

107TH CONGRESS
2D SESSION

S. 2240

To combat nursing home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 2002

Mr. LEAHY (for himself, Mr. DASCHLE, Mr. TORRICELLI, Mr. KENNEDY, Mr. HARKIN, Mr. BINGAMAN, Mr. FEINGOLD, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To combat nursing home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, 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; TABLE OF CONTENTS.**
- 4 (a) SHORT TITLE.—This Act may be cited as the
- 5 “Seniors Safety Act of 2002”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

See. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

TITLE I—COMBATING CRIMES AGAINST SENIORS

Sec. 101. Enhanced sentencing penalties based on age of victim.

Sec. 102. Study and report on health care fraud sentences.

Sec. 103. Increased penalties for fraud resulting in serious injury or death.

Sec. 104. Safeguarding pension plans from fraud and theft.

Sec. 105. Additional civil penalties for defrauding pension plans.

Sec. 106. Punishing bribery and graft in connection with employee benefit plans.

TITLE II—PREVENTING TELEMARKETING FRAUD

Sec. 201. Centralized complaint and consumer education service for victims of telemarketing fraud.

Sec. 202. Blocking of telemarketing scams.

TITLE III—PREVENTING HEALTH CARE FRAUD

Sec. 301. Injunctive authority relating to false claims and illegal kickback schemes involving Federal health care programs.

Sec. 302. Authorized investigative demand procedures.

Sec. 303. Extending antifraud safeguards to the Federal employee health benefits program.

Sec. 304. Grand jury disclosure.

Sec. 305. Increasing the effectiveness of civil investigative demands in false claims investigations.

TITLE IV—PROTECTING RESIDENTS OF NURSING HOMES

Sec. 401. Short title.

Sec. 402. Nursing home resident protection.

TITLE V—PROTECTING THE RIGHTS OF ELDERLY CRIME VICTIMS

Sec. 501. Use of forfeited funds to pay restitution to crime victims and regulatory agencies.

Sec. 502. Victim restitution.

Sec. 503. Bankruptcy proceedings not used to shield illegal gains from false claims.

Sec. 504. Forfeiture for retirement offenses.

3 SEC. 2. FINDINGS AND PURPOSES.

4 (a) FINDINGS.—Congress makes the following findings:

13 (5) Older victims of violent crime are almost
14 twice as likely as younger victims to be raped,
15 robbed, or assaulted at or in their own homes.

16 (6) Approximately half of all Americans who
17 are 50 years of age or older are afraid to walk alone
18 at night in their own neighborhoods.

23 (8) A 1996 American Association of Retired
24 Persons survey of people 50 years of age and older

1 showed that 57 percent were likely to receive calls
2 from telemarketers at least once a week.

3 (9) In 1998, Congress enacted legislation to
4 provide for increased penalties for telemarketing
5 fraud that targets seniors.

6 (10) It has been estimated that—

7 (A) approximately 43 percent of persons
8 turning 65 years of age can expect to spend
9 some time in a long-term care facility; and

10 (B) approximately 20 percent can expect
11 to spend 5 years or more in a such a facility.

12 (11) In 1997, approximately \$82,800,000,000
13 was spent on nursing home care in the United
14 States and over half of this amount was spent by the
15 Medicaid and Medicare programs.

16 (12) Losses to fraud and abuse in health care
17 reportedly cost the United States an estimated
18 \$100,000,000,000 in 1996.

19 (13) The Inspector General for the Department
20 of Health and Human Services has estimated that
21 about \$12,600,000,000 in improper Medicare benefit
22 payments, due to inadvertent mistake, fraud, and
23 abuse were made during fiscal year 1998.

24 (14) Incidents of health care fraud and abuse
25 remain common despite awareness of the problem.

1 (b) PURPOSES.—The purposes of this Act are to—

2 (1) combat nursing home fraud and abuse;

3 (2) enhance safeguards for pension plans and

4 health care programs;

5 (3) develop strategies for preventing and pun-

6 ishing crimes that target or otherwise disproportio-

7 nately affect seniors by collecting appropriate data—

8 (A) to measure the extent of crimes com-

9 mitted against seniors; and

10 (B) to determine the extent of domestic

11 and elder abuse of seniors; and

12 (4) prevent and deter criminal activity, such as

13 telemarketing fraud, that results in economic and

14 physical harm against seniors, and ensure appro-

15 priate restitution.

16 SEC. 3. DEFINITIONS.

17 In this Act:

18 (1) CRIME.—The term “crime” means any
19 criminal offense under Federal or State law.

1 ices, pursuant to section 1908(e) of the Social Secu-
2 rity Act (42 U.S.C. 1396g(e)).

5 **TITLE I—COMBATING CRIMES**

6 **AGAINST SENIORS**

7 SEC. 101. ENHANCED SENTENCING PENALTIES BASED ON
8 AGE OF VICTIM.

9 (a) DIRECTIVE TO THE UNITED STATES SEN-
10 TENCING COMMISSION.—Pursuant to its authority under
11 section 994(p) of title 28, United States Code, and in ac-
12 cordance with this section, the United States Sentencing
13 Commission (referred to in this section as the “Commis-
14 sion”) shall review and, if appropriate, amend section
15 3A1.1(a) of the Federal sentencing guidelines to include
16 the age of a crime victim as one of the criteria for deter-
17 mining whether the application of a sentencing enhance-
18 ment is appropriate.

19 (b) REQUIREMENTS.—In carrying out this section,
20 the Commission shall—

10 (5) account for any aggravating or mitigating
11 circumstances that may justify exceptions, including
12 circumstances for which the Federal sentencing
13 guidelines provide sentencing enhancements;

14 (6) make any necessary conforming changes to
15 the Federal sentencing guidelines; and

20 (c) REPORT.—Not later than December 31, 2002, the
21 Commission shall submit to Congress a report on issues
22 relating to the age of crime victims, which shall include—

23 (1) an explanation of any changes to sentencing
24 policy made by the Commission under this section;
25 and

1 (2) any recommendations of the Commission for
2 retention or modification of penalty levels, including
3 statutory penalty levels, for offenses involving sen-
4 sions.

5 SEC. 102. STUDY AND REPORT ON HEALTH CARE FRAUD
6 SENTENCES.

7 (a) DIRECTIVE TO THE UNITED STATES SEN-
8 TENCING COMMISSION.—Pursuant to its authority under
9 section 994(p) of title 28, United States Code, and in ac-
10 cordance with this section, the United States Sentencing
11 Commission (referred to in this section as the “Commis-
12 sion”) shall review and, if appropriate, amend the Federal
13 sentencing guidelines and the policy statements of the
14 Commission with respect to persons convicted of offenses
15 involving fraud in connection with a health care benefit
16 program (as defined in section 24(b) of title 18, United
17 States Code).

18 (b) REQUIREMENTS.—In carrying out this section,
19 the Commission shall—

20 (1) ensure that the Federal sentencing guide-
21 lines and the policy statements of the Commission
22 reflect the serious harms associated with health care
23 fraud and the need for aggressive and appropriate
24 law enforcement action to prevent such fraud;

9 (4) ensure reasonable consistency with other
10 Federal sentencing guidelines and directives;

15 (6) make any necessary conforming changes to
16 the Federal sentencing guidelines; and

21 (c) REPORT.—Not later than December 31, 2002, the
22 Commission shall submit to Congress a report on issues
23 relating to offenses described in subsection (a), which shall
24 include—

1 (1) an explanation of any changes to sentencing
2 policy made by the Commission under this section;
3 and

7 SEC. 103. INCREASED PENALTIES FOR FRAUD RESULTING
8 IN SERIOUS INJURY OR DEATH.

9 Sections 1341 and 1343 of title 18, United States
10 Code, are each amended by inserting before the last sen-
11 tence the following: “If the violation results in serious bod-
12 ily injury (as defined in section 1365), such person shall
13 be fined under this title, imprisoned not more than 20
14 years, or both, and if the violation results in death, such
15 person shall be fined under this title, imprisoned for any
16 term of years or life, or both.”.

17 SEC. 104. SAFEGUARDING PENSION PLANS FROM FRAUD
18 AND THEFT.

19 (a) IN GENERAL.—Chapter 63 of title 18, United
20 States Code, is amended by adding at the end the fol-
21 lowing:

22 “§1348. Fraud in relation to retirement arrange-
23 ments

24 "(a) DEFINITION.—

1 “(1) RETIREMENT ARRANGEMENT.—In this
2 section, the term ‘retirement arrangement’ means—

3 “(A) any employee pension benefit plan
4 subject to any provision of title I of the Em-
5 ployee Retirement Income Security Act of 1974;

6 “(B) any qualified retirement plan within
7 the meaning of section 4974(c) of the Internal
8 Revenue Code of 1986;

9 “(C) any medical savings account de-
10 scribed in section 220 of the Internal Revenue
11 Code of 1986; or

12 “(D) a fund established within the Thrift
13 Savings Fund by the Federal Retirement Thrift
14 Investment Board pursuant to subchapter III of
15 chapter 84 of title 5.

16 “(2) CERTAIN ARRANGEMENTS INCLUDED.—
17 The term ‘retirement arrangement’ shall include any
18 arrangement that has been represented to be an ar-
19 rangement described in any subparagraph of para-
20 graph (1) (whether or not so described).

21 “(3) EXCEPTION FOR GOVERNMENTAL PLAN.—
22 Except as provided in paragraph (1)(D), the term
23 ‘retirement arrangement’ shall not include any gov-
24 ernmental plan (as defined in section 3(32) of title

1 I of the Employee Retirement Income Security Act
2 of 1974 (29 U.S.C. 1002(32))).

3 “(b) PROHIBITION AND PENALTIES.—Whoever exe-
4 cutes, or attempts to execute, a scheme or artifice—

5 “(1) to defraud any retirement arrangement or
6 other person in connection with the establishment or
7 maintenance of a retirement arrangement; or

8 “(2) to obtain, by means of false or fraudulent
9 pretenses, representations, or promises, any of the
10 money or property owned by, or under the custody
11 or control of, any retirement arrangement or other
12 person in connection with the establishment or main-
13 tenance of a retirement arrangement;

14 shall be fined under this title, imprisoned not more than
15 10 years, or both.

16 “(c) ENFORCEMENT.—

17 “(1) IN GENERAL.—Subject to paragraph (2),
18 the Attorney General may investigate any violation
19 of, and otherwise enforce, this section.

20 “(2) EFFECT ON OTHER AUTHORITY.—Nothing
21 in this subsection may be construed to preclude the
22 Secretary of Labor or the head of any other appro-
23 priate Federal agency from investigating a violation
24 of this section in relation to a retirement arrange-
25 ment subject to title I of the Employee Retirement

1 Income Security Act of 1974 (29 U.S.C. 1001 et
2 seq.) or any other provision of Federal law.”.

3 (b) TECHNICAL AMENDMENT.—Section 24(a)(1) of
4 title 18, United States Code, is amended by inserting
5 “1348,” after “1347,”.

6 (c) CONFORMING AMENDMENT.—The analysis for
7 chapter 63 of title 18, United States Code, is amended
8 by adding at the end the following:

“1348. Fraud in relation to retirement arrangements.”.

9 **SEC. 105. ADDITIONAL CIVIL PENALTIES FOR DEFRAUDING**

10 **PENSION PLANS.**

11 (a) IN GENERAL.—

12 (1) ACTION BY ATTORNEY GENERAL.—Except
13 as provided in subsection (b)—

14 (A) the Attorney General may bring a civil
15 action in the appropriate district court of the
16 United States against any person who engages
17 in conduct constituting an offense under section
18 1348 of title 18, United States Code, or con-
19 spiracy to violate such section 1348; and

20 (B) upon proof of such conduct by a pre-
21 ponderance of the evidence, such person shall
22 be subject to a civil penalty in an amount equal
23 to the greatest of—

24 (i) the amount of pecuniary gain to
25 that person;

14 (b) EXCEPTION.—No civil penalty may be imposed
15 pursuant to subsection (a) with respect to conduct involv-
16 ing a retirement arrangement that—

17 (1) is an employee pension benefit plan subject
18 to title I of the Employee Retirement Income Secu-
19 rity Act of 1974; and

20 (2) for which the civil penalties may be imposed
21 under section 502 of the Employee Retirement In-
22 come Security Act of 1974 (29 U.S.C. 1132).

(c) DETERMINATION OF PENALTY AMOUNT.—In determining the amount of the penalty under subsection (a),

1 the district court may consider the effect of the penalty
2 on the violator or other person's ability to—
3 (1) restore all losses to the victims; or
4 (2) provide other relief ordered in another civil
5 or criminal prosecution related to such conduct, in-
6 cluding any penalty or tax imposed on the violator
7 or other person pursuant to the Internal Revenue
8 Code of 1986.

9 **SEC. 106. PUNISHING BRIBERY AND GRAFT IN CONNEC-**
10 **TION WITH EMPLOYEE BENEFIT PLANS.**

11 (a) **IN GENERAL.**—Section 1954 of title 18, United
12 States Code, is amended to read as follows:

13 **“§ 1954. Bribery and graft in connection with em-**
14 **ployee benefit plans**

15 “(a) **DEFINITIONS.**—In this section—

16 “(1) the term ‘employee benefit plan’ means
17 any employee welfare benefit plan or employee pen-
18 sion benefit plan subject to any provision of title I
19 of the Employee Retirement Income Security Act of
20 1974;

21 “(2) the terms ‘employee organization’, ‘admin-
22 istrator’, and ‘employee benefit plan sponsor’ mean
23 any employee organization, administrator, or plan
24 sponsor, as defined in title I of the Employment Re-
25 tirement Income Security Act of 1974; and

1 “(3) the term ‘applicable person’ means—

2 “(A) an administrator, officer, trustee,
3 custodian, counsel, agent, or employee of any
4 employee benefit plan;

5 “(B) an officer, counsel, agent, or em-
6 ployee of an employer or an employer any of
7 whose employees are covered by such plan;

8 “(C) an officer, counsel, agent, or em-
9 ployee of an employee organization any of
10 whose members are covered by such plan;

11 “(D) a person who, or an officer, counsel,
12 agent, or employee of an organization that, pro-
13 vides benefit plan services to such plan; or

14 “(E) a person with actual or apparent in-
15 fluence or decisionmaking authority in regard
16 to such plan.

17 “(b) **BRIBERY AND GRAFT.**—Whoever—

18 “(1) being an applicable person, receives or
19 agrees to receive or solicits, any fee, kickback, com-
20 mission, gift, loan, money, or thing of value, person-
21 ally or for any other person, because of or with the
22 intent to be corruptly influenced with respect to any
23 action, decision, or duty of that applicable person re-
24 lating to any question or matter concerning an em-
25 ployee benefit plan;

1 “(2) directly or indirectly, gives or offers, or
2 promises to give or offer, any fee, kickback, commis-
3 sion, gift, loan, money, or thing of value, to any ap-
4 plicable person, because of or with the intent to be
5 corruptly influenced with respect to any action, deci-
6 sion, or duty of that applicable person relating to
7 any question or matter concerning an employee ben-
8 efit plan; or

9 “(3) attempts to give, accept, or receive any
10 thing of value with the intent to be corruptly influ-
11 enced in violation of this section;

12 shall be fined under this title, imprisoned not more than
13 5 years, or both.

14 “(c) EXCEPTIONS.—Nothing in this section may be
15 construed to apply to any—

16 “(1) payment to, or acceptance by, any person
17 of bona fide salary, compensation, or other payments
18 made for goods or facilities actually furnished or for
19 services actually performed in the regular course of
20 his duties as an applicable person; or

21 “(2) payment to, or acceptance in good faith
22 by, any employee benefit plan sponsor, or person
23 acting on behalf of the sponsor, of anything of value
24 relating to the decision or action of the sponsor to
25 establish, terminate, or modify the governing instru-

1 ments of an employee benefit plan in a manner that
2 does not violate—

3 “(A) title I of the Employee Retirement
4 Income Security Act of 1974;

8 “(C) any other provision of law governing
9 the plan.”.

10 (b) CONFORMING AMENDMENT.—The analysis for
11 chapter 95 of title 18, United States Code, is amended
12 by striking the item relating to section 1954 and inserting
13 the following:

“1954. Bribery and graft in connection with employee benefit plans.”

14 **TITLE II—PREVENTING** 15 **TELEMARKETING FRAUD**

16 SEC. 201. CENTRALIZED COMPLAINT AND CONSUMER EDU-
17 CATION SERVICE FOR VICTIMS OF TELE-
18 MARKETING FRAUD.

19 (a) CENTRALIZED SERVICE.—

20 (1) REQUIREMENT.—The Federal Trade Com-
21 mission shall, after consultation with the Attorney
22 General, establish procedures to—

23 (A) log and acknowledge the receipt of
24 complaints by individuals who certify that they
25 have a reasonable belief that they have been the

5 (B) provide to individuals described in sub-
6 paragraph (A), and to any other persons, infor-
7 mation on telemarketing fraud, including—

8 (i) general information on tele-
9 marketing fraud, including descriptions of
10 the most common telemarketing fraud
11 schemes;

12 (ii) information on means of referring
13 complaints on telemarketing fraud to ap-
14 propriate law enforcement agencies, includ-
15 ing the Director of the Federal Bureau of
16 Investigation, the attorneys general of the
17 States, and the national toll-free telephone
18 number on telemarketing fraud established
19 by the Attorney General; and

20 (iii) information, if available, on the
21 number of complaints of telemarketing
22 fraud against particular companies and
23 any record of convictions for telemarketing
24 fraud by particular companies for which a
25 specific request has been made; and

1 (C) refer complaints described in subparagraph
2 (A) to appropriate entities, including
3 State consumer protection agencies or entities
4 and appropriate law enforcement agencies, for
5 potential law enforcement action.

10 (3) COMMENCEMENT.—The Federal Trade
11 Commission shall commence carrying out the service
12 not later than 1 year after the date of enactment of
13 this Act.

14 (b) CREATION OF FRAUD CONVICTION DATABASE.—

6 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
7 authorized to be appropriated such sums as may be nec-
8 essary to carry out this section.

9 SEC. 202. BLOCKING OF TELEMARKETING SCAMS.

10 (a) EXPANSION OF SCOPE OF TELEMARKETING
11 FRAUD SUBJECT TO ENHANCED CRIMINAL PENALTIES.—
12 Section 2325(1) of title 18, United States Code, is amend-
13 ed by striking “telephone calls” and inserting “wire com-
14 munications utilizing a telephone service”.

15 (b) BLOCKING OR TERMINATION OF TELEPHONE
16 SERVICE ASSOCIATED WITH TELEMARKETING FRAUD.—
17 (1) IN GENERAL.—Chapter 113A of title 18,
18 United States Code, is amended by adding at the
19 end the following:

20. "§ 2328. Blocking or termination of telephone service

21 "(a) DEFINITIONS.—In this section:

22 "(1) REASONABLE NOTICE TO THE SUB-
23 SCRIBER.—

24 “(A) IN GENERAL.—The term ‘reasonable
25 notice to the subscriber’, in the case of a sub-

1 scriber of a common carrier, means any infor-
2 mation necessary to provide notice to the sub-
3 scriber that—

4 “(i) the wire communications facilities
5 furnished by the common carrier may not
6 be used for the purpose of transmitting,
7 receiving, forwarding, or delivering a wire
8 communication in interstate or foreign
9 commerce for the purpose of executing any
10 scheme or artifice to defraud in connection
11 with the conduct of telemarketing; and

12 “(ii) such use constitutes sufficient
13 grounds for the immediate discontinuance
14 or refusal of the leasing, furnishing, or
15 maintaining of the facilities to or for the
16 subscriber.

17 “(B) INCLUDED MATTER.—The term in-
18 cludes any tariff filed by the common carrier
19 with the Federal Communications Commission
20 that contains the information specified in sub-
21 paragraph (A).

22 “(2) WIRE COMMUNICATION.—The term ‘wire
23 communication’ has the same meaning given that
24 term in section 2510(1).

1 “(3) WIRE COMMUNICATIONS FACILITY.—The
2 term ‘wire communications facility’ means any facil-
3 ity (including instrumentalities, personnel, and serv-
4 ices) used by a common carrier for purposes of the
5 transmission, receipt, forwarding, or delivery of wire
6 communications.

7 “(b) BLOCKING OR TERMINATING TELEPHONE
8 SERVICE.—If a common carrier subject to the jurisdiction
9 of the Federal Communications Commission is notified in
10 writing by the Attorney General, acting within the juris-
11 diction of the Attorney General, that any wire communica-
12 tions facility furnished by that common carrier is being
13 used or will be used by a subscriber for the purpose of
14 transmitting or receiving a wire communication in inter-
15 state or foreign commerce for the purpose of executing any
16 scheme or artifice to defraud, or for obtaining money or
17 property by means of false or fraudulent pretenses, rep-
18 resentations, or promises, in connection with the conduct
19 of telemarketing, the common carrier shall discontinue or
20 refuse the leasing, furnishing, or maintaining of the facil-
21 ity to or for the subscriber after reasonable notice to the
22 subscriber.

23 “(c) PROHIBITION ON DAMAGES.—No damages, pen-
24 alty, or forfeiture, whether civil or criminal, shall be found
25 or imposed against any common carrier for any act done

1 by the common carrier in compliance with a notice re-
2 ceived from the Attorney General under this section.

3 “(d) RELIEF.—

4 “(1) IN GENERAL.—Nothing in this section
5 may be construed to prejudice the right of any per-
6 son affected thereby to secure an appropriate deter-
7 mination, as otherwise provided by law, in a Federal
8 court, that—

9 “(A) the leasing, furnishing, or maintain-
10 ing of a facility should not be discontinued or
11 refused under this section; or

12 “(B) the leasing, furnishing, or maintain-
13 ing of a facility that has been so discontinued
14 or refused should be restored.

15 “(2) SUPPORTING INFORMATION.—In any ac-
16 tion brought under this subsection, the court may
17 direct that the Attorney General present evidence in
18 support of the notice made under subsection (b) to
19 which such action relates.”.

20 (2) CONFORMING AMENDMENT.—The analysis
21 for chapter 113A of title 18, United States Code, is
22 amended by adding at the end the following:

“2328. Blocking or termination of telephone service.”.

1 **TITLE III—PREVENTING HEALTH**
2 **CARE FRAUD**

3 **SEC. 301. INJUNCTIVE AUTHORITY RELATING TO FALSE**
4 **CLAIMS AND ILLEGAL KICKBACK SCHEMES**
5 **INVOLVING FEDERAL HEALTH CARE PRO-**
6 **GRAMS.**

7 (a) IN GENERAL.—Section 1345(a) of title 18, United States Code, is amended—

9 (1) in paragraph (1)—

10 (A) in subparagraph (B), by striking “, or” and inserting a semicolon;

12 (B) in subparagraph (C), by striking the period at the end and inserting “; or”; and

14 (C) by adding at the end the following:

15 “(D) committing or about to commit an offense under section 1128B of the Social Security Act (42 U.S.C. 1320a–7b);”;

18 (2) in paragraph (2), by inserting “a violation of paragraph (1)(D), or” before “a banking”.

20 (b) CIVIL ACTIONS.—

21 (1) IN GENERAL.—Section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended by adding at the end the following:

24 “(g) CIVIL ACTIONS.—

1 “(1) IN GENERAL.—The Attorney General may
2 bring an action in the appropriate district court of
3 the United States to impose upon any person who
4 carries out any activity in violation of this section
5 with respect to a Federal health care program a civil
6 penalty of not more than \$50,000 for each such vi-
7 lation, or damages of 3 times the total remuneration
8 offered, paid, solicited, or received, whichever is
9 greater.

10 “(2) EXISTENCE OF VIOLATION.—A violation
11 exists under paragraph (1) if 1 or more purposes of
12 the remuneration is unlawful, and the damages shall
13 be the full amount of such remuneration.

14 “(3) PROCEDURES.—An action under para-
15 graph (1) shall be governed by—

16 “(A) the procedures with regard to sub-
17 poenas, statutes of limitations, standards of
18 proof, and collateral estoppel set forth in sec-
19 tion 3731 of title 31, United States Code; and
20 “(B) the Federal Rules of Civil Procedure.

21 “(4) NO EFFECT ON OTHER REMEDIES.—Noth-
22 ing in this section may be construed to affect the
23 availability of any other criminal or civil remedy.

24 “(h) INJUNCTIVE RELIEF.—The Attorney General
25 may commence a civil action in an appropriate district

1 court of the United States to enjoin a violation of this
2 section, as provided in section 1345 of title 18, United
3 States Code.”.

8 SEC. 302. AUTHORIZED INVESTIGATIVE DEMAND PROCE-
9 DURES.

10 Section 3486 of title 18, United States Code, is
11 amended—

18 (2) by adding at the end the following:

19 “(f) PRIVACY PROTECTION.—

20 “(1) IN GENERAL.—Except as provided in para-

21 graph (2), any record (including any book, paper,

22 document, electronic medium, or other object or tan-

23 gible thing) produced pursuant to a subpoena issued

24 under this section that contains personally identifi-

25 able health information may not be disclosed to any

1 person, except pursuant to a court order under sub-
2 section (e)(1).

3 “(2) EXCEPTIONS.—A record described in para-
4 graph (1) may be disclosed—

5 “(A) to an attorney for the Government
6 for use in the performance of the official duty
7 of the attorney (including presentation to a
8 Federal grand jury);

9 “(B) to government personnel (including
10 personnel of a State or subdivision of a State)
11 as are determined to be necessary by an attor-
12 ney for the Government to assist an attorney
13 for the Government in the performance of the
14 official duty of that attorney to enforce Federal
15 criminal law;

16 “(C) as directed by a court preliminarily
17 to, or in connection with, a judicial proceeding;

18 “(D) as permitted by a court at the re-
19 quest of a defendant in an administrative, civil,
20 or criminal action brought by the United
21 States, upon a showing that grounds may exist
22 for a motion to exclude evidence obtained under
23 this section; or

24 “(E) at the request of an attorney for the
25 Government, upon a showing that such matters

1 may disclose a violation of State criminal law,
2 to an appropriate official of a State or subdivi-
3 sion of a State for the purpose of enforcing
4 such law.

5 “(3) MANNER OF COURT ORDERED DISCLO-
6 SURES.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), if a court orders the disclo-
9 sure of any record described in paragraph (1),
10 the disclosure—

11 “(i) shall be made in such manner, at
12 such time, and under such conditions as
13 the court may direct; and

14 “(ii) shall be undertaken in a manner
15 that preserves the confidentiality and pri-
16 vacy of individuals who are the subject of
17 the record.

18 “(B) EXCEPTION.—If disclosure is re-
19 quired by the nature of the proceedings, the at-
20 torney for the Government shall request that
21 the presiding judicial or administrative officer
22 enter an order limiting the disclosure of the
23 record to the maximum extent practicable, in-
24 cluding redacting the personally identifiable

1 health information from publicly disclosed or
2 filed pleadings or records.

3 “(4) DESTRUCTION OF RECORDS.—Any record
4 described in paragraph (1), and all copies of that
5 record, in whatever form (including electronic), shall
6 be destroyed not later than 90 days after the date
7 on which the record is produced, unless otherwise or-
8 dered by a court of competent jurisdiction, upon a
9 showing of good cause.

10 “(5) EFFECT OF VIOLATION.—Any person who
11 knowingly fails to comply with this subsection may
12 be punished as in contempt of court.

13 “(g) PERSONALLY IDENTIFIABLE HEALTH INFORMA-
14 TION DEFINED.—In this section, the term ‘personally
15 identifiable health information’ means any information, in-
16 cluding genetic information, demographic information,
17 and tissue samples collected from an individual, whether
18 oral or recorded in any form or medium, that—

19 “(1) relates to the past, present, or future phys-
20 ical or mental health or condition of an individual,
21 the provision of health care to an individual, or the
22 past, present, or future payment for the provision of
23 health care to an individual; and

24 “(2) either—

25 “(A) identifies an individual; or

1 “(B) with respect to which there is a rea-
2 sonable basis to believe that the information
3 can be used to identify an individual.”.

4 **SEC. 303. EXTENDING ANTIFRAUD SAFEGUARDS TO THE**
5 **FEDERAL EMPLOYEE HEALTH BENEFITS**
6 **PROGRAM.**

7 Section 1128B(f)(1) of the Social Security Act (42
8 U.S.C. 1320a–7b(f)(1)) is amended by striking “(other
9 than the health insurance program under chapter 89 of
10 title 5, United States Code)”.

11 **SEC. 304. GRAND JURY DISCLOSURE.**

12 Section 3322 of title 18, United States Code, is
13 amended—

14 (1) by redesignating subsections (c) and (d) as
15 subsections (d) and (e), respectively; and

16 (2) by inserting after subsection (b) the fol-
17 lowing:

18 “(c) GRAND JURY DISCLOSURE.—Subject to section
19 3486(f), upon ex parte motion of an attorney for the Gov-
20 ernment showing that a disclosure in accordance with that
21 subsection would be of assistance to enforce any provision
22 of Federal law, a court may direct the disclosure of any
23 matter occurring before a grand jury during an investiga-
24 tion of a Federal health care offense (as defined in section
25 24(a) of this title) to an attorney for the Government to

1 use in any investigation or civil proceeding relating to
2 fraud or false claims in connection with a Federal health
3 care program (as defined in section 1128B(f) of the Social
4 Security Act (42 U.S.C. 1320a-7b(f))).”.

5 **SEC. 305. INCREASING THE EFFECTIVENESS OF CIVIL IN-**
6 **VESTIGATIVE DEMANDS IN FALSE CLAIMS IN-**
7 **VESTIGATIONS.**

8 Section 3733 of title 31, United States Code, is
9 amended—

10 (1) in subsection (a)(1), in the second sentence,
11 by inserting “, except to the Deputy Attorney Gen-
12 eral or to an Assistant Attorney General” before the
13 period at the end; and

14 (2) in subsection (i)(2)(C), by adding at the end
15 the following: “Disclosure of information to a person
16 who brings a civil action under section 3730, or the
17 counsel of that person, shall be allowed only upon
18 application to a United States district court showing
19 that such disclosure would assist the Department of
20 Justice in carrying out its statutory responsibil-
21 ities.”.

1 **TITLE IV—PROTECTING**
2 **RESIDENTS OF NURSING HOMES**

3 **SEC. 401. SHORT TITLE.**

4 This title may be cited as the “Nursing Home Resi-
5 dent Protection Act of 2002”.

6 **SEC. 402. NURSING HOME RESIDENT PROTECTION.**

7 (a) PROTECTION OF RESIDENTS IN NURSING HOMES
8 AND OTHER RESIDENTIAL HEALTH CARE FACILITIES.—

9 Chapter 63 of title 18, United States Code, is amended
10 by adding at the end the following:

11 **“§ 1349. Pattern of violations resulting in harm to
12 residents of nursing homes and related
13 facilities**

14 “(a) DEFINITIONS.—In this section:

15 “(1) ENTITY.—The term ‘entity’ means—

16 “(A) any residential health care facility
17 (including facilities that do not exclusively pro-
18 vide residential health care services);

19 “(B) any entity that manages a residential
20 health care facility; or

21 “(C) any entity that owns, directly or indi-
22 rectly, a controlling interest or a 50 percent or
23 greater interest in 1 or more residential health
24 care facilities including States, localities, and
25 political subdivisions thereof.

1 “(2) FEDERAL HEALTH CARE PROGRAM.—The
2 term ‘Federal health care program’ has the same
3 meaning given that term in section 1128B(f) of the
4 Social Security Act.

5 “(3) PATTERN OF VIOLATIONS.—The term
6 ‘pattern of violations’ means multiple violations of a
7 single Federal or State law, regulation, or rule or
8 single violations of multiple Federal or State laws,
9 regulations, or rules, that are widespread, systemic,
10 repeated, similar in nature, or result from a policy
11 or practice.

12 “(4) RESIDENTIAL HEALTH CARE FACILITY.—
13 The term ‘residential health care facility’ means any
14 facility (including any facility that does not exclu-
15 sively provide residential health care services), in-
16 cluding skilled and unskilled nursing facilities and
17 mental health and mental retardation facilities,
18 that—

19 “(A) receives Federal funds, directly from
20 the Federal Government or indirectly from a
21 third party on contract with or receiving a
22 grant or other monies from the Federal Govern-
23 ment, to provide health care; or

24 “(B) provides health care services in a res-
25 idential setting and, in any calendar year in

1 which a violation occurs, is the recipient of ben-
2 efits or payments in excess of \$10,000 from a
3 Federal health care program.

4 “(5) STATE.—The term ‘State’ means each of
5 the several States of the United States, the District
6 of Columbia, and any commonwealth, territory, or
7 possession of the United States.

8 "(b) PROHIBITION AND PENALTIES.—Whoever
9 knowingly and willfully engages in a pattern of violations
10 that affects the health, safety, or care of individuals resid-
11 ing in a residential health care facility or facilities, and
12 that results in significant physical or mental harm to 1
13 or more of such residents, shall be punished as provided
14 in section 1347, except that any organization shall be
15 fined not more than \$2,000,000 per residential health care
16 facility.

17 "(c) CIVIL PROVISIONS.—

18 “(1) IN GENERAL.—The Attorney General may
19 bring an action in a district court of the United
20 States to impose on any individual or entity that en-
21 gages in a pattern of violations that affects the
22 health, safety, or care of individuals residing in a
23 residential health care facility, and that results in
24 physical or mental harm to 1 or more such
25 residents—

1 “(A) a civil penalty; or

2 “(B) in the case of—

3 “(i) an individual (other than an

4 owner, operator, officer, or manager of

5 such a residential health care facility), not

6 more than \$10,000;

7 “(ii) an individual who is an owner,

8 operator, officer, or manager of such a res-

9 idential health care facility, not more than

10 \$100,000 for each separate facility in-

11 volved in the pattern of violations under

12 this section;

13 “(iii) a residential health care facility,

14 not more than \$1,000,000 for each pattern

15 of violations; or

16 “(iv) an entity, not more than

17 \$1,000,000 for each separate residential

18 health care facility involved in the pattern

19 of violations owned or managed by that en-

20 tity.

21 “(2) OTHER APPROPRIATE RELIEF.—If the At-

22 torney General has reason to believe that an indi-

23 vidual or entity is engaging in or is about to engage

24 in a pattern of violations that would affect the

25 health, safety, or care of individuals residing in a

1 residential health care facility, and that results in or
2 has the potential to result in physical or mental
3 harm to 1 or more such residents, the Attorney Gen-
4 eral may petition an appropriate district court of the
5 United States for appropriate equitable and declara-
6 tory relief to eliminate the pattern of violations.

7 “(3) PROCEDURES.—In any action under this
8 subsection—

9 “(A) a subpoena requiring the attendance
10 of a witness at a trial or hearing may be served
11 at any place in the United States;

12 “(B) the action may not be brought more
13 than 6 years after the date on which the viola-
14 tion occurred;

15 “(C) the United States shall be required to
16 prove each charge by a preponderance of the
17 evidence;

18 “(D) the civil investigative demand proce-
19 dures set forth in the Antitrust Civil Process
20 Act (15 U.S.C. 1311 et seq.) and regulations
21 promulgated pursuant to that Act shall apply to
22 any investigation; and

23 “(E) the filing or resolution of a matter
24 shall not preclude any other remedy that is

1 available to the United States or any other per-
2 son.

3 “(d) PROHIBITION AGAINST RETALIATION.—Any
4 person who is the subject of retaliation, either directly or
5 indirectly, for reporting a condition that may constitute
6 grounds for relief under this section may bring an action
7 in an appropriate district court of the United States for
8 damages, attorneys’ fees, and other relief.”.

9 (b) AUTHORIZED INVESTIGATIVE DEMAND PROCE-
10 DURES.—Section 3486(a)(1) of title 18, United States
11 Code, as amended by section 402 of this Act, is amended
12 by inserting “, act or activity involving section 1349 of
13 this title” after “Federal health care offense”.

14 (c) CONFORMING AMENDMENT.—The analysis for
15 chapter 63 of title 18, United States Code, is amended
16 by adding at the end the following:

“1349. Pattern of violations resulting in harm to residents of nursing homes and
related facilities.”.

17 **TITLE V—PROTECTING THE
18 RIGHTS OF ELDERLY CRIME
19 VICTIMS**

20 **SEC. 501. USE OF FORFEITED FUNDS TO PAY RESTITUTION
21 TO CRIME VICTIMS AND REGULATORY AGEN-
22 CIES.**

23 Section 981(e) of title 18, United States Code, is
24 amended—

15 SEC. 502. VICTIM RESTITUTION.

16 Section 413 of the Controlled Substances Act (21
17 U.S.C. 853) is amended by adding at the end the fol-
18 lowing:

19 "(r) VICTIM RESTITUTION.—

20 “(1) SATISFACTION OF ORDER OF RESTITU-
21 TION.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), a defendant may not use
24 property subject to forfeiture under this section
25 to satisfy an order of restitution.

1 “(B) EXCEPTION.—If there are 1 or more
2 identifiable victims entitled to restitution from a
3 defendant, and the defendant has no assets
4 other than the property subject to forfeiture
5 with which to pay restitution to the victim or
6 victims, the attorney for the Government may
7 move to dismiss a forfeiture allegation against
8 the defendant before entry of a judgment of
9 forfeiture in order to allow the property to be
10 used by the defendant to pay restitution in
11 whatever manner the court determines to be ap-
12 propriate if the court grants the motion. In
13 granting a motion under this subparagraph, the
14 court shall include a provision ensuring that
15 costs associated with the identification, seizure,
16 management, and disposition of the property
17 are recovered by the United States.

18 “(2) RESTORATION OF FORFEITED PROP-
19 ERTY.—

20 “(A) IN GENERAL.—If an order of for-
21 feiture is entered pursuant to this section and
22 the defendant has no assets other than the for-
23 feited property to pay restitution to 1 or more
24 identifiable victims who are entitled to restitu-
25 tion, the Government shall restore the forfeited

1 property to the victims pursuant to subsection
2 (i)(1) once the ancillary proceeding under sub-
3 section (n) has been completed and the costs
4 of the forfeiture action have been deducted.

5 “(B) DISTRIBUTION OF PROPERTY.—On a
6 motion of the attorney for the Government, the
7 court may enter any order necessary to facili-
8 tate the distribution of any property restored
9 under this paragraph.

10 “(3) VICTIM DEFINED.—In this subsection, the
11 term ‘victim’—

12 “(A) means a person other than a person
13 with a legal right, title, or interest in the for-
14 feited property sufficient to satisfy the standing
15 requirements of subsection (n)(2) who may be
16 entitled to restitution from the forfeited funds
17 pursuant to section 9.8 of part 9 of title 28,
18 Code of Federal Regulations (or any successor
19 to that regulation); and

20 “(B) includes any person who is the victim
21 of the offense giving rise to the forfeiture, or of
22 any offense that was part of the same scheme,
23 conspiracy, or pattern of criminal activity, in-
24 cluding, in the case of a money laundering of-

3 SEC. 503. BANKRUPTCY PROCEEDINGS NOT USED TO
4 SHIELD ILLEGAL GAINS FROM FALSE
5 CLAIMS.

6 (a) CERTAIN ACTIONS NOT STAYED BY BANK-
7 RUPTCY PROCEEDINGS.—

14 (2) CONFORMING AMENDMENT.—Section
15 362(b) of title 11, United States Code, is
16 amended—

17 (A) in paragraph (17), by striking “or” at
18 the end:

19 (B) in paragraph (18), by striking the pe-
20 riod at the end and inserting “; or”; and

21 (C) by adding at the end the following:

22 “(19) the commencement or continuation of an
23 action under section 3729 of title 31.”.

1 (b) CERTAIN DEBTS NOT DISCHARGEABLE IN BANK-
2 RUPTCY.—Section 523 of title 11, United States Code, is
3 amended by adding at the end the following:

4 “(f) A discharge under section 727, 1141, 1228(a),
5 1228(b), or 1328(b) does not discharge a debtor from a
6 debt owed for violating section 3729 of title 31.”.

7 (c) REPAYMENT OF CERTAIN DEBTS CONSIDERED
8 FINAL.—

9 (1) IN GENERAL.—Chapter 1 of title 11, United
10 States Code, is amended by adding at the end the
11 following:

12 **“§ 111. False claims”**

13 “No transfer on account of a debt owed to the United
14 States for violating section 3729 of title 31, or under a
15 compromise order or other agreement resolving such a
16 debt may be avoided under section 544, 545, 547, 548,
17 549, 553(b), or 742(a).”.

18 (2) CONFORMING AMENDMENT.—The analysis
19 for chapter 1 of title 11, United States Code, is
20 amended by adding at the end the following:

“111. False claims.”.

21 **21 SEC. 504. FORFEITURE FOR RETIREMENT OFFENSES.**

22 (a) CRIMINAL FORFEITURE.—Section 982(a) of title
23 18, United States Code, is amended by adding at the end
24 the following:

25 “(9) CRIMINAL FORFEITURE.—

1 “(A) IN GENERAL.—The court, in imposing a
2 sentence on a person convicted of a retirement of-
3 fense, shall order the person to forfeit property, real
4 or personal, that constitutes or that is derived, di-
5 rectly or indirectly, from proceeds traceable to the
6 commission of the offense.

7 “(B) RETIREMENT OFFENSE DEFINED.—In
8 this paragraph, if a violation, conspiracy, or solicita-
9 tion relates to a retirement arrangement (as defined
10 in section 1348 of title 18, United States Code), the
11 term ‘retirement offense’ means a violation of—

12 “(i) section 664, 1001, 1027, 1341, 1343,
13 1348, 1951, 1952, or 1954 of title 18, United
14 States Code; or

15 “(ii) section 411, 501, or 511 of the Em-
16 ployee Retirement Income Security Act of 1974
17 (29 U.S.C. 1111, 1131, 1141).”.

18 (b) CIVIL FORFEITURE.—Section 981(a)(1) of title
19 18, United States Code, is amended by adding at the end
20 the following:

21 “(H) Any property, real or personal, that con-
22 stitutes or is derived, directly or indirectly, from pro-
23 ceeds traceable to the commission of, criminal con-
24 spiracy to violate, or solicitation to commit a crime

1 of violence involving, a retirement offense (as de-
2 fined in section 982(a)(9)(B)).”.

○