Friday, May 28, 2021

So I was reminded after my last post that the House previously considered H.R. 3810 ahead of the TRACED Act passing. That Bill had the same unfortunate name as the new bill proposed by Senator Masto– the “Deter Obnoxious, Nefarious, and Outrageous Telephone Calls Act of 2019”

I note that the 2019 edition of DO NOT was proposed in the House, whereas the 2021 edition is a Senate bill.

It is unclear, therefore, whether the new Senate bill will mirror the old House bill in all respects, but it is worth taking a look at the old bill for consideration until we have the text of the new bill handy:


(a) Criminal Penalties.—

(1) IN GENERAL.—Section 227 of the Communications Act of 1934 (47 U.S.C. 227) is amended by adding at the end the following:
“(i) Criminal Penalties.—

“(1) IN GENERAL.—Except as provided in paragraph (2), any person who willfully and knowingly violates this section shall be imprisoned for not more than 1 year, fined under title 18, United States Code, or both.

“(2) AGGRAVATED OFFENSE.—Any person who willfully and knowingly violates this section shall be imprisoned for not more than 3 years, fined under title 18, United States Code, or both if—

“(A) the person has previously been convicted under this subsection;

“(B) the offense involved initiating more than—

“(i) 100,000 calls in a 24-hour period;

“(ii) 1,000,000 calls in a 30-day period; or

“(iii) 10,000,000 calls in a 1-year period;

“(C) the person committed the offense with the intent to use the calls in furtherance of a felony or conspiracy to commit a felony; or

“(D) the offense caused loss to 1 or more persons aggregating $5,000 or more in value during any 1-year period.

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘call’ includes a message or other communication; and

“(B) the term ‘initiate’, with respect to a call, includes the act of sending, making, or transmitting a call, message, or other communication, as applicable.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 227(e)(5)(B) of the Communications Act of 1934 (47 U.S.C. 227(e)(5)(B)) is amended, in the second sentence, by striking “section 501” and inserting “subsection (i)”.

(b) Increased Penalties For Provision Of Inaccurate Caller Identification Information.—Section 227(e)(5) of the Communications Act of 1934 (47 U.S.C. 227(e)(5)) is amended:

(1) in subparagraph (A)(i), by striking “$10,000” and inserting “$20,000”; and

(2) in subparagraph (B), in the first sentence, by striking “$10,000” and inserting “$20,000”.

Notice how the old House version would criminalize any knowing and willful violation of the statute. Since we have seen knowing and willful violations found in settings where a caller knew it was using technology but did not know that the technology was subject to the TCPA, this bill would put a lot of folks at risk of criminal penalties that might not even see it coming. Really bad stuff—especially from a First Amendment perspective.
Here’s hoping the new bill is a bit more... sane.