115TH CONGRESS
2D Session

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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

Mr. THUNE (for himself, Mr. MARKEY, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To deter criminal robocall violations and improve enforcement of section 227(b) of the Communications Act of 1934, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Telephone Robocall Abuse Criminal Enforcement and Deterrence Act” or the “TRACED Act”.

SEC. 2. FORFEITURE.

(a) IN GENERAL.—Section 227 of the Communications Act of 1934 (47 U.S.C. 227) is amended—
(1) in subsection (b), by adding at the end the following:

“(4) CIVIL FORFEITURE.—

“(A) IN GENERAL.—Any person that is determined by the Commission, in accordance with section 503(b)(3) or section 503(b)(4), to have violated this subsection with the intent to cause such violation shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this paragraph shall be in addition to any other penalty provided for by this Act. The amount of the forfeiture penalty determined under this paragraph shall not exceed $10,000 for each violation.

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

“(C) PROCEDURE.—No forfeiture liability shall be determined under subparagraph (A) against any person unless such person receives the notice required by section 503(b)(3) or section 503(b)(4).

“(D) STATUTE OF LIMITATIONS.—No forfeiture penalty shall be determined or imposed against any person under subparagraph (A) if
the violation charged occurred more than 3
years prior to the date of issuance of the re-
quired notice or notice or apparent liability.

“(E) FORFEITURE UNDER SECTION 503.—
Notwithstanding section 503(b)(1), nothing in
this paragraph may be construed to affect the
authority of the Commission to impose a for-
feiture penalty under section 503(b)(1)(B)
against a person who is determined by the
Commission, in accordance with that section, to
have failed to comply with any provision of this
subsection.

“(5) CRIMINAL FINE.—Any person who violates
this subsection with the intent to cause such viola-
tion shall upon conviction thereof be fined not more
than $10,000 for each violation, or 3 times that
amount for each day of a continuing violation, in
lieu of the fine provided by section 501 of this title
for such a violation. This subparagraph does not
supercede the provisions of section 501 of this title
relating to imprisonment or the imposition of a pen-
alty of both fine and imprisonment.”; and

(2) in subsection (h)—

(A) by striking paragraph (2);
(B) by redesignating paragraphs (3) through (7) as paragraphs (2) through (6), respectively;

(C) in paragraph (3), as redesignated, by striking “paragraph (3)” and inserting “paragraph (2)”;

(D) in paragraph (5), as redesignated, by striking “paragraph (5)” and inserting “paragraph (4)”.

(b) APPLICABILITY.—The amendments made by this section shall not affect any action or proceeding commenced before and pending on the date of enactment of this Act.

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

SEC. 3. CALL AUTHENTICATION.

(a) AUTHENTICATION FRAMEWORK.—

(1) IN GENERAL.—Subject to paragraph (2), the Federal Communications Commission shall require, not later than 18 months after the date of enactment of this Act, a provider of voice service to implement an appropriate and effective call authen-
tication framework in the internet protocol networks of voice service providers.

(2) IMPLEMENTATION.—The Federal Communications Commission—

(A) shall not take the action described in subparagraph (a)(1) if the Federal Communications Commission determines, after public notice and an opportunity for comment, that each provider of voice services, not later than 12 months after the date of enactment of this Act—

(i) has established voluntary rules for an appropriate and effective call authentication framework in the internet protocol networks of voice service providers;

(ii) has agreed voluntarily to participate in the authentication framework under clause (i);

(iii) has begun to implement the authentication framework under clause (i); and

(iv) will fully implement the appropriate and effective call authentication framework under clause (i), not later than
18 months after the date of enactment of this Act, subject to subparagraph (B); and

(B) may extend the deadline for implementation of the call authentication framework under paragraph (1) or subparagraph (A) of this paragraph, as applicable, for an additional 12 months, or such further time as the Federal Communications Commission determines to be necessary, for a provider that demonstrates substantial hardship in purchasing or upgrading equipment to support call authentication.

(b) Safe Harbor and Other Regulations.—

(1) In general.—The Federal Communications Commission shall promulgate rules—

(A) affirming authority for a provider of voice service to block a voice call pursuant to the authentication framework under paragraph (1) or paragraph (2) of subsection (a), as applicable;

(B) establishing a safe harbor for a provider of voice service from liability for unintended or inadvertent blocking of calls or for the unintended or inadvertent misidentification of the level of trust for individual calls pursuant to the authentication framework under para-
(1) or paragraph (2) of subsection (a), as applicable; and

(C) establishing a process to permit a calling party adversely affected by the authentication framework under paragraph (1) or paragraph (2) of subsection (a), as applicable, to verify the authenticity of the calling party’s calls.

(2) CONSIDERATIONS.—In establishing the safe harbor under paragraph (1), the Federal Communications Commission shall consider limiting the liability of providers based on the extent to which they—

(A) block or identify calls based on the authentication framework under paragraph (1) or paragraph (2) of subsection (a), as applicable;

(B) implemented procedures based on the framework; and

(C) used reasonable care.

(c) DEFINITION OF VOICE SERVICE.—In this section, the term “voice service”—

(1) means any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan.
or any successor to the North American Numbering Plan adopted by the Commission under section 251(e)(1) of the Communications Act of 1934 (47 U.S.C. 251(e)(1)); and

(2) includes—

(A) transmissions from a telephone facsimile machine, computer, or other device to a telephone facsimile machine; and

(B) without limitation, any service that enables real-time, two-way voice communications, including any service that requires Internet protocol-compatible customer premises equipment (CPE) and permits out-bound calling, whether or not the service is one-way or two-way voice over Internet protocol.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall preclude the Federal Communications Commission from initiating a rulemaking pursuant to its existing statutory authority.

SEC. 4. PROTECTIONS FROM SPOOFED CALLS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and consistent with the authentication framework under paragraph (1) or paragraph (2) of section 3(a), as applicable, the Federal Communications Commission shall initiate a rulemaking to help pro-
tect a subscriber from receiving unwanted calls or text
messages from a caller using an unauthenticated number.

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

(1) the Government Accountability Office report
on combating the fraudulent provision of misleading
or inaccurate caller identification required by section
503(e) of division P of the Consolidated Appropriations Act 2018 (Public Law 115-141; 132 Stat.
348);

(2) the best means of ensuring that a sub-
scriber or provider has the ability to block calls from
a caller using an unauthenticated number;

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

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

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

SEC. 5. INTERAGENCY WORKING GROUP.

(a) IN GENERAL.—The Attorney General of the
United States, in consultation with the Chairman of the
Federal Communications Commission, shall convene an
interagency working group to study Government prosecution of violations of section 227(b) of the Communications Act of 1935 (47 U.S.C. 227(b)).

(b) DUTIES.—In carrying out the study under subsection (a), the interagency working group shall—

(1) determine whether, and if so how, any Federal law, including regulations, policies, and practices, or budgetary or jurisdictional constraints inhibit the prosecution of such violations;

(2) identify existing and potential Federal policies and programs that encourage and improve coordination among Federal departments and agencies and States, and between States, in the prevention and prosecution of such violations;

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

(4) consider—

(A) the benefit and potential sources of additional resources for the Federal prevention and prosecution of criminal violations of that section;
(B) whether to establish memoranda of understanding regarding the prevention and prosecution of such violations between—

(i) the States;

(ii) the States and the Federal Government; and

(iii) the Federal Government and a foreign government;

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

(D) whether extending civil enforcement to the States would assist in the successful prevention and prosecution of such violations;

(E) whether increased forfeiture and imprisonment penalties are appropriate, such as extending imprisonment for such a violation to a term longer than 2 years;

(F) whether regulation of any entity that enters into a business arrangement with a carrier for the specific purpose of carrying, routing, or transmitting a call that constitutes such a violation would assist in the successful prevention and prosecution of such violations; and
(G) the extent to which, if any, Department of Justice policies to pursue the prosecution of violations causing economic harm, physical danger, or erosion of an inhabitant’s peace of mind and sense of security inhibits the prevention or prosecution of such violations.

(e) MEMBERS.—The interagency working group shall be composed of such representatives of Federal departments and agencies as the Attorney General considers appropriate, such as—

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

(d) NON-FEDERAL STAKEHOLDERS.—In carrying out the study under subsection (a), the interagency working group shall consult with such non-Federal stakeholders as the Attorney General determines have the relevant expertise, including the National Association of Attorneys General.

(e) REPORT TO CONGRESS.—Not later than 9 months after the date of enactment of this Act, the interagency working group shall submit to the Committee on
Commerce, Science, and Transportation of the Senate and
the Committee on Energy and Commerce of the House
of Representatives a report on the findings of the study
under subsection (a), including—

(1) any recommendations regarding the prevention and prosecution of such violations; and

(2) a description of what process, if any, relevant Federal departments and agencies have made
in implementing the recommendations under paragraph (1).

SEC. 6. ACCESS TO NUMBER RESOURCES.

Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall
commence a proceeding to determine whether Federal Communications Commission policies regarding access to
number resources could be modified, including by establishing registration and compliance obligations, to help re-
duce access to numbers by potential perpetrators of violations of section 227(b) of the Communications Act of 1935
(47 U.S.C. 227(b)).