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Calendar No. 206

105TH CONGRESS
1ST SESSION

H. R. 1847

IN THE SENATE OF THE UNITED STATES

JULY 9, 1997

Received; read twice and referred to the Committee on the Judiciary

OCTOBER 9, 1997

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To improve the criminal law relating to fraud against consumers.

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 "Telemarketing Fraud Prevention Act of 1997".~~

~~**SEC. 2. FORFEITURE OF FRAUD PROCEEDS.**~~

~~Section 982(a) of title 18, United States Code, is amended by adding at the end the following:~~

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"(8) The Court, in sentencing a defendant for an offense under section 2326, shall order that the defendant forfeit to the United States any real or personal property—

"(A) used or intended to be used to commit or to promote the commission of such offense, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense; and

"(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.".

SEC. 3. SENTENCING GUIDELINES CHANGES.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the sentencing guidelines to provide a sentencing enhancement for any offense listed in section 2326 of title 18, United States Code—

(1) by at least 4 levels if the circumstances authorizing an additional term of imprisonment under section 2326(1) are present; and

(2) by at least 8 levels if the circumstances authorizing an additional term of imprisonment under section 2326(2) are present.

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SEC. 4. INCREASED PUNISHMENT FOR USE OF FOREIGN LOCATION TO EVADE PROSECUTION.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the sentencing guidelines to increase the offense level for any fraud offense by at least 2 levels if the defendant conducted activities to further the fraud from a foreign country.

SEC. 5. SENTENCING COMMISSION DUTIES.

The Sentencing Commission shall ensure that the sentences, guidelines, and policy statements for offenders convicted of offenses described in sections 3 and 4 are appropriately severe and reasonably consistent with other relevant directives and with other guidelines.

SEC. 6. CLARIFICATION OF ENHANCEMENT OF PENALTIES.

Section 2327(a) of title 18, United States Code, is amended by striking ''under this chapter'' and inserting ''for which an enhanced penalty is provided under section 2326 of this title''.

SEC. 7. ADDITION OF CONSPIRACY OFFENSES TO SECTION 2326 ENHANCEMENT.

Section 2326 of title 18, United States Code, is amended by inserting '', or a conspiracy to commit such an offense,'' after ''or 1344''.

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SECTION 1. SHORT TITLE.

This Act may be cited as the "Telemarketing Fraud Prevention Act of 1997".

SEC. 2. CRIMINAL FORFEITURE OF FRAUD PROCEEDS.

Section 982 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating the second paragraph designated as paragraph (6) as paragraph (7); and

(B) by adding at the end the following:

"(8) The Court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property—

"(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

"(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense."; and

(2) in subsection (b)(1)(A), by striking "(a)(1) or (a)(6)" and inserting "(a)(1), (a)(6), or (a)(8)".

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SEC. 3. PENALTY FOR TELEMARKETING FRAUD.

Section 2326 of title 18, United States Code, is amended by striking "may" each place it appears and inserting "shall".

SEC. 4. ADDITION OF CONSPIRACY OFFENSES TO SECTION 2326 ENHANCEMENT.

Section 2326 of title 18, United States Code, is amended by inserting ", or a conspiracy to commit such an offense," after "or 1344".

SEC. 5. CLARIFICATION OF MANDATORY RESTITUTION.

Section 2327 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "for any offense under this chapter" and inserting "to all victims of any offense for which an enhanced penalty is provided under section 2326"; and

(2) by striking subsection (c) and inserting the following:

"(c) VICTIM DEFINED.—In this section, the term 'victim' has the meaning given that term in section 3663A(a)(2).".

SEC. 6. AMENDMENT OF FEDERAL SENTENCING GUIDELINES.

(a) DEFINITION OF TELEMARKETING.—In this section, the term "telemarketing" has the meaning given that term in section 2326 of title 18, United States Code.

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(b) DIRECTIVE TO SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall—

(1) promulgate Federal sentencing guidelines or amend existing sentencing guidelines (and policy statements, if appropriate) to provide for substantially increased penalties for persons convicted of offenses described in section 2326 of title 18, United States Code, as amended by this Act, in connection with the conduct of telemarketing;

(2) submit to Congress an explanation of each action taken under paragraph (1) and any additional policy recommendations for combating the offenses described in that paragraph.

(c) REQUIREMENTS.—In carrying out this section, the Commission shall—

(1) ensure that the guidelines and policy statements promulgated or amended pursuant to subsection (b)(1) and any recommendations submitted thereunder reflect the serious nature of the offenses;

(2) provide an additional appropriate sentencing enhancement if offense involved sophisticated means, including but not limited to sophisticated concealment

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efforts, such as perpetrating the offense from outside the United States;

(3) provide an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims, including but not limited to victims described in section 2326(2) of title 18, United States Code, are affected by a fraudulent scheme or schemes;

(4) ensure that guidelines and policy statements promulgated or amended pursuant to subsection (b)(1) are reasonably consistent with other relevant statutory directives to the Commission and with other guidelines;

(5) account for any aggravating or mitigating circumstances that might justify upward or downward departures;

(6) ensure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code; and

(7) take any other action the Commission considers necessary to carry out this section.

(d) EMERGENCY AUTHORITY.—The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable, and in any event not later than 120 days after the date of enactment

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of the Telemarketing Fraud Prevention Act of 1997, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that authority had not expired, except that the Commission shall submit to Congress the emergency guidelines or amendments promulgated under this section, and shall set an effective date for those guidelines or amendments not earlier than 30 days after their submission to Congress.

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