

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4709

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IN THE SENATE OF THE UNITED STATES

APRIL 26, 2006

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To amend title 18, United States Code, to strengthen protections for law enforcement officers and the public by providing criminal penalties for the fraudulent acquisition or unauthorized disclosure of phone records.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Telephone Records and  
3 Privacy Protection Act of 2006”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) telephone records can be of great use to  
7 criminals because the information contained in call  
8 logs may include a wealth of personal data;

9 (2) call logs may reveal the names of telephone  
10 users’ doctors, public and private relationships, busi-  
11 ness associates, and more;

12 (3) call logs are typically maintained for the ex-  
13 clusive use of phone companies, their authorized  
14 agents, and authorized consumers;

15 (4) telephone records have been obtained with-  
16 out the knowledge or consent of consumers through  
17 the use of a number of fraudulent methods and de-  
18 vices that include—

19 (A) telephone company employees selling  
20 data to unauthorized data brokers;

21 (B) “pretexting”, whereby a data broker or  
22 other person represents that they are an au-  
23 thorized consumer and convinces an agent of  
24 the telephone company to release the data; or

25 (C) gaining unauthorized Internet access  
26 to account data by improperly activating a con-

1           sumer’s account management features on a  
2           phone company’s webpage or contracting with  
3           an Internet-based data broker who trafficks in  
4           such records; and

5           (5) the unauthorized disclosure of telephone  
6           records not only assaults individual privacy but, in  
7           some instances, may further acts of domestic vio-  
8           lence or stalking, compromise the personal safety of  
9           law enforcement officers, their families, victims of  
10          crime, witnesses, or confidential informants, and un-  
11          dermine the integrity of law enforcement investiga-  
12          tions.

13 **SEC. 3. FRAUD AND RELATED ACTIVITY IN CONNECTION**  
14                   **WITH OBTAINING CONFIDENTIAL PHONE**  
15                   **RECORDS INFORMATION OF A COVERED EN-**  
16                   **TITY.**

17          (a) OFFENSE.—Chapter 47 of title 18, United States  
18          Code, is amended by inserting after section 1038 the fol-  
19          lowing:

20 **“§ 1039. Fraud and related activity in connection**  
21                   **with obtaining confidential phone**  
22                   **records information of a covered entity**

23          “(a) CRIMINAL VIOLATION.—Whoever, in interstate  
24          or foreign commerce, knowingly and intentionally obtains,

1 or attempts to obtain, confidential phone records informa-  
2 tion of a covered entity, by—

3 “(1) making false or fraudulent statements or  
4 representations to an employee of a covered entity;

5 “(2) making such false or fraudulent state-  
6 ments or representations to a customer of a covered  
7 entity;

8 “(3) providing a document to a covered entity  
9 knowing that such document is false or fraudulent;  
10 or

11 “(4) accessing customer accounts of a covered  
12 entity via the Internet, or by means of conduct that  
13 violates section 1030 of this title, without prior au-  
14 thorization from the customer to whom such con-  
15 fidential phone records information relates;

16 shall be fined under this title, imprisoned for not more  
17 than 10 years, or both.

18 “(b) PROHIBITION ON SALE OR TRANSFER OF CON-  
19 FIDENTIAL PHONE RECORDS INFORMATION.—

20 “(1) Except as otherwise permitted by applica-  
21 ble law, whoever, in interstate or foreign commerce,  
22 knowingly and intentionally sells or transfers, or at-  
23 tempts to sell or transfer, confidential phone records  
24 information of a covered entity, without prior au-  
25 thorization from the customer to whom such con-

1 confidential phone records information relates, or know-  
2 ing or having reason to know such information was  
3 obtained fraudulently, shall be fined under this title,  
4 imprisoned not more than 10 years, or both.

5 “(2) For purposes of this subsection, the excep-  
6 tions specified in section 222(d) of the Communica-  
7 tions Act of 1934 shall apply for the use of confiden-  
8 tial phone records information by any covered entity,  
9 as defined in subsection (h).

10 “(c) PROHIBITION ON PURCHASE OR RECEIPT OF  
11 CONFIDENTIAL PHONE RECORDS INFORMATION.—

12 “(1) Except as otherwise permitted by applica-  
13 ble law, whoever, in interstate or foreign commerce,  
14 knowingly and intentionally purchases or receives, or  
15 attempts to purchase or receive, confidential phone  
16 records information of a covered entity, without  
17 prior authorization from the customer to whom such  
18 confidential phone records information relates, or  
19 knowing or having reason to know such information  
20 was obtained fraudulently, shall be fined under this  
21 title, imprisoned not more than 10 years, or both.

22 “(2) For purposes of this subsection, the excep-  
23 tions specified in section 222(d) of the Communica-  
24 tions Act of 1934 shall apply for the use of confiden-

1 tial phone records information by any covered entity,  
2 as defined in subsection (h).

3 “(d) ENHANCED PENALTIES FOR AGGRAVATED  
4 CASES.—Whoever violates, or attempts to violate, sub-  
5 section (a), (b), or (c) while violating another law of the  
6 United States or as part of a pattern of any illegal activity  
7 involving more than \$100,000, or more than 50 customers  
8 of a covered entity, in a 12-month period shall, in addition  
9 to the penalties provided for in such subsection, be fined  
10 twice the amount provided in subsection (b)(3) or (c)(3)  
11 (as the case may be) of section 3571 of this title, impris-  
12 oned for not more than 5 years, or both.

13 “(e) ENHANCED PENALTIES FOR USE OF INFORMA-  
14 TION IN FURTHERANCE OF CERTAIN CRIMINAL OF-  
15 FENSES.—

16 “(1) Whoever, violates, or attempts to violate,  
17 subsection (a), (b), or (c) knowing that such infor-  
18 mation may be used in furtherance of, or with the  
19 intent to commit, an offense described in section  
20 2261, 2261A, 2262, or any other crime of violence  
21 shall, in addition to the penalties provided for in  
22 such subsection, be fined under this title and impris-  
23 oned not more than 5 years.

24 “(2) Whoever, violates, or attempts to violate,  
25 subsection (a), (b), or (c) knowing that such infor-

1 mation may be used in furtherance of, or with the  
2 intent to commit, an offense under section 111, 115,  
3 1114, 1503, 1512, 1513, or to intimidate, threaten,  
4 harass, injure, or kill any Federal, State, or local  
5 law enforcement officer shall, in addition to the pen-  
6 alties provided for in such subsection, be fined under  
7 this title and imprisoned not more than 5 years.

8 “(f) EXTRATERRITORIAL JURISDICTION.—There is  
9 extraterritorial jurisdiction over an offense under this sec-  
10 tion.

11 “(g) NONAPPLICABILITY TO LAW ENFORCEMENT  
12 AGENCIES.—This section does not prohibit any lawfully  
13 authorized investigative, protective, or intelligence activity  
14 of a law enforcement agency of the United States, a State,  
15 or political subdivision of a State, or of an intelligence  
16 agency of the United States.

17 “(h) DEFINITIONS.—In this section:

18 “(1) CONFIDENTIAL PHONE RECORDS INFOR-  
19 MATION.—The term ‘confidential phone records in-  
20 formation’ means information that—

21 “(A) relates to the quantity, technical con-  
22 figuration, type, destination, location, or  
23 amount of use of a service offered by a covered  
24 entity, subscribed to by any customer of that  
25 covered entity, and kept by or on behalf of that

1 covered entity solely by virtue of the relation-  
2 ship between that covered entity and the cus-  
3 tomer;

4 “(B) is made available to a covered entity  
5 by a customer solely by virtue of the relation-  
6 ship between that covered entity and the cus-  
7 tomer; or

8 “(C) is contained in any bill, itemization,  
9 or account statement provided to a customer by  
10 or on behalf of a covered entity solely by virtue  
11 of the relationship between that covered entity  
12 and the customer.

13 “(2) COVERED ENTITY.—The term ‘covered en-  
14 tity’—

15 “(A) has the same meaning given the term  
16 ‘telecommunications carrier’ in section 3 of the  
17 Communications Act of 1934 (47 U.S.C. 153);  
18 and

19 “(B) includes any provider of IP-enabled  
20 voice service.

21 “(3) CUSTOMER.—The term ‘customer’ means,  
22 with respect to a covered entity, any individual, part-  
23 nership, association, joint stock company, trust, or  
24 corporation, or authorized representative of such



1 customer, to whom the covered entity provides a  
2 product or service.

3 “(4) IP-ENABLED VOICE SERVICE.—The term  
4 ‘IP-enabled voice service’ means the provision of  
5 real-time voice communications offered to the public,  
6 or such class of users as to be effectively available  
7 to the public, transmitted through customer prem-  
8 ises equipment using TCP/IP protocol, or a suc-  
9 cessor protocol, (whether part of a bundle of services  
10 or separately) with interconnection capability such  
11 that the service can originate traffic to, or terminate  
12 traffic from, the public switched telephone network,  
13 or a successor network.”.

14 (b) CHAPTER ANALYSIS.—The table of sections for  
15 chapter 47 of title 18, United States Code, is amended  
16 by adding after the item relating to section 1038 the fol-  
17 lowing:

“1039. Fraud and related activity in connection with obtaining confidential  
phone records information of a covered entity.”.

18 **SEC. 4. SENTENCING GUIDELINES.**

19 (a) REVIEW AND AMENDMENT.—Not later than 180  
20 days after the date of enactment of this Act, the United  
21 States Sentencing Commission, pursuant to its authority  
22 under section 994 of title 28, United States Code, and  
23 in accordance with this section, shall review and, if appro-  
24 priate, amend the Federal sentencing guidelines and policy

1 statements applicable to persons convicted of any offense  
2 under section 1039 of title 18, United States Code.

3 (b) AUTHORIZATION.—The United States Sentencing  
4 Commission may amend the Federal sentencing guidelines  
5 in accordance with the procedures set forth in section  
6 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)  
7 as though the authority under that section had not ex-  
8 pired.

Passed the House of Representatives April 25, 2006.

Attest:

KAREN L. HAAS,

*Clerk.*