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 "if—" and all that follows through

6   "therefrom." and inserting "if the offense involves an ac-

7   cess device issued, owned, managed, or controlled by a fi-

8   nancial institution, account issuer, credit card system

9   member, or other entity organized under the laws of the

10   United States, or any State, the District of Columbia, or

11   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 paragraph

15   (1), (4), (5), or (7) of section 1030(a) where such

16   conduct would affect 100 or more protected com-

17   puters (as defined in section 1030) during any 1-

18   year period, including by denying access to or oper-

19   ation of the computers, installing malicious software

20   on the computers, or using the computers without

21   authorization;"; and

22   (B) in paragraph (2), by inserting ", a vio-

23   lation described in subsection (a)(1)(D)," before

24   "or a Federal"; and

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

1   "(c) A restraining order, prohibition, or other action

2 described in subsection (b), if issued in circumstances de-

3 scribed in subsection (a)(1)(D), may, upon application of

4 the Attorney General—

5   "(1) specify that no cause of action shall lie in

6   any court against a person for complying with the

7   restraining order, prohibition, or other action; and

8   "(2) provide that the United States shall pay to

9   such person a fee for reimbursement for such costs

10   as are reasonably necessary and which have been di-

11   rectly incurred in complying with the restraining

12   order, prohibition, or other action.".

13   (b) TECHNICAL AND CONFORMING AMENDMENT.—

14 The table of section for chapter 63 is amended by striking

15 the item relating to section 1345 and inserting the fol-

16 lowing:

"1345. Injunctions against fraud and abuse.".

17 **SEC. ___. AGGRAVATED DAMAGE TO A CRITICAL INFRA-**

18   **STRUCTURE COMPUTER.**

19   (a) IN GENERAL.—Chapter 47 of title 18, United

20 States Code, is amended by inserting after section 1030

21 the following:

22 **"§ 1030A. Aggravated damage to a critical infrastruc-**

23   **ture computer**

24   "(a) OFFENSE.—It shall be unlawful, during and in

25 relation to a felony violation of section 1030, to knowingly

1 cause or attempt to cause damage to a critical infrastruc-

2 ture computer, if such damage results in (or, in the case

3 of an attempted offense, would, if completed have resulted

4 in) the substantial impairment—

5   ''(1) of the operation of the critical infrastruc-

6   ture computer; or

7   ''(2) of the critical infrastructure associated

8   with such computer.

9   ''(b) PENALTY.—Any person who violates subsection

10 (a) shall, in addition to the term of punishment provided

11 for the felony violation of section 1030, be fined under

12 this title, imprisoned for not more than 20 years, or both.

13   ''(c)   CONSECUTIVE   SENTENCE.—Notwithstanding

14 any other provision of law—

15   ''(1) a court shall not place any person con-

16   victed of a violation of this section on probation;

17   ''(2) except as provided in paragraph (4), no

18   term of imprisonment imposed on a person under

19   this section shall run concurrently with any term of

20   imprisonment imposed on the person under any

21   other provision of law, including any term of impris-

22   onment imposed for the felony violation of section

23   1030;

24   ''(3) in determining any term of imprisonment

25   to be imposed for the felony violation of section

1 1030, a court shall not in any way reduce the term

2 to be imposed for such violation to compensate for,

3 or otherwise take into account, any separate term of

4 imprisonment imposed or to be imposed for a viola-

5 tion of this section; and

6 ''(4) a term of imprisonment imposed on a per-

7 son for a violation of this section may, in the discre-

8 tion of the court, run concurrently, in whole or in

9 part, only with another term of imprisonment that

10 is imposed by the court at the same time on that

11 person for an additional violation of this section, if

12 such discretion shall be exercised in accordance with

13 any applicable guidelines and policy statements

14 issued by the United States Sentencing Commission

15 pursuant to section 994 of title 28.

16 ''(d) DEFINITIONS.—In this section

17 ''(1) the terms 'computer' and 'damage' have

18 the meanings given the terms in section 1030; and

19 ''(2) the term 'critical infrastructure' has the

20 meaning given the term in section 1016(e) of the

21 USA PATRIOT Act (42 U.S.C. 5195c(e)).''.

22 (b) TABLE OF SECTIONS.—The table of sections for

23 chapter 47 of title 18, United States Code, is amended

24 by inserting after the item relating to section 1030 the

25 following:

''1030A. Aggravated damage to a critical infrastructure computer.''.

1 **SEC. ___. STOPPING TRAFFICKING IN BOTNETS.**

2   (a) IN GENERAL.—Section 1030 of title 18, United

3 States Code, is amended—

4   (1) in subsection (a), by striking paragraph (6)

5   and inserting the following:

6   "(6) knowing such conduct to be wrongful, in-

7   tentionally traffics in any password or similar infor-

8   mation, or any other means of access, further know-

9   ing or having reason to know that a protected com-

10   puter would be accessed or damaged without author-

11   ization in a manner prohibited by this section as the

12   result of such trafficking;";

13   (2) in subsection (c)—

14   (A) in paragraph (2), by striking ", (a)(3),

15   or (a)(6)" each place it appears and inserting

16   "or (a)(3)"; and

17   (B) in paragraph (4)—

18   (i) in subparagraph (C)(i), by striking

19   "or an attempt to commit an offense"; and

20   (ii) in subparagraph (D), by striking

21   clause (ii) and inserting the following:

22   "(ii) an offense, or an attempt to commit

23   an offense, under subsection (a)(6);"; and

24   (3) in subsection (g), in the first sentence, by

25   inserting ", except for a violation of subsection

26   (a)(6)," after "of this section".