Union Calendar No. 215

109TH CONGRESS
2D SESSION

H. R. 4709

[Report No. 109–395]

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2006

Mr. SMITH of Texas (for himself, Mr. CONYERS, Mr. GOODLATTE, Mr. SCOTT of Virginia, Mr. CANNON, Ms. ZOE LOFGREN of California, Mr. WILSON of South Carolina, Ms. HERSETH, and Mr. REICHERT) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 16, 2006

Additional sponsors: Mr. CHABOT, Mr. CASE, Mr. ROTHMAN, Mr. BERMAN, Mr. BOUCHER, Mr. KUCINICH, Mr. KLINE, and Mr. COSTELLO

MARCH 16, 2006

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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A BILL

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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Law Enforcement and Phone Privacy Protection Act of 2006".

SEC. 2. FINDINGS.

Congress finds that—

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

(2) call logs may reveal the names of telephone users' doctors, public and private relationships, business associates, and more;

(3) call logs are typically maintained for the exclusive use of phone companies, their authorized agents, and authorized consumers;

(4) telephone records have been obtained without the knowledge or consent of consumers through the use of a number of fraudulent methods and devices that include but are not limited to—

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

(B) "pretexting", whereby a data broker or other person represents they are an authorized

1 consumer and convinces an agent of the tele-

2 phone company to release the data; or

3 (C) gaining unauthorized Internet access

4 to account data by improperly activating a con-

5 sumer's account management features on a

6 phone company's webpage or contracting with

7 an Internet-based data broker who traffics in

8 such records; and

9 (5) the unauthorized disclosure of telephone

10 records not only assaults individual privacy but, in

11 some instances, may further acts of domestic vio-

12 lence, compromise the personal safety of law enforce-

13 ment officers, their families, or confidential inform-

14 ants, and undermine the integrity of law enforce-

15 ment investigations.

16 **SEC. 3. FRAUD AND RELATED ACTIVITY IN CONNECTION**

17 **WITH OBTAINING CONFIDENTIAL PHONE**

18 **RECORDS INFORMATION OF A COVERED EN-**

19 **TITY.**

20 Chapter 47 of title 18, United States Code, is amend-

21 ed by inserting after section 1038 the following:

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

"(a) CRIMINAL VIOLATION.—Whoever knowingly and intentionally obtains, or attempts to obtain, confidential phone records information of a covered entity, by—

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

"(2) making such false or fraudulent statements or representations to a customer of a covered entity;

"(3) providing a document to a covered entity knowing that such document is false or fraudulent; or

"(4) accessing customer accounts of a covered entity via the Internet without prior authorization from the customer to whom such confidential records information relates;

shall be fined under this title, imprisoned for not more than 20 years, or both.

"(b) PROHIBITION ON SALE OR TRANSFER OF CONFIDENTIAL PHONE RECORDS INFORMATION.—Except as otherwise provided by applicable law, any person, including any employee of a covered entity or any data broker, who knowingly and intentionally sells, transfers, or attempts to sell or transfer, confidential phone records infor-

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mation of a covered entity, without authorization from the customer to whom such confidential phone records information relates, shall be fined under this title, imprisoned for not more than 5 years, or both.

"(c) PROHIBITION ON PURCHASE OF PHONE RECORDS INFORMATION.—Except as otherwise provided by applicable law, any person who purchases confidential phone records information of a covered entity, knowing such information was obtained fraudulently or without prior authorization from the customer to whom such confidential records information relates, shall be fined under this title, imprisoned not more than 5 years, or both.

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

"(e) ENHANCED PENALTIES FOR USE OF INFORMATION IN FURTHERANCE OF CERTAIN CRIMINAL OFFENSES.—

1   "(1) Whoever, violates, or attempts to violate,

2   subsection (a), (b), or (c) knowing that such infor-

3   mation may be used in furtherance of, or with the

4   intent to commit, an offense described in section

5   2261, 2261A, 2262, or any other crime of violence

6   shall, in addition to the penalties provided for in

7   subsection (a), (b), or (c), be fined under this title

8   and imprisoned not more than 5 years.

9   "(2) Whoever, violates, or attempts to violate,

10   subsection (a), (b), or (c) knowing that such infor-

11   mation may be used in furtherance of, or with the

12   intent to commit, an offense under section 111, 115,

13   1114, 1503, 1512, 1513, or to intimidate, threaten,

14   harass, injure, or kill any Federal, State, or local

15   law enforcement officer shall, in addition to the pen-

16   alties provided for in subsection (a), (b) or (c), be

17   fined under this title and imprisoned not more than

18   5 years.

19   "(f) EXTRATERRITORIAL JURISDICTION.—There is

20 extraterritorrial jurisdiction over an offense under this

21 section.

22   "(g) NONAPPLICABILITY TO LAW ENFORCEMENT

23 AGENCIES.—Nothing in this Act shall be construed to pre-

24 vent, hinder, or otherwise delay the production of con-

25 fidential phone records information from a covered entity

1 upon receipt of a lawful request from a law enforcement

2 agency, or any officer, employee, or agent of such agency,

3 in accordance with other applicable laws.

4   ''(h) DEFINITIONS.—In this section:

5   ''(1) CONFIDENTIAL PHONE RECORDS INFOR-

6   MATION.—The term 'confidential phone records in-

7   formation' means—

8   ''(A) information that—

9   ''(i) relates to the quantity, technical

10   configuration, type, destination, location,

11   or amount of use of a service offered by a

12   covered entity subscribed to by any cus-

13   tomer of that covered entity; and

14   ''(ii) is made available to a covered

15   entity by a customer solely by virtue of the

16   relationship between the covered entity and

17   the customer; or

18   ''(B) information contained in any bill,

19   itemization, or account statement related to a

20   product or service provided by a covered entity

21   to any customer of the covered entity.

22   ''(2) COVERED ENTITY.—The term 'covered en-

23   tity'—

24   ''(A) has the same meaning given the term

25   'telecommunications carrier' in section 3 of the

1   Communications Act of 1934 (47 U.S.C. 153);

2   and

3   "(B) includes any provider of IP-enabled

4   voice service.

5   "(3) CUSTOMER.—The term 'customer' means,

6   with respect to a covered entity, any individual, part-

7   nership, association, joint stock company, trust, or

8   corporation, or authorized representative of such

9   customer, to whom the covered entity provides a

10   product or service.

11   "(4) IP-ENABLED VOICE SERVICE.—The term

12   'IP-enabled voice service' means the provision of

13   real-time 2-way voice communications offered to the

14   public, or such class of users as to be effectively

15   available to the public, transmitted through cus-

16   tomer premises equipment using TCP/IP protocol,

17   or a successor protocol, for a fee (whether part of

18   a bundle of services or separately) with 2-way inter-

19   connection capability such that the service can origi-

20   nate traffic to, and terminate traffic from, a public

21   switched telephone network.".

22 **SEC. 4. SENTENCING GUIDELINES.**

23   (a) REVIEW AND AMENDMENT.—Not later than 180

24 days after the date of enactment of this Act, the United

25 States Sentencing Commission, pursuant to its authority

1 under section 994 of title 28, United States Code, and
2 in accordance with this section, shall review and, if appro-
3 priate, amend the Federal sentencing guidelines and policy
4 statements applicable to persons convicted of any offense
5 under section 1039 of title 18, United States Code.

6   (b) AUTHORIZATION.—The United States Sentencing
7 Commission may amend the Federal sentencing guidelines
8 in accordance with the procedures set forth in section
9 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)
10 as though the authority under that section had not ex-
11 pired.

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