The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1604), as amended, was considered read the third time, and passed.

## TELEMARKETING FRAUD PREVENTION ACT OF 1997

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 206, H.R. 1847.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1847) to improve the criminal law relating to fraud against consumers.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Telemarketing Fraud Prevention Act of 1997''.*

***SEC. 2. CRIMINAL FORFEITURE OF FRAUD PROCEEDS.***

*Section 982 of title 18, United States code, is amended—*

*(1) in subsection (a)—*

*(A) by redesignating the second paragraph designated as paragraph (6) as paragraph (7); and*

*(B) by adding at the end the following:*

*''(8) The Court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property—*

*''(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and*

*''(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.''; and*

*(2) in subsection (b)(1)(A), by striking ''(a)(1) or (a)(6)'' and inserting ''(a)(1), (a)(6), or (a)(8)''.*

***SEC. 3. PENALTY FOR TELEMARKETING FRAUD.***

*Section 2326 of title 18, United States Code, is amended by striking ''may'' each place it appears and inserting ''shall''.*

***SEC. 4. ADDITION OF CONSPIRACY OFFENSES TO SECTION 2326 ENHANCEMENT.***

*Section 2326 of title 18, United States Code, is amended by inserting '', or a conspiracy to commit such an offense,'' after ''or 1344''.*

***SEC. 5. CLARIFICATION OF MANDATORY RESTITUTION.***

*Section 2327 of title 18, United States Code, is amended—*

*(1) in subsection (a), by striking ''for any offense under this chapter'' and inserting ''to all victims of any offense for which an enhanced penalty is provided under section 2326''; and*

*(2) by striking subsection (c) and inserting the following:*

*''(c) VICTIM DEFINED.—In this section, the term 'victim' has the meaning given that term in section 3663A(a)(2).''.*

***SEC. 6. AMENDMENT OF FEDERAL SENTENCING GUIDELINES.***

*(a) DEFINITION OF TELEMARKETING.—In this section, the term ''telemarketing'' has the meaning given that term in section 2326 of title 18, United States Code.*

*(b) DIRECTIVE TO SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall—*

*(1) promulgate Federal sentencing guidelines or amend existing sentencing guidelines (and policy statements, if appropriate) to provide for substantially increased penalties for persons convicted of offenses described in section 2326 of title 18, United States Code, as amended by this Act, in connection with the conduct of telemarketing;*

*(2) submit to Congress an explanation of each action taken under paragraph (1) and any additional policy recommendations for combating the offenses described in that paragraph.*

*(c) REQUIREMENTS.—In carrying out this section, the Commission shall—*

*(1) ensure that the guidelines and policy statements promulgated or amended pursuant to subsection (b)(1) and any recommendations submitted thereunder reflect the serious nature of the offenses;*

*(2) provide an additional appropriate sentencing enhancement if offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States;*

*(3) provide an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims, including but not limited to victims described in section 2326(2) of title 18, United States Code, are affected by a fraudulent scheme or schemes;*

*(4) ensure that guidelines and policy statements promulgated or amended pursuant to subsection (b)(1) are reasonably consistent with other relevant statutory directives to the Commission and with other guidelines;*

*(5) account for any aggravating or mitigating circumstances that might justify upward or downward departures;*

*(6) ensure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code; and*

*(7) take any other action the Commission considers necessary to carry out this section.*

*(d) EMERGENCY AUTHORITY.—The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable, and in any event not later than 120 days after the date of enactment of the Telemarketing Fraud Prevention Act of 1997, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that authority had not expired, except that the Commission shall submit to Congress the emergency guidelines or amendments promulgated under this section, and shall set an effective date for those guidelines or amendments not earlier than 30 days after their submission to Congress.*

AMENDMENT NO. 1628

(Purpose: To prohibit false advertising or misuse of a name to indicate the United States Marshals Service)

Mr. SESSIONS. Mr. President, I send an amendment to the desk on behalf of Mr. LEAHY and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS], for Mr. LEAHY, proposes an amendment numbered 1628.

Mr. SESSIONS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

**SEC. . FALSE ADVERTISING OR MISUSE OF NAME TO INDICATE UNITED STATES MARSHALS SERVICE.**

Section 709 of title 18, United States Code, is amended by inserting after the thirteenth undesignated paragraph the following:

''Whoever, except with the written permission of the Director of the United States Marshals Service, knowingly uses the words 'United States Marshals Service', 'U.S. Marshals Service', 'United States Marshal', 'U.S. Marshal', 'U.S.M.S.' or any colorable imitation of any such words, or the likeness of the United States Marshals Service badge, logo, or insignia on any item of apparel, in connection with any advertisement, circular, book, pamphlet, software, or other publication, or any play, motion picture, broadcast, telecast, or other production, in a manner that is reasonably calculated to convey the impression that the wearer of the item of apparel is acting pursuant to the legal authority of the United States Marshals Service, or to convey the impression that such advertisement, circular, book, pamphlet, software, or other publication, or such play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the United States Marshals Service;''.

Mr. LEAHY. Mr. President, I am glad to support this measure with my amendment to prevent the misuse of the name and likeness of the U.S. Marshals Service.

The U.S. Marshals Service is the Nation's oldest Federal law enforcement agency. Since 1789, U.S. marshals have served the country through a variety of vital law enforcement activities, such as the protection of Federal judicial officials, the apprehension of Federal fugitives, and the transportation of Federal prisoners. Today, approximately 4,000 deputy U.S. marshals and career employees perform these important services across the Nation. I receive frequent reports about the day-to-day activities of the Service from Vermont's U.S. marshal, Jack Rouille, who has been a model public servant and has been a linchpin of coordination for Federal and local law enforcement agencies in Vermont.

The amendment I have offered will assist the Marchals Service by amending 18 U.S.C. 709—the part of the U.S. Code that deals with misuse of names to indicate Federal agencies—to include the Marshals Service among the Federal agencies whose name and likeness are protected from imitation on items of apparel or in connection with any commercial enterprise.

At present, the name and likeness of many other Federal law enforcement agencies are protected under law. For instance, the name and likeness of the Federal Bureau of Investigation [FBI], Secret Service, and Drug Enforcement Agency [DEA] are protected under 18 u.S.C. 709. Moreover, the name and likeness of several non-law enforcement agencies are protected under law. For example, the name and likeness of the Federal Deposit Insurance Corporation, the National Credit Union, the Federal Home Loan Bank, the Overseas Private Investment Corporation, and

the U.S. Mint, to name a few, are protected under 18 U.S.C. 709.

The lack of protection for the Marshals Service has generated serious security concerns. At a minimum, the public may be falsely lead to believe that the Marshals Service approves or endorses an unauthorized product. Even more problematic is the possibility that unauthorized individuals may wear apparel to look like marshals to effectuate criminal purposes or to gain undesired access to secured areas such as courtrooms or witness security facilities.

Recent cases highlight the need for this amendment:

In 1994, an individual dressed in full marshal ''swat team'' apparel and in possession of a loaded weapon made a series of presentations to a group of students at a local high school in Virginia.

An organization known as the United States Marshals and Peace Officers Association of America markets home security systems. Its advertisements use a replica of the Marshals Service badge, implying government endorsement of the organization and its product. The organization is not endorsed or authorized by the Marshals Service.

A Texas company offers bullet-resistant panels as an alternative home protection system. The company advertises that these bullet-proof panels are approved by the Marshals Service. This product is not officially endorsed by the Marshals Service.

While the amendment that I am introducing would protect the Marshals Service against these illegitimate uses of its name and likeness, the amendment is purposely limited in its scope. Specifically, this amendment would not prevent the use of the name or likeness in those instances where the use would not be reasonably calculated to convey the impression that either, first, the wearer of the item of apparel with the name or likeness is acting pursuant to legal authority; or, second, the use is approved, endorsed, or authorized by the Marshals Service.

Thus, for example, there was a case brought before the Patent Office Trademark Trial and Appeal Board in 1971 in which a French clothing manufacturer used the initials FBI in conjunction with the words ''Fabrication Bril International'' on clothing. The Trial and Appeal Board ruled that the law did not create an absolute prohibition against the use of the initials FBI, but was applicable only in those cases in which the initials were used in a manner reasonably calculated to convey a mistaken impression that the item of clothing was approved, endorsed, or authorized by the FBI. In that case, the Board ruled, there was little chance that anyone would think that the clothing was approved, endorsed, or authorized by the FBI, hence there was no violation of the statute.

In a case of political satire, the use of the Marshals Service name or likeness would almost always be permissible. In such instances, there would be little chance that any reasonable person would think that the satirist was acting pursuant to legal authority. This amendment should not interfere with the Capitol Steps or other satirists. As the court stated in Cliff Notes versus Bantam Doubleday Dell Pub. Group in 1989, trademark law courts have uniformly ruled that noncommercial parodies and satires do not infringe legitimate trademarks because there is little chance of confusion as to sponsorship.

Allowing unauthorized individuals to pose as Marshals Service officials or allowing unauthorized individuals to use the name in a manner that mistakenly conveys the impression that the use is sanctioned by the Marshals Service is an affront to those who legitimately and nobly serve under its banner and wear its badge. For this reason, I am delighted that the Senate has accepted this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1628) was agreed to.

AMENDMENT NO. 1629

(Purpose: To combat telemarketing fraud through reasonable disclosure of certain records for telemarketing investigations)

Mr. SESSIONS. Mr. President, I send an amendment to the desk on behalf of Mr. HARKIN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS], for Mr. HARKIN, proposes an amendment numbered 1629.

Mr. SESSIONS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following:

**SEC. . DISCLOSURE OF CERTAIN RECORDS FOR INVESTIGATIONS OF TELEMARKETING FRAUD.**

Section 2703(c)(1)(B) of title 18, United States Code, is amended—

(1) by striking out ''or'' at the end of clause (ii);

(2) by striking out the period at the end of clause (iii) and inserting in lieu thereof ''; or''; and

(3) by adding at the end the following:

''(iv) submits a formal written request relevant to law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is in section 2325 of this title.''.

Mr. HARKIN. Mr. President, Every year thousands of Americans are victimized by fraudulent telemarketing promotions. And, unfortunately, these scam artists prey most often on our senior citizens. The losses every year are estimated to be in the billions of dollars. My amendment will help law enforcement to more effectively combat these abuses.

Today, it's all to easy for telemarketing rip-off artists to profit from the current system. How do these rip-offs occur? Advertisements regarding sweepstakes, contests, loans, credit reports and other promotions appear in newspapers, magazines, and other direct mail and telephone solicitations. The operators of many of these phoney promotions set up telephone boiler rooms for a few months in which a number of phones are operated to receive calls responding to their ads. They steal thousands—even millions—of dollars from innocent victims and then they simply disappear. They take the money and run—moving on to another location to start all over again.

Here's just one example. Not too long ago, 30,000 Iowans received postcards from an organization calling itself Sweepstakes International, Inc. The postcard enticed recipients to call a 900-number and they were charged $9.95 on their phone bill.

Based on a Postal Service investigation, civil action was initiated in U.S. District Court in Iowa. As a result, the promotion was halted and $1.7 million was frozen. This represented just one and a half month's revenue from the scam!

My amendment will protect telemarketing victims by providing law enforcement the authority to more quickly obtain the name, address, and physical location of businesses suspected of telemarketing fraud. Phone companies would have to provide law enforcement officials ONLY the name, address and physical location of a telemarketing business holding a phone number if the officials submitted a formal written request for this information relevant to a legitimate law enforcement investigation. It will make it easier for officers to identify and locate these operations. This is similar to the procedure that is already in place for post office box investigations.

Mr. President, it is necessary to crack down on serious consumer fraud. With this change, we will have many more successful efforts to shut down these rip-off artists like several recent cases in my home state of Iowa.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1629) was agreed to.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill be considered read the third time, and passed, as amended, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The bill (H.R. 1847), as amended, was considered read the third time, and passed.