

115TH CONGRESS
2D SESSION

S. 3288

To amend title 18, United States Code, to provide the Department of Justice needed legal authorities to combat cybercrime, including state sponsored cybercrime, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2018

Mr. GRAHAM (for himself, Mr. WHITEHOUSE, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide the Department of Justice needed legal authorities to combat cybercrime, including state sponsored cybercrime, 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 “International Cyber-
5 crime Prevention Act”.

6 **SEC. 2. PREDICATE OFFENSES.**

7 Part I of title 18, United States Code, is amended—

8 (1) in section 1956(c)(7)(D)—

1 (A) by striking “or section 2339D” and in-
 2 serting “section 2339D”; and

3 (B) by striking “of this title, section
 4 46502” and inserting “, or section 2512 (relat-
 5 ing to the manufacture, distribution, possession,
 6 and advertising of wire, oral, or electronic com-
 7 munication intercepting devices) of this title,
 8 section 46502”; and

9 (2) in section 1961(1), by inserting “section
 10 1030 (relating to fraud and related activity in con-
 11 nection with computers) if the act indictable under
 12 section 1030 is felonious,” before “section 1084”.

13 **SEC. 3. FORFEITURE.**

14 (a) IN GENERAL.—Section 2513 of title 18, United
 15 States Code, is amended to read as follows:

16 **“§ 2513. Confiscation of wire, oral, or electronic com-
 17 munication intercepting devices and
 18 other property**

19 **“(a) CRIMINAL FORFEITURE.—**

20 **“(1) IN GENERAL.—**The court, in imposing a
 21 sentence on any person convicted of a violation of
 22 section 2511 or 2512, or convicted of conspiracy to
 23 violate section 2511 or 2512, shall order, in addition
 24 to any other sentence imposed and irrespective of

1 any provision of State law, that such person forfeit
2 to the United States—

3 “(A) such person’s interest in any prop-
4 erty, real or personal, that was used or intended
5 to be used to commit or to facilitate the com-
6 mission of such violation; and

7 “(B) any property, real or personal, consti-
8 tuting or derived from any gross proceeds, or
9 any property traceable to such property, that
10 such person obtained or retained directly or in-
11 directly as a result of such violation.

12 “(2) FORFEITURE PROCEDURES.—Pursuant to
13 section 2461(c) of title 28, the provisions of section
14 413 of the Controlled Substances Act (21 U.S.C.
15 853), other than subsection (d) thereof, shall apply
16 to criminal forfeitures under this subsection.

17 “(b) CIVIL FORFEITURE.—

18 “(1) IN GENERAL.—The following shall be sub-
19 ject to forfeiture to the United States in accordance
20 with provisions of chapter 46 and no property right
21 shall exist in them:

22 “(A) Any property, real or personal, used
23 or intended to be used, in any manner, to com-
24 mit, or facilitate the commission of a violation

1 of section 2511 or 2512, or a conspiracy to vio-
 2 late section 2511 or 2512.

3 “(B) Any property, real or personal, con-
 4 stituting, or traceable to the gross proceeds
 5 taken, obtained, or retained in connection with
 6 or as a result of a violation of section 2511 or
 7 2512, or a conspiracy to violate section 2511 or
 8 2512.

9 “(2) FORFEITURE PROCEDURES.—Seizures and
 10 forfeitures under this subsection shall be governed
 11 by the provisions of chapter 46, relating to civil for-
 12 feitures, except that such duties as are imposed on
 13 the Secretary of the Treasury under the customs
 14 laws described in section 981(d) shall be performed
 15 by such officers, agents, and other persons as may
 16 be designated for that purpose by the Secretary of
 17 Homeland Security or the Attorney General.”.

18 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 19 The table of sections for chapter 119 is amended by strik-
 20 ing the item relating to section 2513 and inserting the
 21 following:

“2513. Confiscation of wire, oral, or electronic communication intercepting de-
 vices and other property.”.

22 **SEC. 4. SHUTTING DOWN BOTNETS.**

23 (a) AMENDMENT.—Section 1345 of title 18, United
 24 States Code, is amended—

1 (1) in the heading, by inserting “**and abuse**”
2 after “**fraud**”;

3 (2) in subsection (a)—

4 (A) in paragraph (1)—

5 (i) in subparagraph (B), by striking
6 “or” at the end;

7 (ii) in subparagraph (C), by inserting
8 “or” after the semicolon; and

9 (iii) by inserting after subparagraph
10 (C) the following:

11 “(D) violating or about to violate section
12 1030(a)(5) of this title where such conduct has
13 caused or would cause damage (as defined in
14 section 1030) without authorization to 100 or
15 more protected computers (as defined in section
16 1030) during any 1-year period, including by—

17 “(i) impairing the availability or in-
18 tegrity of the protected computers without
19 authorization; or

20 “(ii) installing or maintaining control
21 over malicious software on the protected
22 computers that, without authorization, has
23 caused or would cause damage to the pro-
24 tected computers;” and

1 (B) in paragraph (2), in the matter pre-
 2 ceding subparagraph (A), by inserting “, a vio-
 3 lation described in subsection (a)(1)(D),” before
 4 “or a Federal”; and
 5 (3) by adding at the end the following:

6 “(c) A restraining order, prohibition, or other action
 7 described in subsection (b), if issued in circumstances de-
 8 scribed in subsection (a)(1)(D), may, upon application of
 9 the Attorney General—

10 “(1) specify that no cause of action shall lie in
 11 any court against a person for complying with the
 12 restraining order, prohibition, or other action; and

13 “(2) provide that the United States shall pay to
 14 such person a fee for reimbursement for such costs
 15 as are reasonably necessary and which have been di-
 16 rectly incurred in complying with the restraining
 17 order, prohibition, or other action.”.

18 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 19 The table of sections for chapter 63 of title 18, United
 20 States Code, is amended by striking the item relating to
 21 section 1345 and inserting the following:

“1345. Injunctions against fraud and abuse.”.

1 **SEC. 5. AGGRAVATED DAMAGE TO A CRITICAL INFRA-**
 2 **STRUCTURE COMPUTER.**

3 (a) IN GENERAL.—Chapter 47 of title 18, United
 4 States Code, is amended by inserting after section 1030
 5 the following:

6 **“§ 1030A. Aggravated damage to a critical infrastruc-**
 7 **ture computer**

8 “(a) OFFENSE.—It shall be unlawful, during and in
 9 relation to a felony violation of section 1030, to knowingly
 10 cause or attempt to cause damage to a critical infrastruc-
 11 ture computer, if such damage results in (or, in the case
 12 of an attempted offense, would, if completed, have resulted
 13 in) the substantial impairment—

14 “(1) of the operation of the critical infrastruc-
 15 ture computer; or

16 “(2) of the critical infrastructure associated
 17 with such computer.

18 “(b) PENALTY.—Any person who violates subsection
 19 (a) shall, in addition to the term of punishment provided
 20 for the felony violation of section 1030, be fined under
 21 this title, imprisoned for not more than 20 years, or both.

22 “(c) CONSECUTIVE SENTENCE.—Notwithstanding
 23 any other provision of law—

24 “(1) a court shall not place any person con-
 25 victed of a violation of this section on probation;

1 “(2) except as provided in paragraph (4), no
2 term of imprisonment imposed on a person under
3 this section shall run concurrently with any term of
4 imprisonment imposed on the person under any
5 other provision of law, including any term of impris-
6 onment imposed for the felony violation of section
7 1030;

8 “(3) in determining any term of imprisonment
9 to be imposed for the felony violation of section
10 1030, a court shall not in any way reduce the term
11 to be imposed for such violation to compensate for,
12 or otherwise take into account, any separate term of
13 imprisonment imposed or to be imposed for a viola-
14 tion of this section; and

15 “(4) a term of imprisonment imposed on a per-
16 son for a violation of this section may, in the discre-
17 tion of the court, run concurrently, in whole or in
18 part, only with another term of imprisonment that
19 is imposed by the court at the same time on that
20 person for an additional violation of this section, if
21 such discretion shall be exercised in accordance with
22 any applicable guidelines and policy statements
23 issued by the United States Sentencing Commission
24 pursuant to section 994 of title 28.

25 “(d) DEFINITIONS.—In this section—

1 “(1) the terms ‘computer’ and ‘damage’ have
2 the meanings given the terms in section 1030; and

3 “(2) the term ‘critical infrastructure’ means
4 systems and assets, whether physical or virtual, so
5 vital to the United States that the incapacity or de-
6 struction of such systems and assets would have cat-
7 astrophic regional or national effects on public
8 health or safety, economic security, or national secu-
9 rity, including voter registration databases, voting
10 machines, and other communications systems that
11 manage the election process or report and display
12 results on behalf of State and local governments.”.

13 (b) TABLE OF SECTIONS.—The table of sections for
14 chapter 47 of title 18, United States Code, is amended
15 by inserting after the item relating to section 1030 the
16 following:

“1030A. Aggravated damage to a critical infrastructure computer.”.

17 **SEC. 6. STOPPING TRAFFICKING IN BOTNETS; FOR-**
18 **FEITURE.**

19 (a) IN GENERAL.—Section 1030 of title 18, United
20 States Code, is amended—

21 (1) in subsection (a)—

22 (A) in paragraph (7), by adding “or” at
23 the end; and

24 (B) by inserting after paragraph (7) the
25 following:

1 “(8) intentionally traffics in the means of ac-
 2 cess to a protected computer, if—

3 “(A) the trafficker knows or has reason to
 4 know the protected computer has been damaged
 5 in a manner prohibited by this section; and

6 “(B) the promise or agreement to pay for
 7 the means of access is made by, or on behalf of,
 8 a person the trafficker knows or has reason to
 9 know intends to use the means of access to—

10 “(i) damage a protected computer in
 11 a manner prohibited by this section; or

12 “(ii) violate section 1037 or 1343;”;

13 (2) in subsection (c)(3)—

14 (A) in subparagraph (A), by striking
 15 “(a)(4) or (a)(7)” and inserting “(a)(4), (a)(7),
 16 or (a)(8)”; and

17 (B) in subparagraph (B), by striking
 18 “(a)(4), or (a)(7)” and inserting “(a)(4),
 19 (a)(7), or (a)(8)”; and

20 (3) in subsection (e)—

21 (A) in paragraph (11), by striking “and”
 22 at the end;

23 (B) in paragraph (12), by striking the pe-
 24 riod at the end and inserting “; and”; and

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

1 “(13) the term ‘traffic’, except as provided in
 2 subsection (a)(6), means transfer, or otherwise dis-
 3 pose of, to another as consideration for the receipt
 4 of, or as consideration for a promise or agreement
 5 to pay, anything of pecuniary value.”;

6 (4) in subsection (g), in the first sentence, by
 7 inserting “, except for a violation of subsection
 8 (a)(8),” after “of this section”; and

9 (5) by striking subsections (i) and (j) and in-
 10 serting the following:

11 “(i) CRIMINAL FORFEITURE.—

12 “(1) The court, in imposing sentence on any
 13 person convicted of a violation of this section, or
 14 convicted of conspiracy to violate this section, shall
 15 order, in addition to any other sentence imposed and
 16 irrespective of any provision of State law, that such
 17 person forfeit to the United States—

18 “(A) such person’s interest in any prop-
 19 erty, real or personal, that was used or intended
 20 to be used to commit or to facilitate the com-
 21 mission of such violation; and

22 “(B) any property, real or personal, consti-
 23 tuting or derived from any gross proceeds, or
 24 any property traceable to such property, that

1 such person obtained, directly or indirectly, as
2 a result of such violation.

3 “(2) The criminal forfeiture of property under
4 this subsection, including any seizure and disposition
5 of the property, and any related judicial or adminis-
6 trative proceeding, shall be governed by the provi-
7 sions of section 413 of the Controlled Substances
8 Act (21 U.S.C. 853), except subsection (d) of that
9 section.

10 “(j) CIVIL FORFEITURE OF PROPERTY USED IN THE
11 COMMISSION OF AN OFFENSE.—

12 “(1) Any personal property, including any
13 Internet domain name or Internet Protocol address,
14 that was used or intended to be used to commit or
15 to facilitate the commission of any violation of this
16 section, or a conspiracy to violate this section shall
17 be subject to forfeiture to the United States, and no
18 property right shall exist in such property.

19 “(2) Seizures and forfeitures under this sub-
20 section shall be governed by the provisions of chap-
21 ter 46 relating to civil forfeitures, except that such
22 duties as are imposed on the Secretary of the Treas-
23 ury under the customs laws described in section
24 981(d) shall be performed by such officers, agents,
25 and other persons as may be designated for that

1 purpose by the Secretary of Homeland Security or
2 the Attorney General.”.

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