paragraph (3), subject  
12 to its jurisdiction” before the period and insert-  
13 ing “depository institutions or Federal credit  
14 unions subject to the jurisdiction of such agen-  
15 cy or Board”;

16 (2) in the sixth sentence of paragraph (1) (as  
17 amended by subsection (b))—

18 (A) by striking “each such Board” and in-  
19 serting “each such banking agency and the Na-  
20 tional Credit Union Administration Board”;

21 (B) by striking “banks or savings and loan  
22 institutions described in paragraph (3)” each  
23 place such term appears and inserting “deposi-  
24 tory institutions subject to the jurisdiction of  
25 such agency”;

1 (C) by striking “(A) any such Board” and  
2 inserting “(A) any such Federal banking agency  
3 or the National Credit Union Administration  
4 Board”; and

5 (D) by striking “with respect to banks,  
6 savings and loan institutions” and inserting  
7 “with respect to depository institutions”;

8 (3) by adding at the end of paragraph (1) the  
9 following new sentence: “For purposes of this sub-  
10 section, the terms ‘Federal banking agency’ and ‘de-  
11 pository institution’ have the same meaning as in  
12 section 3 of the Federal Deposit Insurance Act.”;

13 (4) in paragraph (2)(C), by inserting “than”  
14 after “(other”;

15 (5) in paragraph (3), by inserting “by the Di-  
16 rector of the Office of Thrift Supervision” before the  
17 period at the end;

18 (6) in paragraph (4), by inserting “by the Na-  
19 tional Credit Union Administration” before the pe-  
20 riod at the end; and

21 (7) in paragraph (6), by striking “the Board of  
22 Governors of the Federal Reserve System” and in-  
23 serting “any Federal banking agency or the National  
24 Credit Union Administration Board”.

**1 SEC. 11. ENFORCEMENT BY STATE ATTORNEYS GENERAL**

2 (a) IN GENERAL.—Except as provided in subsection  
3 (f), a State, as *parens patriae*, may bring a civil action  
4 on behalf of its residents in an appropriate State or dis-  
5 trict court of the United States to enforce the provisions  
6 of the Federal Trade Commission Act or any other Act  
7 enforced by the Federal Trade Commission to obtain pen-  
8 alties and relief provided under such Acts whenever the  
9 attorney general of the State has reason to believe that  
10 the interests of the residents of the State have been or  
11 are being threatened or adversely affected by a violation  
12 of a subprime mortgage lending rule or a nontraditional  
13 mortgage loan rule promulgated by the Federal Trade  
14 Commission.

15 (b) NOTICE.—The State shall serve written notice to  
16 the Commission of any civil action under subsection (a)  
17 at least 60 days prior to initiating such civil action. The  
18 notice shall include a copy of the complaint to be filed  
19 to initiate such civil action, except that if it is not feasible  
20 for the State to provide such prior notice, the State shall  
21 provide notice immediately upon instituting such civil ac-  
22 tion.

23 (c) INTERVENTION BY FTC.—Upon receiving the no-  
24 tice required by subsection (b), the Commission may inter-  
25 vene in such civil action and upon intervening—

1           (1) be heard on all matters arising in such civil  
2           action;

3           (2) remove the action to the appropriate United  
4           States district court; and

5           (3) file petitions for appeal of a decision in such  
6           civil action.

7           (d) SAVINGS CLAUSE.—Nothing in this section shall  
8           prevent the attorney general of a State from exercising  
9           the powers conferred on the attorney general by the laws  
10          of such State to conduct investigations or to administer  
11          oaths or affirmations or to compel the attendance of wit-  
12          nesses or the production of documentary and other evi-  
13          dence. Nothing in this section shall prohibit the attorney  
14          general of a State, or other authorized State officer, from  
15          proceeding in State or Federal court on the basis of an  
16          alleged violation of any civil or criminal statute of that  
17          State.

18          (e) VENUE; SERVICE OF PROCESS; JOINDER.—In a  
19          civil action brought under subsection (a)—

20                 (1) the venue shall be a judicial district in  
21                 which the lender or a related party operates or is au-  
22                 thorized to do business;

23                 (2) process may be served without regard to the  
24                 territorial limits of the district or of the State in  
25                 which the civil action is instituted; and

1           (3) a person who participated with a lender or  
 2           related party to an alleged violation that is being  
 3           litigated in the civil action may be joined in the civil  
 4           action without regard to the residence of the person.

5           (f) **PREEMPTIVE ACTION BY FTC.**—Whenever a civil  
 6           action or an administrative action has been instituted by  
 7           or on behalf of the Commission for violation of any rule  
 8           described under (a), no State may, during the pendency  
 9           of such action instituted by or on behalf of the Commis-  
 10          sion, institute a civil action under subsection (a) against  
 11          any defendant named in the complaint in such action for  
 12          violation of any rule as alleged in such complaint.

13          (g) **AWARD OF COSTS AND FEES.**—If the attorney  
 14          general of a State prevails in any civil action under sub-  
 15          section (a), the State can recover reasonable costs and at-  
 16          torney fees from the lender or related party.

17          **SEC. 12. HARMONIZATION OF NATIONAL DO-NOT-CALL REG-**  
 18          **ISTRY AND EFFECT ON STATE LAWS.**

19          (a) **AMENDMENT OF THE TELEMARKETING AND**  
 20          **CONSUMER FRAUD AND ABUSE PREVENTION ACT.**—Sec-  
 21          tion 5 of the Telemarketing and Consumer Fraud and  
 22          Abuse Prevention Act (15 U.S.C. 6105) is amended by  
 23          adding at the end thereof the following:

24          “(d) **STATE LAWS NOT PREEMPTED.**—Nothing in  
 25          this Act or the Do-Not-Call Implementation Act (15

1 U.S.C. 6101 note) preempts any State law that imposes  
2 more restrictive requirements on intrastate or interstate  
3 telemarketing to telephone numbers on a do-not-call reg-  
4 istry maintained by that State.”.

5 (b) CONFORMING AMENDMENT.—Section 227(e)(1)  
6 of the Communications Act of 1934 (47 U.S.C. 227(e)(1))  
7 is amended by inserting “interstate or” after “restrictive”.

8 **SEC. 13. FTC STUDY OF ALCOHOLIC BEVERAGE MAR-**  
9 **KETING PRACTICES.**

10 Within 2 years after the Federal Trade Commission  
11 completes its study entitled Self-Regulation in the Alcohol  
12 Industry and every 2 years thereafter, the Commission  
13 shall transmit a report to the Congress on advertising and  
14 marketing practices for alcoholic beverages, together with  
15 such recommendations, including legislative recommenda-  
16 tions, as the Commission deems appropriate. In preparing  
17 the report, the Commission shall consider information con-  
18 tained in reports by the Secretary of Health and Human  
19 services under section 519B of the Public Health Service  
20 Act (42 U.S.C. 290bb–25b), and shall include, to the ex-  
21 tent feasible, data on measured and unmeasured media  
22 by brand and type of beverage, and data on expenditures  
23 for slotting and discounting.

1 **SEC. 14. COMMON CARRIER EXCEPTION.**

2 Section 4 of the Federal Trade Commission Act (15  
3 U.S.C. 44) is amended by striking the paragraph con-  
4 taining the definition of the term “Acts to regulate com-  
5 merce” and inserting the following:

6 “‘Acts to regulate commerce’ means subtitle IV of  
7 title 49, United States Code, and all Acts amendatory  
8 thereof and supplementary thereto.”.

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