The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1604), as amended, was considered read the third time, and passed.

TELEMARKETING FRAUD PREVENTION ACT OF 1997

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 216, H.R. 1604.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1847) to improve the criminal law relating against consumer telemarketing fraud.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment, to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telemarketing Fraud Prevention Act of 1997.";

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:

(8) The Court, in sentencing a defendant who has been convicted of an offense under section 1029, 1029a, 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 2326 of title 18, United States Code, as amended by this Act), in connection with the conduct of telemarketing;

(2) submit to Congress an explanation of each action taken under paragraph (1) and any additional policy recommendations such action thereunder reflect the serious nature of the offenses;

(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.

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 adding at the end the following:

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(2) in subsection (b)(1)(A), by striking "(a)(1)(a)(6)" and inserting "(a)(1), (a)(6), or (a)(8)".

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 and offenses for which an enhanced penalty is provided under section 2326"; and

(2) by striking subsection (c) and inserting the following:

(c) VICTIM DEFINED.—In this section, the term "victims" has the meaning given that term in section 3663a(a)(2)."

SEC. 6. AMENDMENT OF FEDERAL SENTENCING GUIDELINES.

(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 944(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;

(2) submit to Congress an explanation of each action taken under paragraph (1) and any additional policy recommendations such action thereunder reflect the serious nature of the offenses;

(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 on which the President submitted the Emergency Telemarketing Fraud Prevention Act of 1997, in accordance with the procedures set forth in section 212(a) of the Sentencing Reform Act of 1987, as the Director of the United States Sentencing Commission, or any successor to that position, shall determine that a timely submission of such guidelines or amendments is necessary to fulfill the purposes of the Act.

(e) 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) are reasonably consistent with other relevant statutory directives to the Commission and with other guidelines;

(2) 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;

(3) 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;

(4) account for any aggravating or mitigating circumstances that might justify upward or downward departures;

(5) 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.

(f) AMENDMENT OF FEDERAL SENTENCING GUIDELINES.—(Purpose: To prohibit false advertising or misuse of the name and likeness of the United States Marshals Service.)

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 216, H.R. 1604.

The legislative clerk read as follows:

The amendment I have offered will assist the Marshals Service by amending 18 U.S.C. 703—the part of the U.S. Code that deals with misuse of names to indicate Federal agencies—to include the Marshals Service among the Federal agencies whose name and likeness are protected from imitation on items of apparel or in connection with any advertising, circular, book, pamphlet, software, or other publication, 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, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the United States Marshals Service;

Mr. LEAHY. Mr. President, I am glad to support this amendment by Mr. Leahy to prevent the misuse of the name and likeness of the U.S. Marshals Service.

The U.S. Marshals Service is the Nation's oldest Federal law enforcement agency. Since 1789, U.S. marshals have served the country through a variety of vital law enforcement activities, such as the protection of Federal judicial officials, the apprehension of Federal fugitives, and the transportation of Federal prisoners. Today, approximately 4,000 deputy U.S. marshals and career employees perform these important services across the Nation. I receive frequent reports about the day-to-day activities of the Service from Vermont's U.S. marshal, Jack Rouille, who has been a model public servant and has been a linchpin of coordination for Federal and local law enforcement agencies in Vermont.

The amendment I have offered will assist the Marshals Service by amending 18 U.S.C. 703—the part of the U.S. Code that deals with misuse of names to indicate Federal agencies—to include the Marshals Service among the Federal agencies whose name and likeness are protected from imitation on items of apparel or in connection with any commercial enterprise.

At present, the name and likeness of many other Federal law enforcement agencies are protected under law. For example, the name and likeness of the Federal Bureau of Investigation [FBI], Secret Service, and Drug Enforcement Agency [DEA] are protected under 18 U.S.C. 709. Moreover, the name and likeness of several non-law enforcement agencies are protected under law. For example, the name and likeness of the Federal Deposit Insurance Corporation, the National Credit Union, the Federal Home Loan Bank, the Overseas Private Investment Corporation, and other Federal agencies are protected under law.
The lack of protection for the Marshals Service has generated serious security concerns. At a minimum, the public may be falsely lead to believe that the Marshals Service endorses an unauthorized product. Even more problematic is the possibility that unauthorized individuals may wear apparel to look like marshals to effectuate criminal purposes or to gain undesired access to secured areas such as courthouses or witness security facilities.

Recent cases highlight the need for this amendment:

In 1994, an individual dressed in full marshal’s “sweat team” apparel and in possession of a loaded weapon made a series of presentations to a group of students at a local high school in Virginia.

An organization known as the United States Peace Officers Association of America markets home security systems. Its advertisements use a replica of the Marshals Service badge, implying government endorsement of the organization and its product. The organization is not endorsed or authorized by the Marshals Service.

A Texas company offers bullet-resistant panels as an alternative home protection system. The company advertises that these bullet-proof panels are approved by the Marshals Service. This product is not officially endorsed by the Marshals Service.

While the amendment that I am introducing would protect the Marshals Service against these illegitimate uses of its name and likeness, the amendment is purposely limited in its scope. Specifically, this amendment would not prevent the use of the name or likeness in those instances where the use would not be reasonably calculated to convey the impression that either, first, the wearer of the item of apparel with the name or likeness is acting pursuant to legal authority; or, second, the use is approved, endorsed, or authorized by the Marshals Service.

Thus, for example, there was a case brought before the Patent Office Trade-mark Trial and Appeal Board in 1971 in which a French clothing manufacturer used the initials FBI in conjunction with the words “Fabrication Bril International” on clothing. The Trial and Appeal Board held that the law did not create an absolute prohibition against the use of the initials FBI, but was applicable only in those cases in which the initials were used in a manner reasonably calculated to convey a mistaken impression that the item of clothing was approved, endorsed, or authorized by the FBI. In that case, the Board ruled, there was little chance that anyone would think that the clothing was approved, endorsed, or authorized by the FBI, hence there was no violation.

In a case of political satire, the use of the Marshals Service name or likeness would almost always be permissible. In such instances, there would be little chance that any reasonable person would think that the satirist was acting pursuant to legal authority. This amendment should not interfere with the Capitol Steps or other satirists. As the court stated in Cliff Notes versus Bantam Doubleday Dell Pub. Group in 1969, trademark law courts have uniformly ruled that noncommercial parodies and satires do not infringe legitimate trademarks because there is little chance of confusion as to sponsorship.

Allowing unauthorized individuals to pose as Marshals Service officials or allowing unauthorized individuals to use the name in a manner that mistakenly conveys the impression that the use is sanctioned by the Marshals Service is an affront to those who legitimately and nobly serve under its banner and wear its badge. For this reason, I am delighted that the Senate has accepted this amendment.

Speaker's Note: The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1629) was agreed to.

Amendment No. 1629

(Purpose: To combat telemarketing fraud through reasonable disclosure of certain records for telemarketing investigations)

Mr. SESSIONS. Mr. President, I send an amendment to the desk on behalf of Mr. HARKIN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS], for Mr. HARKIN, proposes an amendment numbered 1629.

Mr. SESSIONS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. 2. DISCLOSURE OF CERTAIN RECORDS FOR INVESTIGATIONS OF TELEMARKETING FRAUD.

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

(1) by striking out “or” at the end of clause (ii);

(2) by striking out the period at the end of clause (iii) and inserting in lieu thereof “; or”; and

(3) by adding at the end the following:

“(iv) submits a formal written request relevant to law enforcement investigation concerning telemarketing fraud for the name, address, and physical location of a telecommunication cover number if the officials submitted a formal written request for this information relevant to a legitimate law enforcement investigation. It will make it easier for officers to identify and locate these operations. This is similar to the procedure that is already in place for post office box investigations.

Mr. President, it is necessary to crack down on serious consumer fraud. With this change, we will have many more successful efforts to shut down these rip-off artists like several recent cases in my home state of Iowa.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1629) was agreed to.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill be reconsidered read the third time, and passed, as amended, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The bill (H.R. 1847), as amended, was considered read the third time, and passed.