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TELEMARKETING FRAUD PREVENTION ACT OF 1998

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Public Law 105–184
105th Congress

An Act

June 23, 1998
[H.R. 1847]

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,

Telemarketing Fraud Prevention Act of 1998.
18 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telemarketing Fraud Prevention Act of 1998".

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:

Courts.

"(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)".

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:

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"(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. 28 USC 994 note.

(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.

(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; and

(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 the offense involved sophisticated means, including but not limited to sophisticated concealment 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 the enactment of the Telemarketing Fraud Prevention Act of 1998, 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. Deadlines.

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SEC. 7. FALSE ADVERTISING OR MISUSE OF NAME TO INDICATE UNITED STATES MARSHALS SERVICE.

Section 709 of title 18, United States Code, is amended by inserting after the thirteenth undesignated paragraph the following:

"Whoever, except with the written permission of the Director of the United States Marshals Service, knowingly uses the words 'United States Marshals Service', 'U.S. Marshals Service', 'United States Marshal', 'U.S. Marshal', 'U.S.M.S.', or any colorable imitation of any such words, or the likeness of a United States Marshals Service badge, logo, or insignia on any item of apparel, in connection with any advertisement, circular, book, pamphlet, software, or other publication, or any play, motion picture, broadcast, telecast, or other production, in a manner that is reasonably calculated to convey the impression that the wearer of the item of apparel is acting pursuant to the legal authority of the United States Marshals Service, or to convey the impression that such advertisement, circular, book, pamphlet, software, or other publication, or such play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the United States Marshals Service;".

SEC. 8. DISCLOSURE OF CERTAIN RECORDS FOR INVESTIGATIONS OF TELEMARKETING FRAUD.

Section 2703(c)(1)(B) of title 18, United States Code, is amended—

(1) by striking "or" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting "; or"; and

(3) by adding at the end the following:

"(iv) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title).".

Approved June 23, 1998.

LEGISLATIVE HISTORY—H.R. 1847:

HOUSE REPORTS: No. 105–158 (Comm. on the Judiciary).
CONGRESSIONAL RECORD:
Vol. 143 (1997): July 8, considered and passed House.
Nov. 9, considered and passed Senate, amended.
Vol. 144 (1998): June 16, House concurred in Senate amendment.

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