

103^D CONGRESS
1ST SESSION

S. 1217

To protect the elderly against fraudulent practices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 14 (legislative day, JUNE 30), 1993

Mr. COHEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the elderly against fraudulent practices, 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. FINDINGS.**

4 (a) The Congress finds that—

5 (1) fraudulent activity in the United States has
6 a devastating effect on the elderly;

7 (2) as the fears of the elderly over financial se-
8 curity have increased over the years, so too have the
9 deceptive tactics of unscrupulous groups that prey
10 on those fears;

1 (3) elderly citizens represent 12.5 percent of the
2 population, but they are 30 percent of the victims of
3 fraud;

4 (4) elderly citizens are far more likely to be
5 subjected to questionable and unscrupulous sales
6 practices than any other age group;

7 (5) elderly citizens, because they are home more
8 than younger citizens, are more accessible to fraudu-
9 lent practices involving the telemarketer's call or the
10 knock of a door-to-door salesperson;

11 (6) schemes to bilk the elderly are becoming in-
12 creasingly common as dishonest persons manage to
13 sell inferior, worthless, unnecessary, and sometimes
14 nonexistent products to thousands of elderly citizens
15 nationwide;

16 (7) schemes to bilk the elderly involve out-
17 rageous tactics and rob the elderly of their savings,
18 independence, and dignity;

19 (8) phony vacations, fraudulent credit repair
20 services, and free prizes are but a few of the prac-
21 tices and activities involving consumer fraud carried
22 out against the elderly;

23 (9) persons engaged in consumer fraud against
24 the elderly are highly mobile and prosecution is dif-
25 ficult; and

1 (10) such practices and activities are a blight
2 on reputable businesses engaged in legitimate mar-
3 keting practices.

4 **SEC. 2. FEDERAL TRADE COMMISSION.**

5 (a) PARTICIPATION IN THE FINANCIAL CRIMES EN-
6 FORCEMENT CENTER.—The Federal Trade Commission
7 shall participate in, and be on the receiving list of law en-
8 forcement products of, the Financial Crimes Enforcement
9 Center of the Department of the Treasury.

10 (b) VENUE.—Subsections (a) and (b) of section 13
11 of the Federal Trade Commission Act (15 U.S.C. 53) are
12 each amended by adding at the end thereof the following:
13 “Whenever it appears to the court that the interests of
14 justice require that any other person, partnership, or cor-
15 poration should be a party in such suit, the court may
16 cause such person, partnership, or corporation to be sum-
17 moned without regard to whether they reside or transact
18 business in the district in which the suit is brought, and
19 to that end process may be served wherever the person,
20 partnership, or corporation may be found.”.

21 (c) CRIMINAL CONTEMPT AUTHORITY.—Section
22 16(a)(1) of the Federal Trade Commission Act (15 U.S.C.
23 56(a)(1)) is amended—

1 (1) in subparagraph (A) by striking “civil” the
2 first place it appears and inserting in lieu thereof
3 “Federal court”; and

4 (2) by adding at the end the following: “The
5 Commission may bring a criminal contempt action
6 for violations of orders obtained in cases brought
7 under section 13(b) of this Act in the same manner
8 as civil penalty and other Federal court actions to
9 which this subsection applies. Such cases may be ini-
10 tiated by the Commission on its own complaint, or
11 pursuant to its acceptance of an appointment by a
12 court to assist it in enforcing such orders pursuant
13 to Rule 42(b) of the Federal Rules of Criminal Pro-
14 cedure.”.

15 **SEC. 3. SENTENCING GUIDELINES.**

16 (a) FRAUD AND DECEIT.—The United States Sen-
17 tencing Commission shall amend its sentencing guidelines
18 relating to fraud and deceit so as to provide for increases
19 in offense levels based on the number of persons that the
20 offender has victimized.

21 (b) VULNERABLE VICTIMS.—The United States Sen-
22 tencing Commission shall amend its sentencing guidelines
23 relating to vulnerable victims so as to provide that if the
24 offender knew or should have known that the victim was
25 unusually vulnerable or that the victim was otherwise par-

1 ticularly susceptible to the offense, the offense level shall
2 be increased by 7 levels.

3 **SEC. 4. MANDATORY RESTITUTION.**

4 (a) ORDER OF RESTITUTION.—Section 3663(a) of
5 title 18, United States Code, is amended by striking “may
6 order” and inserting “shall order”.

7 (b) PROCEDURE.—Section 3664(a) of title 18, Unit-
8 ed States Code, is amended by striking “in determining
9 whether to order restitution under section 3663 of this
10 title and the amount of such restitution” and inserting
11 “in determining the amount of restitution under section
12 3663”.

13 **SEC. 5. SENSE OF CONGRESS CONCERNING THE NATIONAL**
14 **TELEMARKETING FRAUD WORKING GROUP.**

15 It is the sense of Congress that—

16 (1) all United States Attorneys should regularly
17 enter information on telemarketing fraud into the
18 database of the National Telemarketing Fraud
19 Working Group; and

20 (2) the National Telemarketing Fraud Working
21 Group and the States should continue to cooperate
22 with each other in coordinating the prosecution of
23 offenders in venues that are convenient to the vic-
24 tims of their offenses.

1 **SEC. 6. CONSUMER AND ANTI-FRAUD ACTIVITIES.**

2 (a) ADDITIONAL UNITED STATES ATTORNEYS.—The
3 Attorney General shall designate 50 existing full-time
4 equivalent positions for attorneys and sufficient support
5 staff to be assigned to the prosecution of consumer fraud
6 and for law enforcement and consumer fraud education
7 programs.

8 (b) EFFECTIVE DATE.—This section shall take effect
9 on the date of enactment of this Act.

10 **SEC. 7. FORFEITURES.**

11 (a) CIVIL FORFEITURE.—Section 981 of title 18,
12 United States Code, is amended—

13 (1) in subsection (a)(1)—

14 (A) in subparagraph (D) by inserting “(i)”
15 before “Any” and redesignating clauses (i), (ii),
16 (iii), (iv), (v), and (vi) as subclauses (I), (II),
17 (III), (IV), (V), and (VI), respectively;

18 (B) by striking “(E) With respect to an of-
19 fense listed in subsection (a)(1)(D)” and insert-
20 ing “(ii) With respect to an offense described in
21 clause (i)”; and

22 (C) by adding at the end the following new
23 subparagraph:

24 “(E) Any property, real or personal, that con-
25 stitutes, represents, is derived from, or is traceable
26 to the proceeds of a violation of section 1029, 1341,

1 or 1343 of this title if such violation relates to
2 crimes against individuals 55 years of age or older.
3 Notwithstanding the provisions of section 524 of
4 title 28, United States Code, up to 25 percent of the
5 amounts forfeited pursuant to this subparagraph for
6 an offense may be used to provide restitution to any
7 victim of the offense.”.

8 (b) CRIMINAL FORFEITURE.—Section 982(a) of title
9 18, United States Code, is amended by adding at the end
10 thereof the following:

11 “(5) The court, in imposing sentence on a person con-
12 victed of a violation of, or a conspiracy to violate, section
13 1029, 1341 or 1343 of this title, affecting an individual
14 55 years of age or older, shall order that the person forfeit
15 to the United States any property constituting, or derived
16 from, proceeds the person obtained directly or indirectly,
17 as the result of such violation. Notwithstanding the provi-
18 sions of section 524 of title 28, United States Code, up
19 to 25 percent of the amounts forfeited pursuant to this
20 paragraph for an offense may be used to provide restitu-
21 tion to any victim of the offense.”.

22 (c) CRIMINAL CONTEMPT AUTHORITY.—Section
23 16(a)(1) of the Federal Trade Commission Act (15 U.S.C.
24 56(a)(1)) is amended—

1 (1) in subparagraph (A) by striking “civil” the
2 first place it appears and inserting in lieu thereof
3 “Federal court”; and

4 (2) by adding at the end the following: “The
5 Commission may bring a criminal contempt action
6 for violations of orders obtained in cases brought
7 under section 13(b) of this Act in the same manner
8 as civil penalty and other Federal court actions to
9 which this subsection applies. Such cases may be ini-
10 tiated by the Commission on its own complaint, or
11 pursuant to its acceptance of an appointment by a
12 court to assist it in enforcing such orders pursuant
13 to Rule 42(b) of the Federal Rules of Criminal Pro-
14 cedure.”.

15 **SEC. 8. MONEY LAUNDERING.**

16 Section 1956(c)(7)(D) of title 18, United States
17 Code, is amended by inserting after “1014 (relating to
18 fraudulent loan or credit applications),” the following:
19 “1029 (relating to fraud relating to access devices),”.

20 **SEC. 9. UNIFORM LAWS GOVERNING LICENSING OF HOME**
21 **REPAIR CONTRACTORS, MORTGAGE COMPA-**
22 **NIES, AND PRIZE GIVEAWAY COMPANIES.**

23 The Attorney General, in consultation with the Amer-
24 ican Law Institute, the National Conference of Commis-
25 sioners on Uniform State Laws, or other interested per-

1 sons, shall prepare model State law on each of the follow-
2 ing subjects:

- 3 (1) Licensing of home repair contractors.
- 4 (2) Licensing of mortgage companies.
- 5 (3) Licensing of prize giveaway companies.

6 **SEC. 10. MAIL FRAUD.**

7 (a) OFFENSE.—Section 1341 of title 18, United
8 States Code, is amended—

9 (1) by inserting “or places in any private cou-
10 rier service office or authorized depository for receipt
11 of matter to be delivered by private courier service,”
12 after “mail matter,”;

13 (2) by inserting “or by a private courier serv-
14 ice” after “Postal Service”; and

15 (3) by inserting “or private courier service”
16 after “by mail”.

17 (b) DEFINITION.—

18 (1) PRIVATE COURIER SERVICE.—Section 1346
19 of title 18, United States Code, is amended to read
20 as follows:

21 **“§ 1346. Definitions**

22 “In this chapter—

23 “‘private courier service’ means a private entity
24 providing services provided by the United States
25 Postal Service.

1 “‘scheme or artifice to defraud’ includes a
2 scheme or artifice to deprive another of the intangi-
3 ble right of honest services.”.

4 (2) TECHNICAL AMENDMENT.—The chapter
5 analysis for chapter 63 of title 18, United States
6 Code, is amended by striking the item for section
7 1346 and inserting the following item:

“1346. Definitions.”.

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