

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend title 18, United States Code, to protect Americans from cybercrime.

IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.

S. 754

To improve cybersecurity in the United States through enhanced sharing of information about cybersecurity threats, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. WHITEHOUSE

Viz:

1 At the end, add the following:

2 **SEC. ____ . STOPPING THE SALE OF AMERICANS' FINANCIAL**
3 **INFORMATION.**

4 Section 1029(h) of title 18, United States Code, is
5 amended by striking “title if—” and all that follows
6 through “therefrom.” and inserting “title if the offense
7 involves an access device issued, owned, managed, or con-
8 trolled by a financial institution, account issuer, credit
9 card system member, or other entity organized under the
10 laws of the United States, or any State, the District of
11 Columbia, or other Territory of the United States.”.

1 **SEC. ____ . SHUTTING DOWN BOTNETS.**

2 (a) AMENDMENT.—Section 1345 of title 18, United
3 States Code, is amended—

4 (1) in the heading, by inserting “**and abuse**”
5 after “**fraud**”;

6 (2) in subsection (a)—

7 (A) in paragraph (1)—

8 (i) in subparagraph (B), by striking
9 “or” at the end;

10 (ii) in subparagraph (C), by inserting
11 “or” after the semicolon; and

12 (iii) by inserting after subparagraph
13 (C) the following:

14 “(D) violating or about to violate section
15 1030(a)(5) where such conduct has caused or would
16 cause damage (as defined in section 1030) without
17 authorization to 100 or more protected computers
18 (as defined in section 1030) during any 1-year pe-
19 riod, including by—

20 “(i) impairing the availability or integrity
21 of the protected computers without authoriza-
22 tion; or

23 “(ii) installing or maintaining control over
24 malicious software on the protected computers
25 that, without authorization, has caused or

1 would cause damage to the protected com-
2 puters;”; and

3 (B) in paragraph (2), by inserting “, a vio-
4 lation described in subsection (a)(1)(D),” before
5 “or a Federal”; and

6 (3) by adding at the end the following:

7 “(c) A restraining order, prohibition, or other action
8 described in subsection (b), if issued in circumstances de-
9 scribed in subsection (a)(1)(D), may, upon application of
10 the Attorney General—

11 “(1) specify that no cause of action shall lie in
12 any court against a person for complying with the
13 restraining order, prohibition, or other action; and

14 “(2) provide that the United States shall pay to
15 such person a fee for reimbursement for such costs
16 as are reasonably necessary and which have been di-
17 rectly incurred in complying with the restraining
18 order, prohibition, or other action.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENT.—

20 The table of section for chapter 63 is amended by striking
21 the item relating to section 1345 and inserting the fol-
22 lowing:

 “1345. Injunctions against fraud and abuse.”.

1 **SEC. ____ . AGGRAVATED DAMAGE TO A CRITICAL INFRA-**
2 **STRUCTURE COMPUTER.**

3 (a) IN GENERAL.—Chapter 47 of title 18, United
4 States Code, is amended by inserting after section 1030
5 the following:

6 **“§ 1030A. Aggravated damage to a critical infrastruc-**
7 **ture computer**

8 “(a) OFFENSE.—It shall be unlawful, during and in
9 relation to a felony violation of section 1030, to knowingly
10 cause or attempt to cause damage to a critical infrastruc-
11 ture computer, if such damage results in (or, in the case
12 of an attempted offense, would, if completed have resulted
13 in) the substantial impairment—

14 “(1) of the operation of the critical infrastruc-
15 ture computer; or

16 “(2) of the critical infrastructure associated
17 with such computer.

18 “(b) PENALTY.—Any person who violates subsection
19 (a) shall, in addition to the term of punishment provided
20 for the felony violation of section 1030, be fined under
21 this title, imprisoned for not more than 20 years, or both.

22 “(c) CONSECUTIVE SENTENCE.—Notwithstanding
23 any other provision of law—

24 “(1) a court shall not place any person con-
25 victed of a violation of this section on probation;

1 “(2) except as provided in paragraph (4), no
2 term of imprisonment imposed on a person under
3 this section shall run concurrently with any term of
4 imprisonment imposed on the person under any
5 other provision of law, including any term of impris-
6 onment imposed for the felony violation of section
7 1030;

8 “(3) in determining any term of imprisonment
9 to be imposed for the felony violation of section
10 1030, a court shall not in any way reduce the term
11 to be imposed for such violation to compensate for,
12 or otherwise take into account, any separate term of
13 imprisonment imposed or to be imposed for a viola-
14 tion of this section; and

15 “(4) a term of imprisonment imposed on a per-
16 son for a violation of this section may, in the discre-
17 tion of the court, run concurrently, in whole or in
18 part, only with another term of imprisonment that
19 is imposed by the court at the same time on that
20 person for an additional violation of this section, if
21 such discretion shall be exercised in accordance with
22 any applicable guidelines and policy statements
23 issued by the United States Sentencing Commission
24 pursuant to section 994 of title 28.

25 “(d) DEFINITIONS.—In this section

1 “(1) the terms ‘computer’ and ‘damage’ have
2 the meanings given the terms in section 1030; and

3 “(2) the term ‘critical infrastructure’ means
4 systems and assets, whether physical or virtual, so
5 vital to the United States that the incapacity or de-
6 struction of such systems and assets would have cat-
7 astrophic regional or national effects on public
8 health or safety, economic security, or national secu-
9 rity.”.

10 (b) TABLE OF SECTIONS.—The table of sections for
11 chapter 47 of title 18, United States Code, is amended
12 by inserting after the item relating to section 1030 the
13 following:

“1030A. Aggravated damage to a critical infrastructure computer.”.

14 **SEC. ____ . STOPPING TRAFFICKING IN BOTNETS.**

15 (a) IN GENERAL.—Section 1030 of title 18, United
16 States Code, is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (7), by adding “or” at
19 the end; and

20 (B) by inserting after paragraph (7) the
21 following:

22 “(8) intentionally traffics in the means of ac-
23 cess to a protected computer, if—

1 “(A) the trafficker knows or has reason to
2 know the protected computer has been damaged
3 in a manner prohibited by this section; and

4 “(B) the promise or agreement to pay for
5 the means of access is made by, or on behalf of,
6 a person the trafficker knows or has reason to
7 know intends to use the means of access to—

8 “(i) damage the protected computer in
9 a manner prohibited by this section; or

10 “(ii) violate section 1037 or 1343;”;

11 (2) in subsection (c)(3)—

12 (A) in subparagraph (A), by striking
13 “(a)(4) or (a)(7)” and inserting “(a)(4), (a)(7),
14 or (a)(8)”; and

15 (B) in subparagraph (B), by striking
16 “(a)(4), or (a)(7)” and inserting “(a)(4),
17 (a)(7), or (a)(8)”; and

18 (3) in subsection (e)—

19 (A) in paragraph (11), by striking “and”
20 at the end;

21 (B) in paragraph (12), by striking the pe-
22 riod at the end and inserting “; and”; and

23 (C) by adding at the end the following:

24 “(13) the term ‘traffic’, except as provided in
25 subsection (a)(6), means transfer, or otherwise dis-

1 pose of, to another as consideration for the receipt
2 of, or as consideration for a promise or agreement
3 to pay, anything of pecuniary value.”; and

4 (4) in subsection (g), in the first sentence, by
5 inserting “, except for a violation of subsection
6 (a)(8),” after “of this section”.