
EMERGENCY AND DISASTER ASSISTANCE FRAUD
PENALTY ENHANCEMENT ACT OF 2007

MAY 22, 2007.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 863]

The Committee on the Judiciary, to which was referred the bill (S. 863) to amend title 18, United States Code, with respect to fraud in connection with major disaster or emergency funds, having considered the same, reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

In response to concerns that the current provisions of title 18, United States Code, do not adequately address or deter fraud in connection with emergency and disaster assistance, Senator Sessions introduced S. 863, the “Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2005,” on March 13, 2007, with Senators Landrieu, Cornyn, Vitter, and Grassley as cosponsors.

The bill makes it a specific crime to engage in fraud in connection with major disaster or emergency benefits, increases criminal penalties for engaging in mail or wire fraud during and in relation to a major disaster or emergency, and directs the United States Sentencing Commission to promulgate guidelines to provide for increased penalties for persons convicted of disaster or emergency benefit fraud.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Congress has appropriated approximately \$62.3 billion in disaster assistance in the wake of Hurricanes Katrina, Rita and Wilma. As of March 8, 2006, the Federal Emergency Management Agency's (FEMA) allocations for Katrina and Rita-related relief from the Disaster Assistance Fund totaled approximately \$29.8 billion. Of this amount, \$13.45 billion has been allocated to human services including: unemployment assistance; crisis counseling; housing assistance; and various other needs of the victims. The remainder, approximately \$16.4 billion, has been allocated for infrastructure, mitigation, general operations and the administration of field operations. These costs include expenditures for relief worker salaries, travel and transportation, as well as contracts for facilities, equipment, utilities, and other required services.

Almost immediately after FEMA began making disaster assistance available to victims of the hurricanes, reports of fraud, misuse and abuse began to surface. These reports included allegations that recipients of disaster assistance had misused funds to purchase luxury goods, that non-eligible persons had applied for and received benefits, and that criminals had established phony Katrina-related websites to exploit those who wished to contribute to legitimate disaster assistance efforts.

In June of 2006 the Government Accountability Office released a report to Congress detailing fraud and abuse of disaster recovery funds following Hurricane Katrina. The report found a host of fraudulent payments in connection with Katrina and Rita disaster relief, such as claims for properties that did not exist and the use of invalid Social Security Numbers to obtain fraudulent payments. The GAO estimated that \$1 billion (16% of total) in improper or fraudulent payments had been made by FEMA at that time. The total price tag for the fraud committed after Hurricanes Katrina and Rita is not yet known; but GAO investigators have testified that it will, at the very least, be in the billions of dollars.

Senator Sessions observed:

Billions of dollars in fraudulent payments is an insult to the victims of these natural disasters and an insult to the ultimate victim in this fraud, the American taxpayer. Natural disasters and emergency situations often create an opportunity for unscrupulous individuals to take advantage of both the immediate victims of the disaster or emergency, as well as those who offer financial and other assistance to the victims. The American people are extremely generous in responding to disasters, but they should not be expected to tolerate the fraud of those who deceitfully exploit their generosity.

In response to increased instances of fraud following the hurricanes, the Attorney General announced the formation of the Hurricane Katrina Fraud Task Force on September 8, 2005. The Task Force is comprised of representatives from the Departments of Justice, Homeland Security, and Treasury, the Federal Bureau of Investigation, Federal Trade Commission, Securities and Exchange Commission, other federal partners, as well as representatives of State and local law enforcement. As of January 3, 2007, the Hurricane Katrina Fraud Task Force had charged 525 individuals in 445 indictments brought in 35 judicial districts around the country with various hurricane fraud-related crimes, including fraud, identity theft, theft of federal funds and public corruption.¹

Although many of the cases prosecuted by the Hurricane Katrina Task Force involved false or fraudulent claims for a few thousand dollars in FEMA benefits, other more elaborate and costly schemes have surfaced. For instance, the United States Attorney for the Northern District of Texas charged a Red Cross volunteer and his sister with theft of over 100 Red Cross debit cards used to obtain over \$230,000 in benefits from the charity intended for Katrina Victims. The defendants used proceeds from these debit cards to purchase vehicles, jewelry and clothing for themselves, family members and friends.

In another case, a grand jury in the Southern District of Texas returned a 39-count indictment against the owner of a Galveston, Texas hotel charging him with filing fraudulent claims with FEMA for over \$232,000 in Short-Term Lodging reimbursements. According to the indictment, the fraudulent conduct included filing claims for payment for rooms in the name of hurricane evacuees who had never stayed at the hotel, rooms in the name of supposed evacuees when the rooms were occupied by paying guests with different names, and multiple rooms in the name of a single guest when the guest occupied fewer rooms than billed.

Despite efforts by federal, State and local law enforcement to prosecute emergency and disaster benefits schemes wherever and whenever they occur, it persists. In February 2006 alone, the Department of Justice announced 15 indictments, three guilty pleas, and two convictions for Hurricane Katrina or Rita-related disaster fraud. In March 2006, the Department charged or indicted another 14 individuals for Katrina-related fraud and obtained four guilty pleas. By January 2007 the number of individuals charged with hurricane fraud-related crimes had grown to 525, and this number continues to grow.

The bill will send a strong message that disaster relief crime is a serious crime. The Department of Justice has written that the bill would “provide important prosecutorial tools in the government’s efforts to combat fraud associated with natural disasters and other emergencies.” Last June, the Department wrote:

[These provisions] will help the Department address natural disasters and will send a strong signal that exploiting the kindness of Americans in times of crisis is a serious crime that will be treated with appropriate severity. The

¹By contrast, the cases for fraud in connection with the efforts in Iraq and Afghanistan in which hundreds of billions have been devoted over the last four years amount to only 25 individuals in eight cases in four judicial districts.

new criminal fraud statute that will be created by the Act, as well as the enhanced penalties for disaster fraud, will help ensure that the victims of these terrible disasters, and members of the American public who generously reach out to help those victims, are not preyed upon by criminals attempting to profit from these disasters and emergencies.

The bill is an effort to prevent and prosecute disaster relief fraud in the aftermath of emergencies and disasters.

In March 2007, tornadoes killed at least 20 people in the Southeast and Midwest and damaged or destroyed hundreds of homes from Minnesota to the Gulf Coast. The loss of eight Alabama children at Enterprise High School was especially heartbreaking. The President declared Enterprise, Alabama, a federal disaster area and the Federal Emergency Management Agency (FEMA) declared several other damaged counties in Alabama eligible for Individual Disaster Assistance. This means the storm victims the affected Alabama counties will potentially be eligible to receive thousands of dollars in federal aid.

We want to help ensure that federal money goes to the right people and does not get stolen by criminals posing as victims. Congress wants to provide appropriate recovery and relief resources to affected States, and also ensure that these resources are protected and distributed only to the real victims—not to individuals seeking to take advantage of the disaster.

III. DISCUSSION

The goal of the bill is to protect the real victims of disasters like Hurricane Katrina by specifically making it a crime under the existing fraud chapter of title 18 (18 U.S.C. §§ 1001–1039) to fraudulently obtain emergency disaster funds. The bill creates a new federal crime specifically related to emergency and disaster relief fraud by amending title 18. In addition to creating a new federal crime that specifically prohibits fraud in connection with any emergency or disaster benefit (including federal assistance or private charitable contributions), the bill also increases criminal penalties for engaging in mail or wire fraud following a major disaster or emergency by updating the current mail and wire fraud statutes found in chapter 63 of title 18. (18 U.S.C. §§ 1341 and 1343). The bill changes the federal mail and wire fraud statutes by applying the 30-year maximum penalties that are currently reserved for cases involving fraud against financial institutions to cases involving emergency or disaster relief fraud.

Senator Sessions has observed:

The fact is, some people think in a disaster they can run in and make any kind of bogus claim they desire—that money will be given to them and people will be too busy to check. And if they do, nothing is ever going to happen to them. We need to completely reverse that mentality. We need to create a mindset on the part of everybody that these disaster relief funds are sacred; that they are for the benefit of people who have suffered loss, and only people who have suffered loss should gain benefit of it. We need to make it clear that those who steal that money are going to be prosecuted more vigorously and punished more se-

verely than somebody who commits some other kind of crime because I think it is worse to steal from the generosity of the American people who intended to help those in need.

Senator Landrieu has noted:

People who commit fraud in a disaster situation should be prosecuted to the fullest extent of the law. . . . It is equivalent to taking money directly from the hurricane victims who lost their homes, businesses, schools and communities. It inhibits our recovery. This legislation puts the remedies and penalties in place without creating obstacles for those rightly seeking federal assistance following a disaster.

Senator Cornyn has noted:

We must send a message that the actions of those who may defraud the government or otherwise illegally obtain a portion of these funds will not be tolerated. The Emergency and Disaster Assistance Fraud Penalty Enhancement Act will say to those who may be thinking about illegally cutting corners or outright stealing disaster funds whether by fraud, theft or embezzlement that they will be caught, prosecuted and imprisoned.

IV. LEGISLATIVE HISTORY

On March 13, 2007, Senators Sessions, Landrieu and others introduced S. 863, the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007.²

In connection with the bill introduction, Senator Sessions said:

After an emergency or disaster, such as the recent tornadoes that devastated the city of Enterprise in my home State, we should do everything we can to make sure 100 percent of the relief funds gets into the hands of real victims. Taxpayers should not sustain a financial loss at the hands of scam artists, and these wrongdoers should not profit from exploiting the victims of horrific events. Common sense requires that those who deceive the government and obtain emergency disaster funds by fraud be subject to criminal punishment. As a former federal prosecutor, I've been there in the aftermath of hurricanes and tornadoes and I've seen such fraud and abuse first hand. Our resources are not unlimited, and it's critical that we ensure that every relief dollar goes to legitimate storm victims. It's important that we give prosecutors the tools they need to protect these victims as well as the American taxpayer.

Senator Vitter stated:

²On June 21, 2006, Senator Jeff Sessions introduced S. 3547, the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2005, which was an earlier version of the bill. That legislation was cosponsored by Senator Mary Landrieu (D-LA), Senator John Cornyn (R-TX), Senator Charles Grassley (R-IA), Senator David Vitter (R-LA), and Senator Mike DeWine (R-OH). That bill was referred to the Committee on the Judiciary. The Committee took no action on the bill in the 109th Congress. The Department of Justice sent a letter to the Chairman of the Committee on June 30, 2006 supporting the legislation.

It sickens me that some people abused the tragedy of many good people of the Gulf Coast who desperately needed relief funds and the kindness of the American taxpayer. This bill creates federal crimes for fraudulent abuse of emergency funds and increases the penalties on these violations to reduce the likelihood of these relief programs being undermined.

After Senators Sessions, Landrieu and others introduced S. 863, the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, in the 110th Congress, on March 13, the bill was referred to the Committee on the Judiciary, and Chairman Leahy placed the bill on the Executive Business Meeting agenda for March 15, 2007.

V. VOTE OF THE COMMITTEE

On March 15, 2007, the Committee on the Judiciary, with a quorum present, met and considered S. 863, the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007. The Committee approved the bill, without amendment, by voice vote, with no objection noted, and ordered the bill to be reported favorably to the full Senate.

VI. SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

The “Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007.”

Sec. 2. Fraud in connection with major disaster or emergency benefits

Section 2 creates a new 18 U.S.C. § 1040 to provide a new crime of fraud in connection with major disaster or emergency benefits. Section 1040 would prohibit fraud “in any matter involving any benefit authorized, transported, transmitted, transferred, disbursed or paid in connection with a major disaster or emergency declaration,” or in connection with any Federal Government contract related to such declarations, as long as the benefit was authorized or paid in interstate commerce, transported in the mail, or is a record, payment, money or other thing of value of the United States. Violations of this section would be punishable by fines up to \$250,000 for an individual or \$500,000 for an organization, imprisonment of up to 30 years, or both.

Sec. 3. Increased criminal penalties for engaging in wire, radio, and television fraud during and relation to a presidentially declared major disaster or emergency

Section 3 increases the penalties available for wire fraud (18 U.S.C. § 1343) that occur in connection with major disaster or emergency declarations. Current law provides that violations of the wire fraud statute (18 U.S.C. § 1343) are punishable by fines up to \$250,000 for an individual or \$500,000 for an organization, or up to 20 years in prison. If the violation involves a financial institution, the maximum penalty is increased to 30 years in prison. This section adds fraud occurring “in relation to, or involving any ben-

efit authorized, transported, transmitted, transferred, disbursed or paid in connection with a major disaster or emergency” to the 30-year maximum now applicable only to financial institution fraud.

Sec. 4. Increased criminal penalties for engaging in mail fraud during and relation to a presidentially declared major disaster or emergency

Section 4 increases the penalties available for mail fraud (18 U.S.C. §1341) that occur in connection with major disaster or emergency declarations. Current law (18 U.S.C. §1341) provides that violations of the mail fraud statute are punishable by fines up to \$250,000 for an individual or \$500,000 for an organization, or up to 20 years in prison. If the violation involves a financial institution, the maximum penalty is increased to 30 years in prison. This section adds fraud occurring “in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a presidentially declared major disaster or emergency” to the 30-year maximum now applicable only to financial institution fraud.

Sec. 5. Directive to Sentencing Commission

Section 5 directs the United States Sentencing Commission to promulgate sentencing guidelines, or amend the existing guidelines to provide for increased penalties for fraud or theft offenses committed in connection with a major disaster or emergency declaration. Section 5 also directs the Commission to submit to the Committees on the Judiciary any guidelines changes accompanied by an explanation and any additional policy recommendations for combating emergency or disaster fraud.

This section identifies several requirements for the Sentencing Commission, including assuring reasonable consistency with other relevant directives and guidelines, accounting for any circumstances that might justify exceptions, and making any necessary conforming changes to the sentencing guidelines. Section 5 also provides emergency authority for the Sentencing Commission to promulgate the guidelines or amendments and a deadline of not later than 30 days after the enactment of S. 863.

VII. COST ESTIMATE

MARCH 21, 2007.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 863, the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 863—Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007

CBO estimates that implementing S. 863 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues, but CBO estimates that any such effects would not be significant.

S. 863 contains no intergovernmental or private-sector mandates as defined in the unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 863 would establish a new federal crime for the commission of certain fraudulent acts relating to benefits distributed after major disasters or emergencies. Because the bill would establish a new offense, the government would be able to pursue cases that it otherwise would not be able to prosecute. We expect that S. 863 would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 863 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VIII. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 863 will not have a significant regulatory impact.

IX. ADDITIONAL VIEWS OF SENATOR SESSIONS

It is clear that current criminal penalties are insufficient to deter disaster fraud. The increasing number of indictments from the direct aftermath of Hurricanes Katrina and Rita through today illustrates this problem. The Justice Department is aggressively prosecuting these criminals, but they have asked Congress for additional tools so that the federal statutes adequately address and deter fraud in connection with emergency and disaster assistance.

The bill will send a strong message that disaster relief fraud is a serious crime. Importantly, the increased penalties will help to deter this kind of fraud. Exploiting the kindness of the American people in times of crisis is a serious crime that will be treated with appropriate severity. We will not tolerate criminals stealing from the pockets of disaster victims. We must ensure that victims and the generous members of the American public are not preyed upon by criminals attempting to profit from these disasters and emergencies.

The Department of Justice announced its strong support for this legislation by letter to the Chairman of the Committee on April 25, 2007. The Justice Department's Views Letter raises a number of

important points, and I include the letter as an attachment to this statement.

JEFF SESSIONS.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 25, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the Department of Justice's views on S.863, the "Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007," which was introduced on March 13. The Department strongly supports the Act, which will provide important prosecutorial tools in the government's efforts to combat fraud associated with natural disasters and other emergencies.

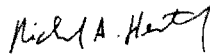
As you know, natural disasters and emergency situations often create an opportunity for unscrupulous individuals to take advantage both of the immediate victims and of those who generously offer financial and other assistance to those victims. It was for precisely this reason that on September 8, 2005, Attorney General Gonzales established the Hurricane Katrina Fraud Task Force to address such predatory activity in the aftermath of Hurricane Katrina. The overall goal of the Task Force is to stop people who seek to illegally take for themselves the money that is intended for the victims of the hurricane and the rebuilding of the Gulf Coast region. The Task Force has mobilized to bring prosecutions as quickly as possible, to send a strong message of deterrence.

We believe the "Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007" will help the Department address natural disasters and emergencies even more effectively, and will send a strong signal that exploiting the kindness of Americans in times of crisis is a serious crime that will be treated with appropriate severity. The new criminal fraud statute that will be created by the Act, as well as the enhanced penalties for disaster fraud, will help ensure that the victims of these terrible disasters, and members of the American public who generously reach out to help those victims, are not preyed upon by criminals attempting to profit from these disasters and emergencies.

The Honorable Patrick J. Leahy
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Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to this letter.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Arlen Specter
Ranking Member

✓ The Honorable Jeff Sessions

X. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 863, as reported, are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.

1001. Statements or entries generally.

* * * * *

1040. *Fraud in connection with major disaster or emergency benefits.*

* * * * *

§ 1040. *Fraud in connection with major disaster or emergency benefits*

(a) *Whoever, in a circumstance described in subsection (b) of this section, knowingly—*

(1) falsifies, conceals, or covers up by any trick, scheme, or device any material fact; or

(2) makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or representation,

in any matter involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a major disaster declaration under section 401 of the Disaster Relief Act of 1974, or an emergency declaration under section 501 of the Disaster Relief Act of 1974, or in connection with any procurement of property or services related to any emergency or disaster declaration as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, shall be fined under this title, imprisoned for not more than 30 years, or both.

(b) *The circumstance to which subsection (a) of this section refers is that—*

(1) the authorization, transportation, transmission, transfer, disbursement, or payment of the benefit is in or affects interstate or foreign commerce;

(2) the benefit is transported in the mail at any point in the authorization, transportation, transmission, transfer, disbursement, or payment of that benefit; or

(3) the benefit is a record, voucher, payment, money, or thing of value of the United States, or of any department or agency thereof.

(c) *In this section, the term “benefit” means any record, voucher, payment, money or thing of value, good, service, right, or privilege*

provided by the United States, State or local government, or other entity.

* * * * *

CHAPTER 63—MAIL FRAUD

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§ 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation *occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency, or affects a financial institution*, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

* * * * *

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation *occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency, or affects a financial institution*, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

* * * * *