

103^D CONGRESS
2^D SESSION

H. R. 4399

To combat telemarketing fraud.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1994

Mr. CARR of Michigan introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To combat telemarketing fraud.

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 “Senior Citizens
5 Against Marketing Scams Act of 1994”.

6 **SEC. 2. ENHANCED PENALTIES FOR TELEMARKETING**
7 **FRAUD.**

8 (a) OFFENSE.—Part I of title 18, United States
9 Code, is amended—

10 (1) by redesignating chapter 113A as chapter
11 113B; and

1 (2) by inserting after chapter 113 the following
2 new chapter:

3 **“CHAPTER 113A—TELEMARKETING FRAUD**

“Sec.

“2325. Definition.

“2326. Enhanced penalties.

“2327. Restitution.

4 **“§ 2325. Definition**

5 “In this chapter, ‘telemarketing’—

6 “(1) means a plan, program, promotion, or
7 campaign that is conducted to induce—

8 “(A) purchases of goods or services; or

9 “(B) participation in a contest or sweep-
10 stakes,

11 by use of 1 or more interstate telephone calls initi-
12 ated either by a person who is conducting the plan,
13 program, promotion, or campaign or by a prospec-
14 tive purchaser or contest or sweepstakes participant;
15 but

16 “(2) does not include the solicitation of sales
17 through the mailing of a catalog that—

18 “(A) contains a written description or il-
19 lustration of the goods or services offered for
20 sale;

21 “(B) includes the business address of the
22 seller;

1 “(C) includes multiple pages of written
2 material or illustration; and

3 “(D) has been issued not less frequently
4 than once a year,

5 if the person making the solicitation does not solicit
6 customers by telephone but only receives calls initi-
7 ated by customers in response to the catalog and
8 during those calls take orders without further solici-
9 tation.

10 **“§ 2326. Enhanced penalties**

11 “An offender that is convicted of an offense under
12 1028, 1029, 1341, 1342, 1343, or 1344 in connection with
13 the conduct of telemarketing—

14 “(1) may be imprisoned for a term of 5 years
15 in addition to any term of imprisonment imposed
16 under any of those sections, respectively; and

17 “(2) in the case of an offense under any of
18 those sections that—

19 “(A) victimized a significant number of
20 persons over the age of 55; or

21 “(B) targeted persons over the age of 55,
22 may be imprisoned for a term of 10 years in addi-
23 tion to any term of imprisonment imposed under any
24 of those sections, respectively.

1 **“§ 2327. Restitution**

2 “In sentencing an offender under section 2326, the
3 court shall order the offender to pay restitution to any
4 victims and may order the offender to pay restitution to
5 others who sustained losses as a result of the offender’s
6 fraudulent activity.”.

7 (b) CLERICAL AMENDMENTS.—The table of chapters
8 at the beginning of part I of title 18, United States Code,
9 is amended by striking the item relating to chapter 113A
10 and inserting the following:

“113A. Telemarketing fraud	2325
“113B. Terrorism	2331”.

11 **SEC. 3. FORFEITURE OF FRAUD PROCEEDS.**

12 Section 982(a) of title 18, United States Code, is
13 amended by adding at the end the following new para-
14 graph:

15 “(6) The Court, in sentencing an offender
16 under section 2326, shall order that the offender
17 forfeit to the United States any real or personal
18 property constituting or derived from proceeds that
19 the offender obtained directly or indirectly as a
20 result of the offense.”.

21 **SEC. 4. INCREASED PENALTIES FOR FRAUD AGAINST**
22 **OLDER VICTIMS.**

23 (a) REVIEW.—The United States Sentencing Com-
24 mission shall review and, if necessary, amend the sentenc-

1 ing guidelines to ensure that victim related adjustments
2 for fraud offenses against older victims over the age of
3 55 are adequate.

4 (b) REPORT.—Not later than 180 days after the date
5 of enactment of this Act, the Sentencing Commission shall
6 report to Congress the result of its review under sub-
7 section (a).

8 **SEC. 5. REWARDS FOR INFORMATION LEADING TO PROS-**
9 **ECUTION AND CONVICTION.**

10 Section 3059 of title 18, United States Code, is
11 amended by adding at the end the following new sub-
12 section:

13 “(c)(1) In special circumstances and in the Attorney
14 General’s sole discretion, the Attorney General may make
15 a payment of up to \$10,000 to a person who furnishes
16 information unknown to the Government relating to a pos-
17 sible prosecution under section 2325 which results in a
18 conviction.

19 “(2) A person is not eligible for a payment under
20 paragraph (1) if—

21 “(A) the person is a current or former officer
22 or employee of a Federal, State, or local government
23 agency or instrumentality who furnishes information
24 discovered or gathered in the course of government
25 employment;

1 “(B) the person knowingly participated in the
2 offense;

3 “(C) the information furnished by the person
4 consists of an allegation or transaction that has been
5 disclosed to the public—

6 “(i) in a criminal, civil, or administrative
7 proceeding;

8 “(ii) in a congressional, administrative, or
9 General Accounting Office report, hearing,
10 audit, or investigation; or

11 “(iii) by the news media, unless the person
12 is the original source of the information; or

13 “(D) when, in the judgment of the Attorney
14 General, it appears that a person whose illegal ac-
15 tivities are being prosecuted or investigated could
16 benefit from the award.

17 “(3) For the purposes of paragraph (2)(C)(iii), the
18 term ‘original source’ means a person who has direct and
19 independent knowledge of the information that is fur-
20 nished and has voluntarily provided the information to the
21 Government prior to disclosure by the news media.

22 “(4) Neither the failure of the Attorney General to
23 authorize a payment under paragraph (1) nor the amount
24 authorized shall be subject to judicial review.”.

1 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated for fiscal
3 year 1995 for the purposes of carrying out this Act and
4 the amendments made by this Act—

5 (1) \$10,000,000 for the Federal Bureau of In-
6 vestigation to hire, equip, and train no fewer than
7 100 special agents and support staff to investigate
8 telemarketing fraud cases;

9 (2) \$3,500,000 to hire, equip, and train no
10 fewer than 30 Department of Justice attorneys, as-
11 sistant United States Attorneys, and support staff to
12 prosecute telemarketing fraud cases; and

13 (3) \$10,000,000 for the Department of Justice
14 to conduct, in cooperation with State and local law
15 enforcement agencies and senior citizen advocacy or-
16 ganizations, public awareness and prevention initia-
17 tives for senior citizens, such as seminars and
18 training.

19 **SEC. 7. BROADENING APPLICATION OF MAIL FRAUD STAT-**
20 **UTE.**

21 Section 1341 of title 18, United States Code, is
22 amended—

23 (1) by inserting “or deposits or causes to be de-
24 posited any matter or thing whatever to be sent or
25 delivered by any private or commercial interstate
26 carrier,” after “Postal Service,”; and

1 (2) by inserting “or such carrier” after “causes
2 to be delivered by mail”.

3 **SEC. 8. FRAUD AND RELATED ACTIVITY IN CONNECTION**
4 **WITH ACCESS DEVICES.**

5 Section 1029 of title 18, United States Code, is
6 amended—

7 (1) in subsection (a)—

8 (A) by striking “or” at the end of para-
9 graph (3); and

10 (B) by inserting after paragraph (4) the
11 following new paragraphs:

12 “(5) knowingly and with intent to defraud ef-
13 fects transactions, with 1 or more access devices is-
14 sued to another person or persons, to receive pay-
15 ment or any other thing of value during any 1-year
16 period the aggregate value of which is equal to or
17 greater than \$1,000;

18 “(6) without the authorization of the issuer of
19 the access device, knowingly and with intent to de-
20 fraud solicits a person for the purpose of—

21 “(A) offering an access device; or

22 “(B) selling information regarding or an
23 application to obtain an access device; or

24 “(7) without the authorization of the credit
25 card system member or its agent, knowingly and

1 with intent to defraud causes or arranges for an-
2 other person to present to the member or its agent,
3 for payment, 1 or more evidences or records of
4 transactions made by an access device;”;

5 (2) in subsection (c)(1) by striking “(a)(2) or
6 (a)(3)” and inserting “(a) (2), (3), (5), (6), or (7)”;
7 and

8 (3) in subsection (e)—

9 (A) by striking “and” at the end of para-
10 graph (5);

11 (B) by striking the period at the end of
12 paragraph (6) and inserting “; and”; and

13 (C) by adding at the end the following new
14 paragraph:

15 “(7) the term ‘credit card system member’
16 means a financial institution or other entity that is
17 a member of a credit card system, including an en-
18 tity, whether affiliated with or identical to the credit
19 card issuer, that is the sole member of a credit card
20 system.”.

21 **SEC. 9. INFORMATION NETWORK.**

22 (a) HOTLINE.—The Attorney General shall establish
23 a national toll-free hotline for the purpose of—

24 (1) providing general information on
25 telemarketing fraud to interested persons; and

1 (2) gathering information related to possible
2 violations of this Act.

3 (b) ACTION ON INFORMATION GATHERED.—The At-
4 torney General shall work in cooperation with the Federal
5 Trade Commission to ensure that information gathered
6 through the hotline shall be acted on in an appropriate
7 manner.

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