

Facing Hard Time: Congress Ratcheting Up Potential Criminal Penalties For TCPA Violations

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With the TRACED Act, S. 151, safely passed and resting with the House Committee on Energy and Commerce, a quartet of Democratic Senators have turned their legislative attention to beefing up criminal penalties for violating the TCPA. Senator Catherine Cortez Masto of Nevada, joined by co-sponsors Charles Schumer (D-NY), Amy Klobuchar (D-MN) and Margaret Hassan (D-NH), has introduced the “Deter Obnoxious, Nefarious and Outrageous Telephone (DO NOT) Call Act of 2019.” The bill, S. 1826, is now in the hands of the Senate Committee on Commerce, Science, and Transportation for consideration.

Declaring, “[i]t’s time for Congress to act and put stronger penalties on those who would initiate illegal robocall scams that defraud Americans of their money,” [Senator Cortez Masto’s proposal](#) would add a specific “Criminal Penalties” subsection to the TCPA.

In general, any person who willfully and knowingly violated the TCPA “shall be imprisoned” for up to one year, fined under Title 18 of the U.S. Code, or both. For individuals found to have committed an “aggravated offense,” the prison time would be up to three years, with similar prospects for a fine or both. An aggravated offense would be one (a) committed by a person previously convicted under the statute, (b) involving initiating more than 100,000 violating calls in a day, 1,000,000 in a month or 10,000,000 in a year, (c) committed in furtherance of a felony or conspiracy to commit a felony, or (d) causing loss to one or more persons aggregating USD5,000 in a year.

In addition, the bill defines a “call” to include a “message or other communication.” Call initiation includes the “act of sending, making, or transmitting a call, message, or other communication.”

Finally, to top it off, the proposal would double the USD10,000 civil forfeiture penalty for violations of the Truth in Caller ID Act, a subsection of the TCPA added in 2009. At the same time, the bill does not eliminate the current criminal fine provision for illegal caller ID spoofing, but criminal penalties for such violations would now be governed by the newly added subsection.

As both Houses of Congress held hearings and considered legislation over the last several months, there were calls for more criminal enforcement under the TCPA. The penalties envisioned under the DO NOT Call Act respond in one way to those pleas. With the TCPA bills already in line ahead of S. 1826, legislative concentration seems most likely to focus on the reconciliation of the TRACED Act with any emerging House-passed initiative. Of course, TCPAWorld will be watching DO NOT Call as well.

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