

115TH CONGRESS
2D SESSION

S. 3655

To deter criminal robocall violations and improve enforcement of section 227(b) of the Communications Act of 1934, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2018

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

A BILL

To deter criminal robocall violations and improve enforcement of section 227(b) of the Communications Act of 1934, 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.**

4 This Act may be cited as the “Telephone Robocall
5 Abuse Criminal Enforcement and Deterrence Act” or the
6 “TRACED Act”.

7 **SEC. 2. FORFEITURE.**

8 (a) IN GENERAL.—Section 227 of the Communica-
9 tions Act of 1934 (47 U.S.C. 227) is amended—

1 (1) in subsection (b), by adding at the end the
2 following:

3 “(4) CIVIL FORFEITURE.—

4 “(A) IN GENERAL.—Any person that is de-
5 termined by the Commission, in accordance
6 with section 503(b)(3) or section 503(b)(4), to
7 have violated this subsection with the intent to
8 cause such violation shall be liable to the
9 United States for a forfeiture penalty. A for-
10 feiture penalty under this paragraph shall be in
11 addition to any other penalty provided for by
12 this Act. The amount of the forfeiture penalty
13 determined under this paragraph shall not ex-
14 ceed \$10,000 for each violation.

15 “(B) RECOVERY.—Any forfeiture penalty
16 determined under subparagraph (A) shall be re-
17 coverable under section 504(a).

18 “(C) PROCEDURE.—No forfeiture liability
19 shall be determined under subparagraph (A)
20 against any person unless such person receives
21 the notice required by section 503(b)(3) or sec-
22 tion 503(b)(4).

23 “(D) STATUTE OF LIMITATIONS.—No for-
24 feiture penalty shall be determined or imposed
25 against any person under subparagraph (A) if

1 the violation charged occurred more than 3
2 years prior to the date of issuance of the re-
3 quired notice or notice or apparent liability.

4 “(E) FORFEITURE UNDER SECTION 503.—
5 Notwithstanding section 503(b)(1), nothing in
6 this paragraph may be construed to affect the
7 authority of the Commission to impose a for-
8 feiture penalty under section 503(b)(1)(B)
9 against a person who is determined by the
10 Commission, in accordance with that section, to
11 have failed to comply with any provision of this
12 subsection.

13 “(5) CRIMINAL FINE.—Any person who violates
14 this subsection with the intent to cause such viola-
15 tion shall upon conviction thereof be fined not more
16 than \$10,000 for each violation, or 3 times that
17 amount for each day of a continuing violation, in
18 lieu of the fine provided by section 501 of this title
19 for such a violation. This subparagraph does not
20 supercede the provisions of section 501 of this title
21 relating to imprisonment or the imposition of a pen-
22 alty of both fine and imprisonment.”; and

23 (2) in subsection (h)—

24 (A) by striking paragraph (2);

1 (B) by redesignating paragraphs (3)
2 through (7) as paragraphs (2) through (6), re-
3 spectively;

4 (C) in paragraph (3), as redesignated, by
5 striking “paragraph (3)” and inserting “para-
6 graph (2)”; and

7 (D) in paragraph (5), as redesignated, by
8 striking “paragraph (5)” and inserting “para-
9 graph (4)”.

10 (b) **APPLICABILITY.**—The amendments made by this
11 section shall not affect any action or proceeding com-
12 menced before and pending on the date of enactment of
13 this Act.

14 (c) **DEADLINE FOR REGULATIONS.**—The Federal
15 Communications Commission shall prescribe regulations
16 to implement the amendments made by this section not
17 later than 270 days after the date of enactment of this
18 Act.

19 **SEC. 3. CALL AUTHENTICATION.**

20 (a) **AUTHENTICATION FRAMEWORK.**—

21 (1) **IN GENERAL.**—Subject to paragraph (2),
22 the Federal Communications Commission shall re-
23 quire, not later than 18 months after the date of en-
24 actment of this Act, a provider of voice service to
25 implement an appropriate and effective call authen-

1 tication framework in the internet protocol networks
2 of voice service providers.

3 (2) IMPLEMENTATION.—The Federal Commu-
4 nications Commission—

5 (A) shall not take the action described in
6 subparagraph (a)(1) if the Federal Communica-
7 tions Commission determines, after public no-
8 tice and an opportunity for comment, that each
9 provider of voice services, not later than 12
10 months after the date of enactment of this
11 Act—

12 (i) has established voluntary rules for
13 an appropriate and effective call authen-
14 tication framework in the internet protocol
15 networks of voice service providers;

16 (ii) has agreed voluntarily to partici-
17 pate in the authentication framework
18 under clause (i);

19 (iii) has begun to implement the au-
20 thentication framework under clause (i);
21 and

22 (iv) will fully implement the appro-
23 priate and effective call authentication
24 framework under clause (i), not later than

1 18 months after the date of enactment of
2 this Act, subject to subparagraph (B); and

3 (B) may extend the deadline for implemen-
4 tation of the call authentication framework
5 under paragraph (1) or subparagraph (A) of
6 this paragraph, as applicable, for an additional
7 12 months, or such further time as the Federal
8 Communications Commission determines to be
9 necessary, for a provider that demonstrates
10 substantial hardship in purchasing or upgrad-
11 ing equipment to support call authentication.

12 (b) SAFE HARBOR AND OTHER REGULATIONS.—

13 (1) IN GENERAL.—The Federal Communica-
14 tions Commission shall promulgate rules—

15 (A) affirming authority for a provider of
16 voice service to block a voice call pursuant to
17 the authentication framework under paragraph
18 (1) or paragraph (2) of subsection (a), as appli-
19 cable;

20 (B) establishing a safe harbor for a pro-
21 vider of voice service from liability for unin-
22 tended or inadvertent blocking of calls or for
23 the unintended or inadvertent misidentification
24 of the level of trust for individual calls pursuant
25 to the authentication framework under para-

1 graph (1) or paragraph (2) of subsection (a), as
2 applicable; and

3 (C) establishing a process to permit a call-
4 ing party adversely affected by the authentica-
5 tion framework under paragraph (1) or para-
6 graph (2) of subsection (a), as applicable, to
7 verify the authenticity of the calling party's
8 calls.

9 (2) CONSIDERATIONS.—In establishing the safe
10 harbor under paragraph (1), the Federal Commu-
11 nications Commission shall consider limiting the li-
12 ability of providers based on the extent to which
13 they—

14 (A) block or identify calls based on the au-
15 thentication framework under paragraph (1) or
16 paragraph (2) of subsection (a), as applicable;

17 (B) implemented procedures based on the
18 framework; and

19 (C) used reasonable care.

20 (c) DEFINITION OF VOICE SERVICE.—In this section,
21 the term “voice service”—

22 (1) means any service that is interconnected
23 with the public switched telephone network and that
24 furnishes voice communications to an end user using
25 resources from the North American Numbering Plan

1 or any successor to the North American Numbering
2 Plan adopted by the Commission under section
3 251(e)(1) of the Communications Act of 1934 (47
4 U.S.C. 251(e)(1)); and

5 (2) includes—

6 (A) transmissions from a telephone fac-
7 simile machine, computer, or other device to a
8 telephone facsimile machine; and

9 (B) without limitation, any service that en-
10 ables real-time, two-way voice communications,
11 including any service that requires Internet pro-
12 tocol-compatible customer premises equipment
13 (CPE) and permits out-bound calling, whether
14 or not the service is one-way or two-way voice
15 over Internet protocol.

16 (d) **RULE OF CONSTRUCTION.**—Nothing in this sec-
17 tion shall preclude the Federal Communications Commis-
18 sion from initiating a rulemaking pursuant to its existing
19 statutory authority.

20 **SEC. 4. PROTECTIONS FROM SPOOFED CALLS.**

21 (a) **IN GENERAL.**—Not later than 1 year after the
22 date of enactment of this Act, and consistent with the au-
23 thentication framework under paragraph (1) or paragraph
24 (2) of section 3(a), as applicable, the Federal Communica-
25 tions Commission shall initiate a rulemaking to help pro-

1 tect a subscriber from receiving unwanted calls or text
2 messages from a caller using an unauthenticated number.

3 (b) CONSIDERATIONS.—In promulgating rules under
4 subsection (a), the Federal Communications Commission
5 shall consider—

6 (1) the Government Accountability Office report
7 on combating the fraudulent provision of misleading
8 or inaccurate caller identification required by section
9 503(c) of division P of the Consolidated Appropria-
10 tions Act 2018 (Public Law 115–141; 132 Stat.
11 348);

12 (2) the best means of ensuring that a sub-
13 scriber or provider has the ability to block calls from
14 a caller using an unauthenticated number;

15 (3) the impact on the privacy of a telephone
16 subscriber from unauthenticated calls;

17 (4) the effectiveness in verifying the accuracy of
18 caller identification information; and

19 (5) the availability and cost of providing protec-
20 tion from the unwanted calls or text messages de-
21 scribed in subsection (a).

22 **SEC. 5. INTERAGENCY WORKING GROUP.**

23 (a) IN GENERAL.—The Attorney General of the
24 United States, in consultation with the Chairman of the
25 Federal Communications Commission, shall convene an

1 interagency working group to study Government prosecu-
2 tion of violations of section 227(b) of the Communications
3 Act of 1935 (47 U.S.C. 227(b)).

4 (b) DUTIES.—In carrying out the study under sub-
5 section (a), the interagency working group shall—

6 (1) determine whether, and if so how, any Fed-
7 eral law, including regulations, policies, and prac-
8 tices, or budgetary or jurisdictional constraints in-
9 hibit the prosecution of such violations;

10 (2) identify existing and potential Federal poli-
11 cies and programs that encourage and improve co-
12 ordination among Federal departments and agencies
13 and States, and between States, in the prevention
14 and prosecution of such violations;

15 (3) identify existing and potential international
16 policies and programs that encourage and improve
17 coordination between nations in the prevention and
18 prosecution of such violations; and

19 (4) consider—

20 (A) the benefit and potential sources of ad-
21 ditional resources for the Federal prevention
22 and prosecution of criminal violations of that
23 section;

1 (B) whether to establish memoranda of un-
2 derstanding regarding the prevention and pros-
3 ecution of such violations between—

4 (i) the States;

5 (ii) the States and the Federal Gov-
6 ernment; and

7 (iii) the Federal Government and a
8 foreign government;

9 (C) whether to establish a process to allow
10 States to request Federal subpoenas from the
11 Federal Communications Commission;

12 (D) whether extending civil enforcement to
13 the States would assist in the successful preven-
14 tion and prosecution of such violations;

15 (E) whether increased forfeiture and im-
16 prisonment penalties are appropriate, such as
17 extending imprisonment for such a violation to
18 a term longer than 2 years;

19 (F) whether regulation of any entity that
20 enters into a business arrangement with a car-
21 rier for the specific purpose of carrying, rout-
22 ing, or transmitting a call that constitutes such
23 a violation would assist in the successful pre-
24 vention and prosecution of such violations; and

1 (G) the extent to which, if any, Depart-
2 ment of Justice policies to pursue the prosecu-
3 tion of violations causing economic harm, phys-
4 ical danger, or erosion of an inhabitant's peace
5 of mind and sense of security inhibits the pre-
6 vention or prosecution of such violations.

7 (c) MEMBERS.—The interagency working group shall
8 be composed of such representatives of Federal depart-
9 ments and agencies as the Attorney General considers ap-
10 propriate, such as—

- 11 (1) the Department of Commerce;
- 12 (2) the Department of State;
- 13 (3) the Department of Homeland Security;
- 14 (4) the Federal Communications Commission;
- 15 (5) the Federal Trade Commission; and
- 16 (6) the Consumer Financial Protection Bureau.

17 (d) NON-FEDERAL STAKEHOLDERS.—In carrying
18 out the study under subsection (a), the interagency work-
19 ing group shall consult with such non-Federal stake-
20 holders as the Attorney General determines have the rel-
21 evant expertise, including the National Association of At-
22 torneys General.

23 (e) REPORT TO CONGRESS.—Not later than 9
24 months after the date of enactment of this Act, the inter-
25 agency working group shall submit to the Committee on

1 Commerce, Science, and Transportation of the Senate and
2 the Committee on Energy and Commerce of the House
3 of Representatives a report on the findings of the study
4 under subsection (a), including—

5 (1) any recommendations regarding the preven-
6 tion and prosecution of such violations; and

7 (2) a description of what process, if any, rel-
8 evant Federal departments and agencies have made
9 in implementing the recommendations under para-
10 graph (1).

11 **SEC. 6. ACCESS TO NUMBER RESOURCES.**

12 Not later than 180 days after the date of enactment
13 of this Act, the Federal Communications Commission shall
14 commence a proceeding to determine whether Federal
15 Communications Commission policies regarding access to
16 number resources could be modified, including by estab-
17 lishing registration and compliance obligations, to help re-
18 duce access to numbers by potential perpetrators of viola-
19 tions of section 227(b) of the Communications Act of 1935
20 (47 U.S.C. 227(b)).

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