

116TH CONGRESS
1ST SESSION

S. 151

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

JANUARY 16, 2019

Mr. THUNE (for himself and Mr. MARKEY) 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 paragraph (3) or (4) of section 503(b), to
7 have violated any provision of this subsection
8 shall be liable to the United States for a for-
9 feiture penalty pursuant to section 503(b)(1).
10 The amount of the forfeiture penalty deter-
11 mined under this subparagraph shall be deter-
12 mined in accordance with subparagraphs (A)
13 through (F) of section 503(b)(2).

14 “(B) VIOLATION WITH INTENT.—Any per-
15 son that is determined by the Commission, in
16 accordance with paragraph (3) or (4) of section
17 503(b), to have violated this subsection with the
18 intent to cause such violation shall be liable to
19 the United States for a forfeiture penalty. The
20 amount of the forfeiture penalty determined
21 under this subparagraph shall be equal to an
22 amount determined in accordance with subpara-
23 graphs (A) through (F) of section 503(b)(2)
24 plus an additional penalty not to exceed
25 \$10,000.

1 “(C) RECOVERY.—Any forfeiture penalty
2 determined under subparagraph (A) or (B)
3 shall be recoverable under section 504(a).

4 “(D) PROCEDURE.—No forfeiture liability
5 shall be determined under subparagraph (A) or
6 (B) against any person unless such person re-
7 ceives the notice required by paragraph (3) or
8 (4) of section 503(b).

9 “(E) STATUTE OF LIMITATIONS.—No for-
10 feiture penalty shall be determined or imposed
11 against any person—

12 “(i) under subparagraph (A) if the
13 violation charged occurred more than 1
14 year prior to the date of issuance of the re-
15 quired notice or notice of apparent liabil-
16 ity; and

17 “(ii) under subparagraph (B) if the
18 violation charged occurred more than 3
19 years prior to the date of issuance of the
20 required notice or notice of apparent liabil-
21 ity.

22 “(F) RULE OF CONSTRUCTION.—Notwith-
23 standing any law to the contrary, the Commis-
24 sion may not determine or impose a forfeiture

1 penalty on a person under both subparagraphs
2 (A) and (B) based on the same conduct.”; and
3 (2) by striking subsection (h).

4 (b) APPLICABILITY.—The amendments made by this
5 section shall not affect any action or proceeding com-
6 menced before and pending on the date of enactment of
7 this Act.

8 (c) DEADLINE FOR REGULATIONS.—The Federal
9 Communications Commission shall prescribe regulations
10 to implement the amendments made by this section not
11 later than 270 days after the date of enactment of this
12 Act.

13 **SEC. 3. CALL AUTHENTICATION.**

14 (a) DEFINITIONS.—In this section:

15 (1) STIR/SHAKEN AUTHENTICATION FRAME-
16 WORK.—The term “STIR/SHAKEN authentication
17 framework” means the secure telephone identity re-
18 visited and signature-based handling of asserted in-
19 formation using tokens standards proposed by the
20 information and communications technology industry
21 to attach a certificate of authenticity to each phone
22 to verify the source of each call.

23 (2) VOICE SERVICE.—The term “voice serv-
24 ice”—

1 (A) means any service that is inter-
2 connected with the public switched telephone
3 network and that furnishes voice communica-
4 tions to an end user using resources from the
5 North American Numbering Plan or any suc-
6 cessor to the North American Numbering Plan
7 adopted by the Commission under section
8 251(e)(1) of the Communications Act of 1934
9 (47 U.S.C. 251(e)(1)); and

10 (B) includes—

11 (i) transmissions from a telephone
12 facsimile machine, computer, or other de-
13 vice to a telephone facsimile machine; and

14 (ii) without limitation, any service
15 that enables real-time, two-way voice com-
16 munications, including any service that re-
17 quires internet protocol-compatible cus-
18 tomer premises equipment (commonly
19 known as “CPE”) and permits out-bound
20 calling, whether or not the service is one-
21 way or two-way voice over internet pro-
22 tocol.

23 (b) AUTHENTICATION FRAMEWORK.—

24 (1) IN GENERAL.—Subject to paragraphs (2)
25 and (3), not later than 18 months after the date of

1 enactment of this Act, the Federal Communications
2 Commission shall require a provider of voice service
3 to implement the STIR/SHAKEN authentication
4 framework in the internet protocol networks of voice
5 service providers.

6 (2) IMPLEMENTATION.—The Federal Commu-
7 nications Commission shall not take the action de-
8 scribed in paragraph (1) if the Commission deter-
9 mines that a provider of voice service, not later than
10 12 months after the date of enactment of this Act—

11 (A) has adopted the STIR/SHAKEN au-
12 thentication framework for calls on the internet
13 protocol networks of voice service providers;

14 (B) has agreed voluntarily to participate
15 with other providers of voice service in the
16 STIR/SHAKEN authentication framework;

17 (C) has begun to implement the STIR/
18 SHAKEN authentication framework; and

19 (D) will be capable of fully implementing
20 the STIR/SHAKEN authentication framework
21 not later than 18 months after the date of en-
22 actment of this Act.

23 (3) IMPLEMENTATION REPORT.—Not later than
24 12 months after the date of enactment of this Act,
25 the Federal Communications Commission shall sub-

1 mit to the Committee on Commerce, Science, and
2 Transportation of the Senate and the Committee on
3 Energy and Commerce of the House of Representa-
4 tives a report on the determination required under
5 paragraph (2), which shall include—

6 (A) an analysis of the extent to which pro-
7 viders of a voice service have implemented the
8 STIR/SHAKEN authentication framework; and

9 (B) an assessment of the efficacy of the
10 STIR/SHAKEN authentication framework, as
11 being implemented under this section, in ad-
12 dressing all aspects of call authentication.

13 (4) REVIEW AND REVISION OR REPLACE-
14 MENT.—Not later than 3 years after the date of en-
15 actment of this Act, and every 3 years thereafter,
16 the Federal Communications Commission, after pub-
17 lic notice and an opportunity for comment, shall—

18 (A) assess the efficacy of the call authen-
19 tication framework implemented under this sec-
20 tion;

21 (B) based on the assessment under sub-
22 paragraph (A), revise or replace the call au-
23 thentication framework under this section if the
24 Commission determines it is in the public inter-
25 est to do so; and

1 (C) submit to the Committee on Com-
2 merce, Science, and Transportation of the Sen-
3 ate and the Committee on Energy and Com-
4 merce of the House of Representatives a report
5 on the findings of the assessment under sub-
6 paragraph (A) and on any actions to revise or
7 replace the call authentication framework under
8 subparagraph (B).

9 (5) EXTENSION OF IMPLEMENTATION DEAD-
10 LINE.—The Federal Communications Commission
11 may extend any deadline for the implementation of
12 a call authentication framework required under this
13 section by 12 months or such further amount of
14 time as the Commission determines necessary if the
15 Commission determines that purchasing or upgrad-
16 ing equipment to support call authentication would
17 constitute a substantial hardship for a provider or
18 category of providers.

19 (c) SAFE HARBOR AND OTHER REGULATIONS.—

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

22 (A) establishing when a provider of voice
23 service may block a voice call based, in whole or
24 in part, on information provided by the call au-
25 thentication framework under subsection (b);

1 (B) establishing a safe harbor for a pro-
2 vider of voice service from liability for unin-
3 tended or inadvertent blocking of calls or for
4 the unintended or inadvertent misidentification
5 of the level of trust for individual calls based,
6 in whole or in part, on information provided by
7 the call authentication framework under sub-
8 section (b); and

9 (C) establishing a process to permit a call-
10 ing party adversely affected by the information
11 provided by the call authentication framework
12 under subsection (b) to verify the authenticity
13 of the calling party's calls.

14 (2) CONSIDERATIONS.—In establishing the safe
15 harbor under paragraph (1), the Federal Commu-
16 nications Commission shall consider limiting the li-
17 ability of a provider based on the extent to which the
18 provider—

19 (A) blocks or identifies calls based, in
20 whole or in part, on the information provided
21 by the call authentication framework under sub-
22 section (b);

23 (B) implemented procedures based, in
24 whole or in part, on the information provided

1 by the call authentication framework under sub-
2 section (b); and

3 (C) used reasonable care.

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

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

9 (a) **IN GENERAL.**—Not later than 1 year after the
10 date of enactment of this Act, and consistent with the call
11 authentication framework under section 3, the Federal
12 Communications Commission shall initiate a rulemaking
13 to help protect a subscriber from receiving unwanted calls
14 or text messages from a caller using an unauthenticated
15 number.

16 (b) **CONSIDERATIONS.**—In promulgating rules under
17 subsection (a), the Federal Communications Commission
18 shall consider—

19 (1) the Government Accountability Office report
20 on combating the fraudulent provision of misleading
21 or inaccurate caller identification required by section
22 503(c) of division P of the Consolidated Appropria-
23 tions Act 2018 (Public Law 115–141);

24 (2) the best means of ensuring that a sub-
25 scriber or provider has the ability to block calls from

1 a caller using an unauthenticated North American
2 Numbering Plan number;

3 (3) the impact on the privacy of a subscriber
4 from unauthenticated calls;

5 (4) the effectiveness in verifying the accuracy of
6 caller identification information; and

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

10 **SEC. 5. INTERAGENCY WORKING GROUP.**

11 (a) IN GENERAL.—The Attorney General, in con-
12 sultation with the Chairman of the Federal Communica-
13 tions Commission, shall convene an interagency working
14 group to study Government prosecution of violations of
15 section 227(b) of the Communications Act of 1934 (47
16 U.S.C. 227(b)).

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

19 (1) determine whether, and if so how, any Fed-
20 eral laws, including regulations, policies, and prac-
21 tices, or budgetary or jurisdictional constraints in-
22 hibit the prosecution of such violations;

23 (2) identify existing and potential Federal poli-
24 cies and programs that encourage and improve co-
25 ordination among Federal departments and agencies

1 and States, and between States, in the prevention
2 and prosecution of such violations;

3 (3) identify existing and potential international
4 policies and programs that encourage and improve
5 coordination between countries in the prevention and
6 prosecution of such violations; and

7 (4) consider—

8 (A) the benefit and potential sources of ad-
9 ditional resources for the Federal prevention
10 and prosecution of criminal violations of that
11 section;

12 (B) whether to establish memoranda of un-
13 derstanding regarding the prevention and pros-
14 ecution of such violations between—

15 (i) the States;

16 (ii) the States and the Federal Gov-
17 ernment; and

18 (iii) the Federal Government and a
19 foreign government;

20 (C) whether to establish a process to allow
21 States to request Federal subpoenas from the
22 Federal Communications Commission;

23 (D) whether extending civil enforcement
24 authority to the States would assist in the suc-

1 cessful prevention and prosecution of such vio-
2 lations;

3 (E) whether increased forfeiture and im-
4 prisonment penalties are appropriate, such as
5 extending imprisonment for such a violation to
6 a term longer than 2 years;

7 (F) whether regulation of any entity that
8 enters into a business arrangement with a com-
9 mon carrier regulated under title II of the Com-
10 munications Act of 1934 (47 U.S.C. 201 et
11 seq.) for the specific purpose of carrying, rout-
12 ing, or transmitting a call that constitutes such
13 a violation would assist in the successful pre-
14 vention and prosecution of such violations; and

15 (G) the extent to which, if any, Depart-
16 ment of Justice policies to pursue the prosecu-
17 tion of violations causing economic harm, phys-
18 ical danger, or erosion of an inhabitant's peace
19 of mind and sense of security inhibits the pre-
20 vention or prosecution of such violations.

21 (c) MEMBERS.—The interagency working group shall
22 be composed of such representatives of Federal depart-
23 ments and agencies as the Attorney General considers ap-
24 propriate, such as—

25 (1) the Department of Commerce;

- 1 (2) the Department of State;
- 2 (3) the Department of Homeland Security;
- 3 (4) the Federal Communications Commission;
- 4 (5) the Federal Trade Commission; and
- 5 (6) the Bureau of Consumer Financial Protec-
- 6 tion.

7 (d) NON-FEDERAL STAKEHOLDERS.—In carrying
8 out the study under subsection (a), the interagency work-
9 ing group shall consult with such non-Federal stake-
10 holders as the Attorney General determines have the rel-
11 evant expertise, including the National Association of At-
12 torneys General.

13 (e) REPORT TO CONGRESS.—Not later than 270 days
14 after the date of enactment of this Act, the interagency
15 working group shall submit to the Committee on Com-
16 merce, Science, and Transportation of the Senate and the
17 Committee on Energy and Commerce of the House of
18 Representatives a report on the findings of the study
19 under subsection (a), including—

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

22 (2) a description of what progress, if any, rel-
23 evant Federal departments and agencies have made
24 in implementing the recommendations under para-
25 graph (1).

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

2 (a) IN GENERAL.—

3 (1) EXAMINATION OF FCC POLICIES.—Not later
4 than 180 days after the date of enactment of this
5 Act, the Federal Communications Commission shall
6 commence a proceeding to determine whether Fed-
7 eral Communications Commission policies regarding
8 access to number resources, including number re-
9 sources for toll free and non-toll free telephone num-
10 bers, could be modified, including by establishing
11 registration and compliance obligations, to help re-
12 duce access to numbers by potential perpetrators of
13 violations of section 227(b) of the Communications
14 Act of 1934 (47 U.S.C. 227(b)).

15 (2) REGULATIONS.—If the Federal Commu-
16 nications Commission determines under paragraph
17 (1) that modifying the policies described in that
18 paragraph could help achieve the goal described in
19 that paragraph, the Commission shall prescribe reg-
20 ulations to implement those policy modifications.

21 (b) AUTHORITY.—Any person who knowingly,
22 through an employee, agent, officer, or otherwise, directly
23 or indirectly, by or through any means or device whatso-
24 ever, is a party to obtaining number resources, including
25 number resources for toll free and non-toll free telephone
26 numbers, from a common carrier regulated under title II

1 of the Communications Act of 1934 (47 U.S.C. 201 et
2 seq.), in violation of a regulation prescribed under sub-
3 section (a) of this section, shall, notwithstanding section
4 503(b)(5) of the Communications Act of 1934 (47 U.S.C.
5 503(b)(5)), be subject to a forfeiture penalty under section
6 503 of that Act. A forfeiture penalty under this subsection
7 shall be in addition to any other penalty provided for by
8 law.

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