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(Original Signature of Member)

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

# H. R. \_\_\_\_\_

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.

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## IN THE HOUSE OF REPRESENTATIVES

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

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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.

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 “Law Enforcement and  
3 Phone 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 but are not limited to—

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

21 (B) “pretexting”, whereby a data broker or  
22 other person represents they are an authorized  
23 consumer and convinces an agent of the tele-  
24 phone 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, compromise the personal safety of law enforce-  
9           ment officers, their families, or confidential inform-  
10          ants, and undermine the integrity of law enforce-  
11          ment investigations.

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

16          Chapter 47 of title 18, United States Code, is amend-  
17          ed by inserting after section 1038 the following:

18 **“§ 1039. Fraud and related activity in connection**  
19                   **with obtaining confidential phone**  
20                   **records information of a covered entity**

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

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



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

4           “(3) providing a document to a covered entity  
5           knowing that such document is false or fraudulent;  
6           or

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

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

13          “(b) PROHIBITION ON SALE OR TRANSFER OF CON-  
14 FIDENTIAL PHONE RECORDS INFORMATION.—Except as  
15 otherwise provided by applicable law, any person, includ-  
16 ing any employee of a covered entity or any data broker,  
17 who knowingly and intentionally sells, transfers, or at-  
18 tempts to sell or transfer, confidential phone records infor-  
19 mation of a covered entity, without authorization from the  
20 customer to whom such confidential phone records infor-  
21 mation relates, shall be fined under this title, imprisoned  
22 for not more than 5 years, or both.

23          “(c) PROHIBITION ON PURCHASE OF PHONE  
24 RECORDS INFORMATION.—Except as otherwise provided  
25 by applicable law, any person who purchases confidential



1 phone records information of a covered entity, knowing  
2 such information was obtained fraudulently or without  
3 prior authorization from the customer to whom such con-  
4 fidential records information relates, shall be fined under  
5 this title, imprisoned not more than 5 years, or both.

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

16 “(e) ENHANCED PENALTIES FOR USE OF INFORMA-  
17 TION IN FURTHERANCE OF CERTAIN CRIMINAL OF-  
18 FENSES.—

19 “(1) Whoever, violates, or attempts to violate,  
20 subsection (a), (b), or (c) knowing that such infor-  
21 mation may be used in furtherance of, or with the  
22 intent to commit, an offense described in section  
23 2261, 2261A, 2262, or any other crime of violence  
24 shall, in addition to the penalties provided for in



1 subsection (a), (b), or (c), be fined under this title  
2 and imprisoned not more than 5 years.

3 “(2) Whoever, violates, or attempts to violate,  
4 subsection (a), (b), or (c) knowing that such infor-  
5 mation may be used in furtherance of, or with the  
6 intent to commit, an offense under section 111, 115,  
7 1114, 1503, 1512, 1513, or to intimidate, threaten,  
8 harass, injure, or kill any Federal, State, or local  
9 law enforcement officer shall, in addition to the pen-  
10 alties provided for in subsection (a), (b) or (c), be  
11 fined under this title and imprisoned not more than  
12 5 years.

13 “(f) EXTRATERRITORIAL JURISDICTION.—There is  
14 extraterritorial jurisdiction over an offense under this  
15 section.

16 “(g) NONAPPLICABILITY TO LAW ENFORCEMENT  
17 AGENCIES.—Nothing in this Act shall be construed to pre-  
18 vent, hinder, or otherwise delay the production of con-  
19 fidential phone records information from a covered entity  
20 upon receipt of a lawful request from a law enforcement  
21 agency, or any officer, employee, or agent of such agency,  
22 in accordance with other applicable laws.

23 “(h) DEFINITIONS.—In this section:



1           “(1) CONFIDENTIAL PHONE RECORDS INFOR-  
2           MATION.—The term ‘confidential phone records in-  
3           formation’ means—

4                   “(A) information that—

5                           “(i) relates to the quantity, technical  
6                           configuration, type, destination, location,  
7                           or amount of use of a service offered by a  
8                           covered entity subscribed to by any cus-  
9                           tomer of that covered entity; and

10                           “(ii) is made available to a covered  
11                           entity by a customer solely by virtue of the  
12                           relationship between the covered entity and  
13                           the customer; or

14                           “(B) information contained in any bill,  
15                           itemization, or account statement related to a  
16                           product or service provided by a covered entity  
17                           to any customer of the covered entity.

18           “(2) COVERED ENTITY.—The term ‘covered  
19           entity’—

20                           “(A) has the same meaning given the term  
21                           ‘telecommunications carrier’ in section 3 of the  
22                           Communications Act of 1934 (47 U.S.C. 153);  
23                           and

24                           “(B) includes any provider of IP-enabled  
25                           voice service.



1           “(3) CUSTOMER.—The term ‘customer’ means,  
2           with respect to a covered entity, any individual, part-  
3           nership, association, joint stock company, trust, or  
4           corporation, or authorized representative of such  
5           customer, to whom the covered entity provides a  
6           product or service.

7           “(4) IP-ENABLED VOICE SERVICE.—The term  
8           ‘IP-enabled voice service’ means the provision of  
9           real-time 2-way voice communications offered to the  
10          public, or such class of users as to be effectively  
11          available to the public, transmitted through cus-  
12          tomer premises equipment using TCP/IP protocol,  
13          or a successor protocol, for a fee (whether part of  
14          a bundle of services or separately) with 2-way inter-  
15          connection capability such that the service can origi-  
16          nate traffic to, and terminate traffic from, a public  
17          switched telephone network.”.

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.

