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Mr. HEFLEY. Mr. Speaker, the President's budget includes a Citizen's Guide to help taxpayers better understand the budget process. It describes a typical American household where a father and mother sit around their kitchen table to review the family budget. They decide how much they can spend on food, shelter, clothing, and transportation, and figure out if they will be able to afford a family vacation this year.

Let us say that this family described in the Citizen's Guide thinks that it is important to keep one parent home to care of their children. Imagine how puzzled they will be when they realize in the President's plan they do not get a tax break unless both of them work.

And I bet that typical American family is sitting around the kitchen table wondering why the President feels compelled to raise taxes by over $100 billion when we are on the eve of a balanced budget for the first time in 20 years.

Mr. Speaker, imagine when they hear they will have to help finance 85 new Washington spending programs, including 39 new expanded entitlements. There goes the family vacation.

Mr. Speaker, I am glad our typical American family is strong, because they are going to find the President's budget very taxing indeed.

CONGRESS SHOULD REJECT SUPPLEMENTAL APPROPRIATION FOR IMF

(Mr. KUCINICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KUCINICH. Mr. Speaker, a supplemental appropriation for the International Monetary Fund, IMF, is rushing toward the Congress. Against the backdrop of headlines coming from Asia, the supplemental appropriation would seem to be needed for an emergency. The fact is, the supplemental appropriation is not needed to bail out Asian borrowers. The bailout has already taken place with existing IMF funds.

The supplemental is not needed on an emergency basis. Instead, the supplemental appropriation is a back-door attempt to increase the size and scope of the IMF. The $18 billion supplemental appropriation would be the U.S. share of a planned 45 percent increase in the size of the IMF and in its magnitude.

Mr. Speaker, IMF proponents are counting on confusing Congress and the country in order to preclude careful scrutiny and push through a big increase in its size. The real question before this Congress should be do we really want to expand the size and scope of the IMF? Has the IMF been helpful or harmful? Are there changes we want?

Mr. Speaker, do we not want to find the answers to these questions before we commit $18 billion to the IMF? The only way to get time to answer those and other questions is to first reject the supplemental appropriation.

BUSINESS AS USUAL AT THE IRS

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, some people think it is not fair to pick on the IRS so much. But when we think about all the people whose lives were turned upside down because of an honest mistake or an audit, our outrage might resurface with even greater force.

Americans could probably be divided into those who have experienced IRS abuse or incompetence and those who have not. And it would be interesting to see how many are in each group.

Mr. Speaker, listen to this horror story: Because of a printing error, about a million taxpayers could mail their returns to the IRS and see them sent right back to the sender. Hard to file a return on time when that happens. It turns out that there was a computer error on the stick-on address labels that are used for processing. The IRS bar code tells the computer to take poor Mr. Taxpayer's form and send it right back to him.

Of course, in fairness we could say that that mistake was a simple bureaucratic snafu or an isolated instance or we could note that this is an all-too-common IRS blunder and simply more evidence of business as usual at the IRS.

CAMPAIGN REFORM PROPOSALS THAT DO NOT REFORM ANYTHING

(Ms. HOOLEY of Oregon asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. HOOLEY of Oregon. Mr. Speaker, as a mom, my children used to love for me to read the Alice in Wonderland story. They used to ah and ooh and giggle as I read it, because left meant right, up meant down, and nothing was what it seemed to be.

While I participate in the campaign finance reform debate in the House I cannot help but think back to those days of reading that story to my children. They would have laughed and giggled because we have got reform proposals that do not reform anything and a lot of people screaming about a broken system, but unwilling to do anything to fix it.

□ 1030

The trouble is, this is not Alice in Wonderland, so it is not funny. It is time to stop playing games and bring real and honest campaign finance reform to the floor for a vote.

BE HONEST ABOUT PROTECTING SOCIAL SECURITY

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, we hear a lot of fanfare about the budget and the surplus, and we hear that the deficit has been wiped out. When we take a close look at this, we find the only reason why we can say the budget is balanced is because we take $100 billion in Social Security surplus and apply it to the general fund. Now, if we take that out of there, there is still a deficit; that we are still spending more money than we bring in if we pull Social Security out of it.

The reason why this is important is I agree with those who want to put Social Security first. I think it is very important to preserve Social Security, to protect it and to separate it from the rest of the group of money. But the President, as we know, has proposed over $100 billion in new spending. Now, is it not coincidental that we have a $100 billion surplus in Social Security and the President is pushing $100 billion in new spending?

It is total fraud. We are not putting Social Security first. We are not protecting it when we are saying let us go out with a whole bunch of big government spending programs. I think we should be truthful and honest with America's seniors, protect Social Security and not increase government spending.

WIRELESS TELEPHONE PROTECTION ACT

Ms. PRYCE of Ohio. Mr. Speaker, by the direction of the Committee on Rules, I call up House Resolution 368 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 368

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2460) to amend title 18, United States Code, with respect to scanning receivers and similar devices. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with clause 2(l)(6) of rule XI are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. Each section of the committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on

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They had countless opportunities to do something about a government agency that clearly had major problems, problems which offended the American ideals of due process, of innocence until proven guilty, and basic fairness before the law.

When we have a country in which honest citizens fear a tax audit as much as tax cheats do, that is a situation that demands action. However, when one party seeks to expand the size and power of Washington and the IRS is the source of its power to do so, well, it is not surprising that nothing was done in 40 years to improve the situation.

Our party intends to reduce the size and power of Washington, so it is only natural that our party seeks to reform the IRS, and that makes all the difference.

MANAGED CARE REFORM SHOULD OCCUR NOW, NOT NEXT YEAR

(Mr. GREEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GREEN. Mr. Speaker, the need for managed health care reform is growing every day. We hear numerous complaints from our constituents and concerns about managed care and how it limits their ability to make medical decisions on their own.

This coming Monday, March 2, is a special day. One, it is also Texas Independence Day, but also we are holding a town hall meeting in Houston, Texas, to talk about managed care reform and to hear from the constituents in my home district. It will be at Houston Community College Southeast from 1:00 to 4:00.

We need to take action now after hearing from our constituents on solving the problems of managed care. A patient deserves a managed care plan that meets their needs, but also provides quality health care at an affordable rate. A patient's bill of rights will ensure that providers, not insurance companies, make medical decisions for patients.

We also need to ensure that patients receive high quality health care by guaranteeing their access to specialists, guaranteeing their ability to go to the emergency room without preclearance, and participation in medical decisions about their conditions.

We need patients to have these options now, not wait until next year.

AMERICANS DESERVE A TAX CUT

(Mr. JONES asked and was given permission to address the House for 1 minute.)

Mr. JONES. Mr. Speaker, the average American is now faced with a tax burden that is over 38 percent. I emphasize "burden" because that is exactly what it is.

I am one who believes that Americans should be rewarded for their hard work. To the contrary of that belief, however, people in our Nation today face a system that is penalizing their efforts to earn and save money by slapping them in the face with more and more taxes.

Last session, the Congress provided American families with the first tax relief they have seen in 16 long years. I hope that we will be able to continue that trend this year with further tax cuts and ultimately with a fairer and simpler tax system.

Let us once again reward the American people for their hard work and savings by giving them the tax relief they so rightly deserve.

BILL OF RIGHTS FOR HEALTH CARE CONSUMERS

(Mr. WYNN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WYNN. Mr. Speaker, I rise today to call for managed care reform, sometimes known as the Patient's Bill of Rights.

The President is correct, we need to protect the consumers of health care services. Today, millions of Americans have moved into managed care. It is fundamentally a good system, but there are problems. A recent California study showed that 42 percent of the people who have managed care have encountered problems with their service.

How can we correct this with a bill of rights? It would ensure that patients are informed of their health care options. It would ensure that they get the right doctor for the right type of care. It would ensure that they get access to emergency rooms when they need it. It would ensure that they are presented with all of their health care options, regardless of cost. It would ensure that doctors make decisions, not medical care bureaucrats. And it would keep patients' medical records confidential.

Mr. Speaker, these are official rights for every health care consumer. We ought to pass this law. Unfortunately, the Republican leadership is attempting to block our Health Care Consumers Bill of Rights. That is not fair. We need to move toward an intelligent bill of rights for health care consumers.

AMERICA'S BACKBONE DESERVES A TAX CUT

(Mr. PETERSON of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PETERSON of Pennsylvania. Mr. Speaker, there are some who think that Americans generally are undertaxed. There are those who think that the current tax burden is just about right. And then there are those who think Americans send too much money to Washington and are just flat not getting their money's worth. I fall into that category, as do, I suspect, most of my Republican colleagues.

Mr. Speaker, Americans do not mind paying their fair share. Americans truly are a people that want to see others get ahead, especially those who face greater obstacles in life than most of us face. But Americans do not like to see their money wasted. They are not happy about a Federal Government in Washington, D.C. that just keeps getting bigger and bigger while at the same time becoming less and less accountable to the people.

Simply put, Washington has gotten too big, too powerful and Washington should not be taking between one-third and one-half of a middle-class family's income.

Mr. Speaker, I do not care what the temporary polls show. I think the middle-class, the backbone of America, could use a break. The Tax Code is aggressive. It raises our taxes without a law change. We need a tax cut to make sure that middle America does not have a tax increase that just happens automatically because of the aggressiveness of the code.

DEBATE ON HEALTH CARE REFORM SHOULD BE SCHEDULED

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, you have been quoted in the paper as saying that until you have a vision, you will not allow a bill to come out here to guarantee patients a bill of rights in the health care industry.

Mr. Speaker, I suggest you go see the movie "As Good as it Gets." When that pediatrician talks to that waitress about the asthma which her kid has, the whole audience claps because they are furious with the way they are being treated by HMOs.

As a physician, I have had the experience in Seattle of seeing a patient and having to get on the phone and call some health care bureaucrat in Omaha, Nebraska, and argue about whether my patient can stay another day in the hospital. Now that is not in the best interest of the patient nor of the physician. And this is the almost universal experience by physicians in this country.

Mr. Speaker, that is why they are so upset and why the bill offered by the gentleman from Georgia (Mr. NORWOOD), though not a perfect bill, is certainly a bill that ought to be scheduled for floor debate so that we can bring this issue that the President has called for before the American people.

There is no excuse for us never being in session and allowing this issue to sit unresolved. Schedule a debate, Mr. Speaker.

CLINTON'S BUDGET AND THE AMERICAN FAMILY

(Mr. HEFLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

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any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be fifteen minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. After passage of H.R. 2460, it shall be in order to consider in the House S. 493. It shall be in order to move that the House strike all after the enacting clause of the Senate bill and insert in lieu thereof the provisions of H.R. 2460 as passed by the House.

The SPEAKER pro tempore (Mr. TIAHRT). The gentlewoman from Ohio (Ms. PRYCE) is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to my good friend, the gentleman from Ohio (Mr. HALL), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 368 is a fair and open rule providing for the consideration of H.R. 2460, the Wireless Telephone Protection Act.

The rule provides for 1 hour of general debate equally divided between the chairman and ranking member of the Committee on the Judiciary. For the purposes of amendment, the rule makes in order the Committee on the Judiciary amendment in the nature of a substitute as an original bill and, under this rule, any germane amendment may be offered, with priority recognition given to those Members who have preprinted their amendments in the CONGRESSIONAL RECORD.

In addition, the rule provides for the customary motion to recommit, with or without instructions.

In order to bring this legislation to the floor today, it is necessary to waive clause 2(L)(6) of Rule XI, which requires a 3-day layover of the committee report, and this rule provides such a waiver.

Further, to expedite consideration of H.R. 2460, the chairman of the committee will be permitted to postpone votes during consideration of the bill and reduce voting time to 5 minutes on a postponed question as long as it follows a 15-minute vote.

Finally, the rule provides that upon House passage, it will be in order to move to insert the House language in the Senate bill number. This provision is included because the Senate has already passed the Wireless Telephone Protection Act.

Mr. Speaker, I hope all of my colleagues will support this fair and open rule so that we may proceed with a thorough debate of the underlying legislation, which the Committee on the Judiciary reported favorably by voice vote.

The goal of 2460 is straightforward. It seeks to deter cellular telephone fraud. As our society becomes increasingly reliant on cellular technology it is important that we have the tools to discourage and prosecute fraud in the wireless telephone industry.

The pervasiveness of such fraud is startling. In fact, calls made from stolen or cloned telephones are responsible for losses to the industry of close to $710 million.

The dollars lost are very significant, but perhaps more worrisome are the much more serious crimes which are related to cellular fraud. For example, it is becoming common practice for drug dealers to use cloned telephones to avoid detection when making calls to their sources and clients.

Under current law, prosecutors must prove that a person who possessed or used technology to obtain unauthorized access to telecommunications services had the "intent to defraud." But law enforcement officials have pointed out that this is often too hard to meet the standard and prove a violation of Federal law.

H.R. 2460 responds to this legal obstacle by removing the "intent to defraud" standard, recognizing that there is no reason why any person not working in the wireless telephone industry or in law enforcement would need such high-tech equipment unless they are intending to use it to clone cellular telephones. This change in the law will enable the government to successfully prosecute and punish the fraudulent use of cellular technology.

Another provision of H.R. 2460 will clean up existing law by clarifying the penalties which may be imposed for cellular telephone fraud, allowing for a 15-year maximum penalty for violations.

Mr. Speaker, the gentleman from Florida (Mr. MCCOLLUM), the chairman of the Subcommittee on Crime, explained to the Committee on Rules that this legislation is not controversial; and he requested that the legislation be considered under an open rule so that any Member who may be uncomfortable with the bill will have the opportunity to amend it.

The Committee on Rules was pleased to honor that request. In fact, the rule was reported out of committee by voice vote without dissent.

So I urge my colleagues to support a free and fair debate on the Wireless Telephone Protection Act by voting "yes" on this rule.

Mr. Speaker, I reserve the balance of my time.

(Mr. HALL of Ohio asked and was given permission to revise and extend his remarks.)

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume, and I want to thank my colleague, the gentlewoman from Ohio (Ms. PRYCE) for yielding me this time.

This is an open rule. It will allow for full and fair debate.

As my colleague just described, this rule provides for 1 hour of general debate, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. Under this rule, amendments will be allowed under the 5-minute rule. This is the normal amending process in the House. All Members on both sides of the aisle will have the opportunity to offer amendments.

Fraud involving cellular telephones is a significant criminal problem in this country. Cell phone fraud is often linked to other, more serious crimes when criminals use illegal phones to avoid detection of their activities.

This measure will make it easier to obtain convictions against criminals involved in cell phone fraud. It is a bipartisan bill with support on both sides of the aisle. The Committee on Rules approved this by a voice vote, and I urge adoption of the rule.

Ms. PRYCE of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 368 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for consideration of the bill, H.R. 2460.

□ 1040

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2460) to amend title 18, United States Code, with respect to scanning receivers and similar devices, with Mr. COLLINS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Florida (Mr. MCCOLLUM) and the gentleman from Florida (Mr. WEXLER) each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. MCCOLLUM).

Mr. MCCOLLUM. Mr. Chairman, I yield myself such time as I may consume.

I am pleased to rise in support of H.R. 2460, the Wireless Protection Act. This bill, introduced by the gentleman from Texas (Mr. SAM JOHNSON), is truly a bipartisan effort. I am proud to say that I was an original cosponsor of the bill, together with the gentleman from New York (Mr. SCHUMER), who is the ranking minority member of the Subcommittee on Crime, which I chair.

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This bill will close a loophole in a statute Congress passed in 1994 to fight cellular telephone fraud.

At a hearing before the Subcommittee on Crime last year, witnesses from both the wireless industry and law enforcement testified that cellular telephone fraud is a significant criminal activity in the United States. In 1996, the wireless telephone industry lost over $700 million in revenue as a result of calls made from stolen or cloned phones.

As important as that loss is, it is important that Members bear in mind that criminals often use these illegal telephones as a means to evade detection while they plan and commit other crimes. This phenomenon is most prevalent in drug crimes, where criminals frequently use several cloned phones in a day, or routinely switch from one cloned phone to another each day in order to evade detection.

In 1994, Congress amended section 1029 of Title 18 to make it a crime to knowingly and with intent to defraud possess hardware or software configured to clone wireless telephones. However, law enforcement officials have testified before the Subcommittee on Crime that it is often impossible to prove the intent to defraud element of this section.

Even in the most common case, law enforcement officials will arrest criminals for other crimes and find the telephone cloning equipment in the possession of the criminals, which has been, of course, used to make the cloned phones. However, they do so without finding specific evidence that the criminals intended to use this equipment to clone the wireless telephones; and if they do not find that evidence, law enforcement officials often have been thwarted in proving a violation of this statute.

Because there is no legitimate reason why an ordinary person would possess this equipment, there is no doubt that the intent of these criminals was to use that equipment to clone cellular phones. In order to remedy this problem, H.R. 2460 amends section 1029 to eliminate the "intent to defraud" requirement concerning the possession of this equipment.

In order to ensure that telecommunications company employees may continue to use these devices, however, the bill provides that it is not a violation of the amended statute for an officer, employee or agent of a facilities-based carrier to use, produce, have custody or control of or possess the hardware or software described in that subsection if they are doing it for the purpose of protecting the property or legal rights of that carrier.

□ 1045

The bill provides a definition of facilities-based carrier to make it clear to whom the exception applies. The bill also clarifies the penalties which may be imposed for violations of section 1029. Under existing law, violations of some subsections of this statute are subject to two different maximum penalties. The bill deletes this duplicative language and restates the entire punishment section of 1029 to more clearly state the maximum punishments for each possible violation of that section. Finally, the bill directs the United States Sentencing Commission to review and, if appropriate, amend its guidelines and policy statements so as to provide an appropriate penalty for each of the offenses involving the cloning of wireless telephones.

Mr. Chairman, I would like to again reiterate the thrust of this bill. It is to provide for a situation where we can gain more prosecutions successfully, gain more convictions of those who are out there cloning telephones. The idea is that if one has this telephone cloning equipment, there is no possible earthly reason for him to have it unless he has got it there to clone phones. The only people who should have that equipment are the folks who are the manufacturers, the people who are in the telephone equipment company business who are professionals designed to have it. Therefore, in order to gain these convictions, since proving the intent to clone is not something that we have been able to do, we are making it in this case a criminal violation to possess in essence this equipment without having to prove the intent element.

It is a very simple bill, a very important bill, because telephone cloning is a very big business in this country and it involves a lot of criminal activity at all levels. Mr. Chairman, with that in mind, I urge the adoption of this bill.

Mr. Chairman, I reserve the balance of my time.

Mr. WEXLER. Mr. Chairman, I yield myself such time as I may consume. I rise in support of this bill and commend the gentleman from Texas (Mr. SAM JOHNSON) along with the gentleman from Florida (Mr. MCCOLLUM) and the gentleman from New York (Mr. SCHUMER), the ranking member, for their work on this bill.

Mr. Chairman, cell phone cloning is the hottest new scam on the street. Cloning costs phone companies and their customers more than $650 million a year. It lets drug cartels operate in secrecy, away from the reach of law enforcement surveillance. Cloned cell phones are rapidly becoming the main communication network of drug runners and street gangs. The reason is that cloned phones not only allow the criminals to cheat the phone company, but they also evade wire taps. A drug dealer will often have 20 or more cloned phones, constantly switching among them to cover his tracks.

The gentleman from Florida (Mr. MCCOLLUM) has already explained how the cloning process works. This bill will ban the copycat machines that criminals use to make cloned phones. These machines are freely advertised in magazines and on the Internet from anywhere from $1100 to $2500. Yet the only reason anyone would buy these devices is to defraud innocent consumers. Under current law, copycat machines are illegal only if the government can prove an intent to defraud. That is often impossible to prove and it permits unscrupulous manufacturers to keep making the machines and offering them for sale. This bill will ban the copycat machines outright.

There has been one concern raised about the bill. Some cell phone companies are concerned that the language of the bill might inadvertently apply to machinery used by legitimate companies to test or reprogram their equipment. I understand that the gentleman from Florida (Mr. MCCOLLUM) will offer an amendment in the nature of a substitute that cures this problem. I expect to fully support the bill after that amendment.

I also want to note that with the amendment, the wireless industry fully supports the bill. In fact, at a hearing before the Subcommittee on Crime, representatives from both the cell phone industry and from law enforcement testified about the rapid increase they are seeing in cloning activity and the need to take these copycat devices out of circulation among the general public.

Mr. Chairman, I urge support for this bill.

Mr. Chairman, I yield back the balance of my time.

Mr. MCCOLLUM. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas (Mr. SAM JOHNSON), the author of this bill.

(Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Chairman, I thank the gentleman from Florida (Mr. MCCOLLUM) for yielding me this time and for his valuable assistance in helping make this bill possible.

The Wireless Telephone Protection Act is really another effort of ours to stop crime in this country. It is going to outlaw equipment which is used to steal cellular telephone numbers. For those who are not familiar with cellular cloning, the process is simple. Criminals sit in parked cars outside airports or along roadways and use special software and equipment to steal the electronic serial numbers from any person who uses a cellular phone within range. The stolen numbers are then programmed into other cell phones, called clones, and finally charges are made to the unsuspecting person's account, like me, for instance. My phone was cloned last year while I was standing on the curb at D-FW Airport, that is Dallas-Fort Worth, waiting for my wife. I ended up with over a $6,000 phone bill for calls that I did not make. There were calls made to places all over the world, including Spain, Colombia and Mexico. Later while I was on my phone with the telephone company trying to get this problem resolved, my personal phone number was still being used to make calls while I was talking to the phone company.

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The tactic of using stolen phone numbers is commonly employed by drug dealers and gang members who are trying to evade law enforcement wiretaps or other surveillance. It is estimated that the cellular industry loses about $650 million per year due to this illegal activity. It increases the cost to every cellular phone user in the country.

I hope that as a result of this bill, we can stop this fraud and help keep costs down for both the industry and the consumer. Cellular phone use is expanding by about 40 percent per year. With this increase, the Secret Service has doubled the number of arrests due to fraud every year since 1991. I am certain our law enforcement personnel could prosecute more criminals, as the gentleman from Florida (Mr. MCCOLLUM) says, if the current law permitted it, and it does not.

Current law requires prosecutors to prove that a criminal acted with the intent to defraud. This means that an officer must catch the crook in the act of cloning to be arrested, which is next to impossible. The bill removes this burden. Now criminals will be arrested for possessing or manufacturing the cloning equipment, which has no other purpose than to steal a phone number.

I have got an advertisement here that shows how easy it is to buy this cloning equipment. If we look at the fine print, it states that the equipment is used for educational or experimental purposes. That is kind of false. In fact, it is against the law. According to the Secret Service, there is no lawful purpose to possess, produce or sell hardware or software used to clone a wireless telephone.

This is good, common sense legislation that is supported on both sides of the aisle. As my colleagues can see here, it is also supported by the Department of Justice, the U.S. Secret Service, and the cellular wireless industry, as my colleague has already stated. Every Member of this House has constituents who have been the victim of cell phone cloning. It causes them great stress, and I can tell my colleagues when you get a bill for 6,000 bucks on your phone, it is a shock.

Let me just tell Members how James Kallstrom, the former head of the FBI, New York office, describes phone cloners. He says, quote, they are hard core criminals, murderers, kidnappers, terrorists, major drug dealers, child pornographers and pedophiles, violent criminals who use technology to avoid the law. We must stop this criminal activity now. This bill will do it. I urge Members' support.

Mr. MCCOLLUM. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Chairman, I thank the gentleman for yielding me this time. I would like to engage the gentleman in a colloquy on cellular extension phones.

Mr. Chairman, I understand that many cellular subscribers find it advantageous to have two cellular phones with the same number. In this way, someone trying to reach a subscriber need only dial one number and the subscriber will be able to receive the call on either his or her car phone or on his or her portable hand-held phone. I also understand that the FCC currently prohibits companies from altering the electronic serial number of a cellular phone to allow more than one phone to have the same telephone number, but that the commission has been asked to reconsider that rule. I wonder, how would this bill affect the petition for reconsideration of this matter that is now pending before the FCC?

Mr. MCCOLLUM. Mr. Chairman, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Florida.

Mr. MCCOLLUM. I thank the gentlewoman for her inquiry. In passing H.R. 2460, we do not intend to direct the FCC to act in one way or another on the pending petition for reconsideration that she has described. If the FCC were to change its rules, however, I think it is important for Members to understand that even though they did change those rules, the bill would still prevent the use, possession, production, and so forth, of hardware or software to insert or modify electronic serial numbers or other telecommunication identifying information to create extension phones. If the FCC does decide that a change in its rules serves the public interest, I would be willing to consider amending section 1029 in such a way as to conform the bill to the spirit of the FCC's decision, yet still making sure that this equipment would be unlikely to fall into the hands of criminals.

Mrs. MORELLA. Mr. Chairman, that sounds reasonable.

Mr. MCCOLLUM. Mr. Chairman, I yield such time as he may consume to the gentleman from Arkansas (Mr. HUTCHINSON), a member of the committee.

Mr. HUTCHINSON. Mr. Chairman, I rise in strong support of H.R. 2460, the Wireless Telephone Protection Act, and commend the gentleman from Texas (Mr. SAM JOHNSON) for introducing the legislation. I also want to commend the leadership of the gentleman from Florida (Mr. MCCOLLUM) for his excellent work in behalf of this important legislation.

We have known for some time that a significant amount of criminal activity in the United States involves the use of cellular telephones and cloned phone numbers. Each year the cellular telephone industry loses millions of dollars in revenue as a result of the use of cell phones that are being illegally cloned. But more important, the greatest difficulty is in the arena of law enforcement. Those people who are trying to put drug dealers in jail have difficulty with the illegal use of cloned phones. Criminals frequently clone the cell phone number of an unsuspecting, innocent party and then use this cloned number to engage in criminal activity, especially drug-related crimes.

The process of cloning involves the use of a device which captures the identifying information in the telephone and a second device which is used to reprogram the subsequent phones. Current Federal law requires a prosecutor to prove that persons in possession of those devices had an intent to defraud. This standard is very difficult to meet and since these devices have no legitimate purpose except for the use by the telephone companies themselves, then I believe it is very important to remove the intent requirement and make possession itself a crime.

As a parent of teenagers, very concerned about the drug culture that is so prominent in our society, as a former Federal prosecutor, I believe this is critically important in order to address the problems of drugs in our society and the use of cloned phones by the drug dealers.

Mr. Chairman, about a year ago the Subcommittee on Crime held a hearing on drug interdiction efforts in the Caribbean. One of the issues that repeatedly resurfaced during our discussions with law enforcement was the problems posed by cloned cell phones. This legislation provides an important tool for prosecutors to use in the war against drugs and as such I urge my colleagues to support it.

Mr. PAUL. Mr. Speaker, I rise today in opposition of H.R. 2460, The Wireless Telephone Protection Act. Setting aside the vital and relevant question of whether the enumerated powers and tenth amendment allow the federal government to make possession of electronic scanning devices criminal, another aspect of this bill should have met with harsh criticism from those who hold individual liberties in even some regard.

Under current "anti-cloning" law, prosecutors must prove a defendant intended to use scanning equipment illegally, or have an "intent" to defraud. This bill shifts the burden of proof of "innocent use" from the prosecutor to the defendant.

The United States Constitution prohibits this federal government from depriving a person of life, liberty, or property without due process of law. Pursuant to this constitutional provision, a criminal defendant is presumed to be innocent of the crime charged and, pursuant to what is often called "the *Winship* doctrine," the persecution is allocated the burden of persuading the fact-finder of every fact necessary to constitute the crime . . . charged." The prosecution must carry this burden because of the immense interests at stake in a criminal prosecution, namely that a conviction often results in the loss of liberty or life (in this case, a sentence of up to ten years).

This radical departure from the long held notion of "innocent until proven guilty" warrants opposition to this bill.

Mr. MCCOLLUM. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

The committee amendment in the nature of a substitute printed in the bill shall be considered by section as an

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original bill for the purpose of amendment, and pursuant to the rule each section is considered read.

During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

The Clerk will designate section 1.

The text of section 1 is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wireless Telephone Protection Act".

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The CHAIRMAN. Are there any amendments to section 1?

If not, the Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COUNTERFEIT ACCESS DEVICES.

(a) UNLAWFUL ACTS.—Section 1029(a) of title 18, United States Code, is amended—

(1) by redesignating paragraph (9) as paragraph (10); and

(2) by striking paragraph (8) and inserting the following:

"(8) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a scanning receiver;

"(9) knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured for altering or modifying a telecommunications instrument so that such instrument may be used to obtain unauthorized access to telecommunications services; or".

(b) PENALTIES.—

(1) GENERALLY.—Section 1029(c) of title 18, United States Code, is amended to read as follows:

"(c) PENALTIES.—The punishment for an offense under subsection (a) of this section is—

"(1) in the case of an offense that does not occur after a conviction for another offense under this section—

"(A) if the offense is under paragraph (1), (2), (3), (6), (7), or (10) of subsection (a), a fine under this title or imprisonment for not more than 10 years, or both; and

"(B) if the offense is under paragraph (4), (5), (8), or (9), of subsection (a), a fine under this title or imprisonment for not more than 15 years, or both; and

"(2) in the case of an offense that occurs after a conviction for another offense under this section, a fine under this title or imprisonment for not more than 20 years, or both.".

(2) ATTEMPTS.—Section 1029(b)(1) of title 18, United States Code, is amended by striking "punished as provided in subsection (c) of this section" and inserting "subject to the same penalties as those prescribed for the offense attempted".

(c) DEFINITIONS.—Section 1029(e)(8) of title 18, United States Code, is amended by inserting before the period "or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument".

(d) APPLICABILITY OF NEW SECTION 1029(a)(9).—

(1) IN GENERAL.—Section 1029 of title 18, United States Code, is amended by adding at the end the following:

"(g) It is not a violation of subsection (a)(9) for an officer, employee, or agent of, or a person under contract with, a facilities-based carrier, for the purpose of protecting the property or legal rights of that carrier, to use, produce, have custody or control of, or possess hardware or software configured as described in that subsection (a)(9).".

(2) DEFINITION.—Section 1029(e) of title 18, United States Code is amended—

(A) by striking "and" at the end of paragraph (6);

(B) by striking the period at the end of paragraph (7) and inserting a semicolon;

(C) by striking the period at the end of paragraph (8) and inserting "; and"; and

(D) by adding at the end the following:

"(9) the term 'facilities-based carrier' means an entity that owns communications transmission facilities, is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934.".

(e) AMENDMENT OF FEDERAL SENTENCING GUIDELINES FOR WIRELESS TELEPHONE CLONING.—

(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, if appropriate, to provide an appropriate penalty for offenses involving the cloning of wireless telephones (including offenses involving an attempt or conspiracy to clone a wireless telephone).

(2) FACTORS FOR CONSIDERATION.—In carrying out this subsection, the Commission shall consider, with respect to the offenses described in paragraph (1)—

(A) the range of conduct covered by the offenses;

(B) the existing sentences for the offenses;

(C) the extent to which the value of the loss caused by the offenses (as defined in the Federal sentencing guidelines) is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(D) the extent to which sentencing enhancements within the Federal sentencing guidelines and the court's authority to sentence above the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offenses;

(E) the extent to which the Federal sentencing guideline sentences for the offenses have been constrained by statutory maximum penalties;

(F) the extent to which Federal sentencing guidelines for the offenses adequately achieve the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code;

(G) the relationship of Federal sentencing guidelines for the offenses to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(H) any other factor that the Commission considers to be appropriate.

The CHAIRMAN. Are there any amendments to section 2?

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. MCCOLLUM

Mr. McCOLLUM. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. MCCOLLUM:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wireless Telephone Protection Act".

SEC. 2. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COUNTERFEIT ACCESS DEVICES.

(a) UNLAWFUL ACTS.—Section 1029(a) of title 18, United States Code, is amended—

(1) by redesignating paragraph (9) as paragraph (10); and

(2) by striking paragraph (8) and inserting the following:

"(8) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a scanning receiver;

"(9) knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured to insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument so that such instrument may be used to obtain telecommunications service without authorization; or".

(b) PENALTIES.—

(1) GENERALLY.—Section 1029(c) of title 18, United States Code, is amended to read as follows:

"(c) PENALTIES.—

"(1) GENERALLY.—The punishment for an offense under subsection (a) of this section is—

"(A) in the case of an offense that does not occur after a conviction for another offense under this section—

"(i) if the offense is under paragraph (1), (2), (3), (6), (7), or (10) of subsection (a), a fine under this title or imprisonment for not more than 10 years, or both; and

"(ii) if the offense is under paragraph (4), (5), (8), or (9), of subsection (a), a fine under this title or imprisonment for not more than 15 years, or both;

"(B) in the case of an offense that occurs after a conviction for another offense under this section, a fine under this title or imprisonment for not more than 20 years, or both; and

"(C) in either case, forfeiture to the United States of any personal property used or intended to be used to commit the offense.

"(2) FORFEITURE PROCEDURE.—The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative and judicial proceeding, shall be governed by section 413 of the Controlled Substances Act, except for subsection (d) of that section.".

(2) ATTEMPTS.—Section 1029(b)(1) of title 18, United States Code, is amended by striking "punished as provided in subsection (c) of this section" and inserting "subject to the same penalties as those prescribed for the offense attempted".

(c) DEFINITIONS.—Section 1029(e)(8) of title 18, United States Code, is amended by inserting before the period "or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument".

(d) APPLICABILITY OF NEW SECTION 1029(a)(9).—

(1) IN GENERAL.—Section 1029 of title 18, United States Code, is amended by adding at the end the following:

"(g)(1) It is not a violation of subsection (a)(9) for an officer, employee, or agent of, or a person engaged in business with, a facilities-based carrier, to engage in conduct (other than trafficking) otherwise prohibited by that subsection for the purpose of protecting the property or legal rights of that

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carrier, unless such conduct is for the purpose of obtaining telecommunications service provided by another facilities-based carrier without the authorization of such carrier.

"(2) In a prosecution for a violation of subsection (a)(9), (other than a violation consisting of producing or trafficking) it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) that the conduct charged was engaged in for research or development in connection with a lawful purpose.".

(2) DEFINITIONS.—Section 1029(e) of title 18, United States Code is amended—

(A) by striking "and" at the end of paragraph (6);

(B) by striking the period at the end of paragraph (7) and inserting a semicolon; and

(C) by striking the period at the end of paragraph (8); and

(D) by adding at the end the following:

"(9) the term 'telecommunications service' has the meaning given such term in section 3 of title I of the Communications Act of 1934 (47 U.S.C. 153));

"(10) the term 'facilities-based carrier' means an entity that owns communications transmission facilities, is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934; and

"(11) the term 'telecommunication identifying information' means electronic serial number or any other number or signal that identifies a specific telecommunications instrument or account, or a specific communication transmitted from a telecommunications instrument.".

(e) AMENDMENT OF FEDERAL SENTENCING GUIDELINES FOR WIRELESS TELEPHONE CLONING.—

(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, if appropriate, to provide an appropriate penalty for offenses involving the cloning of wireless telephones (including offenses involving an attempt or conspiracy to clone a wireless telephone).

(2) FACTORS FOR CONSIDERATION.—In carrying out this subsection, the Commission shall consider, with respect to the offenses described in paragraph (1)—

(A) the range of conduct covered by the offenses;

(B) the existing sentences for the offenses;

(C) the extent to which the value of the loss caused by the offenses (as defined in the Federal sentencing guidelines) is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(D) the extent to which sentencing enhancements within the Federal sentencing guidelines and the court's authority to sentence above the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offenses;

(E) the extent to which the Federal sentencing guideline sentences for the offenses have been constrained by statutory maximum penalties;

(G) the extent to which Federal sentencing guidelines for the offenses adequately achieve the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code;

(H) the relationship of Federal sentencing guidelines for the offenses to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(I) any other factor that the Commission considers to be appropriate.

Mr. MCCOLLUM (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the record.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. MCCOLLUM. Mr. Chairman, I will be brief in supporting this amendment in the nature of a substitute, but it does contain a number of technical amendments that we need to talk about. The manager's amendment makes changes to H.R. 2460 from the form in which the bill was reported from the full Committee on the Judiciary. It reflects the input of minority members of the Committee on the Judiciary, the cellular telephone industry, the Justice Department of the United States, Secret Service and members of the Committee on the Judiciary of the other body which passed a bill similar to H.R. 2460 at the end of last year.

Mr. Chairman, the minority has indicated support of this amendment, but for the benefit of all Members, I will briefly outline the differences between the manager's amendment in the bill as it was reported by the Committee on the Judiciary.

The purpose of H.R. 2460 is to clarify the provisions of section 1029 of Title 18 relating to equipment that could be used to clone wireless telephones. H.R. 2460 amends that section to make it clear that the mere possession of this equipment will be illegal in most instances.

The bill as reported by the committee prohibited the possession of equipment which had been configured for altering or modifying telecommunications instruments. Upon further reflection and after receiving input from the computer and telecommunications trade associations, the decision was made to further refine this language in order to make it more clear what types of devices would be prescribed.

The manager's amendment will modify the bill to refer to hardware or software which has been, quote, configured to insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument, unquote.

The bill defines the term "telecommunication" identifying information to mean the electronic serial number or any other number or signal that identifies a specific telecommunications instrument and account relating to its specific telecommunication or the actual communication itself. The effect of this amendment is to make it clear that only devices which can insert or modify telecommunication identifying information contained in or otherwise associated with a telecommunications instrument are made illegal by the bill.

Mr. Chairman, H.R. 2460 as reported by the full committee amended the penalty provisions of section 1029 to make them more clear and to correct an unintended redundancy in that section. The manager's amendment adds an asset forfeiture provision to the bill for all violations of section 1029. This provision requires forfeiture to the government of any personal property used or intended to be used to commit an offense. I note that this provision does not require the forfeiture of real property. Further, the property subject to forfeiture is only that personal property which the offender used or intended to use to commit the offense in question.

Additionally, the bill as reported by the subcommittee contains an exception to the prohibition on possessing cellular telephone cloning equipment for officers, employees, agents and persons under contract with telecommunications carriers so long as their use of this equipment is for the purposes of protecting the property or legal rights of the carrier.

The manager's amendment eliminates the requirement that third persons, quote, "be under contract with," unquote, a facilities-based carrier and requires merely the person be engaged in business with a facilities-based carrier. The purpose of this phrase is to include within the exception third parties which have a business relationship with the carrier, but where that relationship may not be evidenced by written contract.

In most cases, these parties will be persons and companies with technical expertise hired by carriers to assist them in protecting their property and legal rights. The phrase should not be interpreted to include within its meaning subscribers to the services of the telecommunications carrier.

The manager's amendment also adds a further modification to this exception to make it clear that telecommunication carriers cannot use these devices to obtain telecommunication services provided by other carriers without the other carrier's authorization.

Finally, the manager's amendment to the bill also adds a new provision creating an affirmative defense to a prosecution under new section 1029(a)(9) in instances where the charge involved was the use, custody or control or possession of the equipment described in the bill. The affirmative defense is available if the defendant can prove that his or her use, custody or control or possession of this equipment was for the purpose of research or development in connection with a lawful purpose. The defendant bears the burden of proving the facts relating to his or her conduct by a preponderance of the evidence, and I point out that the affirmative defense is not available as a defense to a charge of production or trafficking in this type of hardware or software.

Mr. Chairman, I believe the amendments made in the manager's amendment strengthen the bill, are entirely consistent with the intent of the legislation introduced by the gentleman

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from Texas (Mr. SAM JOHNSON) and I want to again thank him for his leadership on this issue. I also want to thank the gentleman from Massachusetts (Mr. FRANK) and the gentlewoman from California (Ms. LOFGREN) for their helpful suggestions as well as those who have also been reporting information to us on this bill.

EXPLANATORY STATEMENT AND SECTION-BY-SECTION ANALYSIS OF H.R. 2460 AS AMENDED BY THE MANAGER'S AMENDMENT SUBMITTED BY REP. SAM JOHNSON, REP. BILL MCCOLLUM, AND REP. CHARLES SCHUMER

PURPOSE AND SUMMARY

H.R. 2460 amends section 1029 of Title 18 of the United States Code, relating to fraud and related activity in connection with access devices. The bill amends subsection (a)(8) of section 1029 by deleting the "intent to defraud" requirement which exists under current law in order to prove a violation of that section. This section relates to persons who knowingly use, produce, traffic in, have custody or control of, or possess hardware or software which has been configured for altering or modifying a telecommunications instrument. As a result of the amendments made by the bill, in order to prove a violation of section 1029, law enforcement officials will no longer have to prove that a defendant possessing such hardware or software did so with the intent to defraud another person.

The amendment to the statute is being made because law enforcement officials occasionally have been thwarted in proving true violations of the statute by the "intent to defraud" requirement. But as the hardware and software in question can be used only for the purpose of altering or modifying telecommunications instruments, persons other than those working in the telecommunications industry have no legitimate reason to possess the equipment. Therefore, requiring the government to prove an "intent to defraud" in order to prove a violation of the section for possessing this equipment is not necessary. By eliminating this requirement from existing law this bill will make it easier to obtain convictions against criminals who possess this equipment before they actually use it for illegal purposes.

BACKGROUND AND NEED FOR THE LEGISLATION

Cellular telephone fraud is a significant criminal activity in the United States. Each year the wireless telephone industry loses hundreds of millions of dollars in revenue as the result of calls made from stolen telephones or cloned telephones. In 1996, the last year for which data is available, the wireless telephone industry reported that the aggregate loss to the industry was approximately $710 million. While the industry estimates that the losses for 1997 will be less, largely attributable to anti-fraud technologies it has developed and employed, the loss to this industry is still unacceptably high.

As significant as is the loss of revenue to the wireless telephone industry, cellular telephone fraud poses another, more sinister, crime problem. A significant amount of the cellular telephone fraud which occurs in this country is connected with other types of crime. In most cases, criminals used cloned phones in an effort to evade detection for the other crimes they are committing. This phenomenon is most prevalent in drug crimes, where dealers need to be in constant contact with their sources of supply and confederates on the street. These criminals often use several cloned phones in a day, or switch from one cloned phone to another each day, in order to evade detection. Most significantly, this technique thwarts law enforcement's efforts to use wiretaps in order to intercept the criminals' conversations in which they plan their illegal activity.

In 1994, Congress passed the Communications Assistance for Law Enforcement Act (Public Law 103-414) which, in part, amended 18 U.S.C. §1029, which concerns fraud and related activity in connection with access devices. That act added a new provision to section 1029 to make it a crime for persons to knowingly, and with intent to defraud, use, produce, traffic in, or have custody or control of, or possess a scanning receiver or hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services.

Law enforcement officials have testified before the Subcommittee on Crime that it is often hard to prove the intent to defraud aspect of this section with respect to the possession of hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services. In the most common case, law enforcement officials will arrest criminals for other crimes and find telephone cloning equipment in the possession of the criminals. Without finding specific evidence that the criminals intended to use this equipment to clone cellular telephones, law enforcement officials often have been thwarted in an effort to prove a violation of this statute. But because there is no legitimate reason why any person not working for wireless telephone industry carriers would possess this equipment, there is no question that these criminals intended to use that equipment to clone cellular telephones. Law enforcement officials have informed the Subcommittee that deleting the "intent to defraud" requirement from section 1029(a)(8) with respect to this equipment would enable the government to punish a person who merely possesses this equipment, as well as those who produce, traffic in, or have custody or control over it.

While we believe that, generally speaking, Congress should be hesitant to criminalize the mere possession of technology without requiring proof of an intent to use it for an improper purpose, the testimony before the Subcommittee on Crime, both by law enforcement agencies and representatives of the wireless telephone industry, confirms that the only use for this type of equipment, other than by persons employed in the wireless telephone industry and law enforcement, is to clone cellular telephones. Although wireless telecommunications companies use this equipment to test the operation of legitimate cellular telephones, to test the anti-fraud technologies their companies employ to thwart the use of cloned telephones, and in other ways to protect their property and legal rights, the equipment has no other legitimate purpose. Thus, there is no legitimate reason for any other person to possess this equipment. In short, the requirement in existing law to prove an intent to use this equipment for an illegal purpose is unnecessary.

The bill H.R. 2460, amends existing law by deleting the intent to defraud requirement currently found in section 1029(a)(8). The bill strikes current subsection (a)(8) of section 1029 and replaces it with two separate subsections. New paragraph (8) restates the language presently found in section 1029(a)(8)(A). New paragraph (9) restates the introductory phrase of existing paragraph (8), but omits the "intent to defraud" requirement and essentially restates the text of existing subparagraph (B) of current paragraph (8).

The bill also clarifies the penalties which may be imposed for violations of section 1029. Under existing law, violations of subsections (a) (5), (6), (7), or (8) are subject to a maximum penalty of 10 years under section 1029(c)(1). However, these same violations are also subject to a maximum penalty of 15 years under subsection (c)(2) of that same section. This unintentional duplication of penalty provisions for these crimes should be corrected. The bill corrects this problem by restating the punishment section of section 1029 to more clearly state the maximum punishment for violations of each paragraph of section 1029(a).

In order to ensure that telecommunications companies may continue to use these devices, the bill provides that it is not a violation of new subsection (a)(9) for an officer, employee, or agent of, or a person doing business with, a facilities-based carrier to use, produce, have custody or control of, or possess hardware or software as described in that subsection if they are doing so for the purpose of protecting the property of or legal rights of that carrier. Section 1029 presently contains an exception to that section's prohibition for any lawful investigative, protective, or intelligence activities of law enforcement agencies of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States. The bill also defines "facilities-based carrier" in order to make it clear that the exception to new subsection (a)(9) is only available to officers, employees, or agents of, or persons doing business with, companies that actually own communications transmission facilities, and persons under contract with those companies, because only those persons have a legitimate reason to use this property to test the operation of and perform maintenance on those facilities, or otherwise to protect the property or legal rights of the carrier.

The bill also amends the definition of scanning receiver presently found in subsection (e)(8) of section 1029. Under that definition, a scanning receiver is a device or apparatus "that can be used to intercept a wire or electronic communication in violation of Chapter 119" of Title 18. the bill will add to that definition to ensure that the term "scanning receiver" will be understood to also include devices which intercept electronic serial numbers, mobile identification numbers, or other identifiers of telecommunications service, equipment, or instruments.

Finally, the bill provides direction to the United States Sentencing Commission to review and amend, if appropriate, its guidelines and policy statements so as to provide an appropriate penalty for offenses involving cloning of wireless telephones. The bill states eight factors which the Commission is to consider in reviewing existing guidelines and policy statements.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title. Section 1 of the bill states the short title of the bill as the "Wireless Telephone Protection Act."

Section 2. Fraud and Related Activity in Connection with Counterfeit Access Devices. Section 2 of the bill sets forth the amendments made by the bill to section 1029 of Title 18 of the United States Code.

Section 2(a) of the bill deletes existing paragraph (8) from section 1029(a) and replaces it with two new paragraphs. New paragraph (8) restates in its entirety the text of old paragraph (8)(A). The text of new paragraph (9) is essentially the text of existing paragraph (8)(B), except that the existing requirement that the government show an "intent to defraud" in order to prove a violation has been deleted. Therefore, as section 1029 will be amended, in order to prove a violation of new subsection (a)(9), the government need only prove that the defendant knowingly used, produced, trafficked in, had custody or control of, or possessed hardware or

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software with the knowledge that it had been configured to insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument so that the instrument could be used to obtain telecommunications service without authorization.

As amended, new subsection (a)(9) does not make it a crime to simply possess a wireless telephone or other access device that has been manufactured or modified to obtain unauthorized use of telecommunications services. Under other subsections of section 1029, however, it will continue to be illegal to use, produce, traffic in, have custody or control of, or possess such a device if the act was done with the intent to defraud another person. This is current law, and it remains unchanged by the bill.

The statute, as amended, also does not prohibit persons from simply possessing equipment that only intercepts electronic serial numbers or wireless telephone numbers (defined as "scanning receivers" under section 1029, as amended by the bill). For example, companies which produce technology to sell to carriers or state and local governments that ascertains the location of wireless telephones as part of enhanced 911 services do not violate section 1029 by their actions. Under new subsection (a)(8), however, it will continue to be illegal to use, produce, traffic in, have custody or control of, or possess a scanning receiver if such act was done with the intent to defraud another person. This also is current law, and it remains unchanged by the bill.

While not specifically defined in the bill, the term "telecommunications instrument" as used in new subsection (a)(9) should be construed to mean the type of device which can be used by individuals to transmit or receive wireless telephone calls. The term should be construed to include within its definition the microchip or card which identifies the device or communications transmitted through the device.

Section 2(b) of the bill amends all of existing subsection (c) of section 1029. Due to a previous amendment to this subsection, an inconsistency exists in current law with respect to the maximum punishment which may be imposed for violations of current paragraphs (a)(5), (6), (7), or (8). Currently, the maximum punishment for violations of these paragraphs is 10 years under subsection (c)(1) but 15 years under subsection (c)(2). Clearly, it is inappropriate for there to be different maximum punishments which may be imposed for violations of these paragraphs. Section 2(b) of the bill eliminates this inconsistency by clearly stating the maximum punishments which may be imposed for all violations of section 1029.

Section 2(b) of the bill also amends existing subsection (b)(1) of section 1029 to state more clearly the maximum punishment which may be imposed for attempts to commit the crimes described in section 1029. As amended, subsection (b)(1) will provide that convictions for attempts under section 1029 are to be subject to the same penalties as those proscribed for the offense attempted.

Section 2(b) of the bill further amends existing subsection (b)(1) of section 1029 to add a criminal asset forfeiture provision for violations of section 1029(a). In the event of a conviction for a violation of this subsection, the defendant will be required to forfeit to the United States any personal property used or which was intended to be used to commit the offense. This section of the bill also provides that the forfeiture procedure to be used is that contained in section 413 of the Controlled Substances Act (except for subsection (d) of that section).

Section 2(c) of the bill amends the definition of "scanning receiver" currently found in section 1029(e)(8). The bill adds to the definition of scanning receiver additional language to ensure that the defined term is understood to include a device or apparatus that can be used to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument.

Section 2(d) of the bill creates an exception to the crime described in new subsection (a)(9) for persons who are employed by or are engaged in business with certain telecommunications carriers. The new exception provides that it is not a violation of new subsection (a)(9) for an officer, employer, or agent of a facilities-based carrier, or a person engaged in business with a facilities-based carrier, to engage in conduct (other than trafficking) otherwise prohibited by that subsection in limited situations. Therefore, the behavior permitted by this subsection is the use, production, custody or control of, or possession of the hardware or software described in subsection (a)(9). The exception is only available to those persons described if their actions were taken for the purpose of protecting the property or legal rights of the facilities-based carrier.

The purpose of the phrase "person engaged in business with a facilities-based carrier" is to include within the exception third parties which have a business relationship with the carrier but where that relationship may not be evidenced by a written contract. In most cases, these parties will be persons and companies with technical expertise hired by carriers to assist them in protecting their property and legal rights. The phrase should not be interpreted to include within its meaning parties whose business relationship with the carrier is only by virtue of having subscribed to the services of the telecommunications carrier.

The phrase "for the purpose of protecting the property or legal rights" of the carrier should be narrowly construed. Only such actions which might be deemed to be part of the ordinary course of business of a telecommunications carrier, such as actions involving maintenance on or modifications to its telecommunications system, or which are designed to test the operation of the system or the system's ability to deter unauthorized usage (including the reverse engineering of hardware or software configured as described in new subsection (a)(9)), should be deemed to fall within this exception. Acts taken with the intent to defraud another, even if taken by officers, employees, or agents of a facilities-based carrier, or by persons under contract with a facilities-based carrier, would still violate the statute.

We take particular note of the fact that under certain under some circumstances a facilities-based carrier may wish to use this type of equipment to intercept signals carried on another telecommunications carrier's system for the purpose of testing whether its customers may be able to utilize the other carrier's system when those customers initiate or receive calls while inside the other carrier's geographic area of operation. It is our understanding that these types of interceptions have always occurred with the express consent of the two carriers involved. We believe that this is the appropriate practice. Therefore, the bill has been amended to include an "exception to the exception." The excepted conduct is not excepted (i.e., the conduct should be deemed to violate the statute) if the conduct was undertaken for the purpose of obtaining telecommunications service provided by another facilities-based carrier without the authorization of that carrier. Thus, the exception created by subsection (d) of the bill only applies to situations where the other carrier has consented to the use of this equipment to obtain the service provided on its system.

Subsection (d) of the bill also creates an affirmative defense to the crime described in new subsection (a)(9) for violations other than those consisting of producing or trafficking. The section provides that it is a defense to a prosecution for such a violation if the conduct charged was engaged in for research or development in connection with a lawful purpose. The defendant bears the burden of proving the facts supporting this defense by a preponderance of the evidence. The defendant must prove that the purpose of its acts was otherwise lawful and that its conduct was limited to research and development activities. Acts which go beyond research and development, even if connected to a lawful purpose, fall outside the scope of the affirmative defense. The defense is only available to defend against the charges of use, custody or control of, or possessing the hardware or software described in subsection (a)(9). In the event that a defendant is charged with one of these violations together with a charge for which the defense is not available (e.g., the defendant is charged with both use and trafficking) the defense may still be used by the defendant but only as against the charge permitted by the statute (e.g., use).

Section (d) of the bill also adds new paragraph (9) to subsection (e) of section 1029 in order to define the term "telecommunications service" and provides that the term is to have the meaning given that term in section 3 of title 1 of the Communications Act of 1934 (47 U.S.C. Section 153).

Section (d) of the bill also adds new paragraph (10) section 1029(e) in order to define the term "facilities-based carrier" as it is used in the exception to new subsection (a)(9). That term is defined to mean an entity that owns communications transmissions facilities, is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission. Thus, it does not include so-called "resellers" of wireless telephone air time, companies which buy blocks of air time and resell it to retail customers. The definition also does not include companies which hold nominal title to telecommunications equipment but which have no responsibility for their operations or for performing maintenance on them. Finally, the definition does not include persons or companies which may own and operate tangible telecommunications equipment but which do not hold the appropriate license for that purpose issued by the Federal Communications Commission.

Finally, the bill also defines "telecommunication identifying information," one of the key terms in new subsection (a)(9). That term is defined to mean an electronic serial number or any other number or signal that identifies a specific telecommunications instrument. The intent of this term is to identify the unique components or features of a telecommunications instrument which can be inserted or modified by the devices described in new subsection (a)(9) such that the instrument can be used to obtain telecommunications service without authorization.

Section 2(e) of the bill directs the United States Sentencing Commission to review and amend its sentencing guidelines and policy statements, if appropriate, to provide an appropriated penalty for offenses involving the cloning of wireless telephones. This section of the bill states a number of factors which the Sentencing Commission is directed to consider during its review. We are concerned that violations of section 1029 are not punished as severely as other, similar, fraud crimes are punished under the Sentencing Commission's sentencing guidelines and, in any event, are not punished as severely as

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they should be in light of the magnitude of loss resulting from this crime and the fact that this crime is often used to facilitate more serious crimes. This section of the bill directs the Sentencing Commission to consider these and other factors in making to Congress as part of its annual reporting process whatever recommendations it deems appropriate with respect to the guidelines for imposing punishment for violations of section 1029.

Mr. McCOLLUM. Mr. Chairman, I yield back the balance of my time on this amendment.

Mr. WEXLER. Mr. Chairman, I rise in support of the McCollum amendment.

The gentleman from Florida (Mr. MCCOLLUM) has described what this amendment does. It simply makes clear that FCC license carriers can use the type of equipment described by the bill for their legitimate business purposes. On behalf of the gentleman from Michigan (Mr. CONYERS) I want to thank Chairman MCCOLLUM and his counsel, Glen Schmitt, for their willingness to work through this issue. I also want to make it clear because there have been some questions on this point that the bill before us does not affect scanners. Scanners do have legitimate uses and will remain available.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I move to strike the last word.

Mr. Chairman, in closing I just want to say that this bill will make cellular telephones across America more secure. It is high time in our society that the victim rather than the criminal is protected. No longer will the hard-core criminal be able to steal cellular phone numbers and rack up huge phone bills which cost all of us.

Mr. Chairman, this bill is about freedom and security, the right of each American to freely and safely use their phones without the fear of their number being stolen. This bill is going to help our law enforcement agencies and ensure a safer America for all.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Florida (Mr. MCCOLLUM).

The amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Are there other amendments?

If not, the question on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. GILCHREST) having assumed the chair, Mr. COLLINS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2460) to amend title 18, United States Code, with respect to scanning receivers and similar devices, pursuant to House Resolution 368, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. McCOLLUM. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 414, nays 1, not voting 15, as follows:

[Roll No. 25]

YEAS—414

Abercrombie	Carson	Engel
Ackerman	Castle	English
Aderholt	Chabot	Ensign
Allen	Chambliss	Eshoo
Andrews	Chenoweth	Etheridge
Archer	Christensen	Evans
Armey	Clay	Everett
Bachus	Clayton	Ewing
Baesler	Clement	Farr
Baker	Clyburn	Fawell
Baldacci	Coble	Fazio
Ballenger	Coburn	Filner
Barcia	Collins	Foley
Barr	Combest	Forbes
Barrett (NE)	Condit	Fossella
Barrett (WI)	Conyers	Fowler
Bartlett	Cook	Fox
Barton	Cooksey	Frank (MA)
Bass	Costello	Franks (NJ)
Bateman	Cox	Frelinghuysen
Becerra	Coyne	Frost
Bentsen	Cramer	Furse
Bereuter	Crane	Gallegly
Berman	Crapo	Ganske
Berry	Cubin	Gejdenson
Bilbray	Cummings	Gekas
Bilirakis	Cunningham	Gephardt
Bishop	Danner	Gibbons
Blagojevich	Davis (FL)	Gilchrest
Bliley	Davis (IL)	Gillmor
Blumenauer	Davis (VA)	Gilman
Blunt	Deal	Goode
Boehlert	DeFazio	Goodlatte
Boehner	DeGette	Goodling
Bonilla	Delahunt	Gordon
Bonior	DeLauro	Goss
Borski	DeLay	Graham
Boswell	Deutsch	Granger
Boucher	Diaz-Balart	Green
Boyd	Dickey	Greenwood
Brady	Dicks	Gutierrez
Brown (CA)	Dingell	Gutknecht
Brown (OH)	Dixon	Hall (OH)
Bryant	Doggett	Hall (TX)
Bunning	Dooley	Hamilton
Burr	Doolittle	Hansen
Burton	Doyle	Harman
Buyer	Dreier	Hastert
Callahan	Duncan	Hastings (FL)
Calvert	Dunn	Hayworth
Camp	Edwards	Hefley
Canady	Ehlers	Hefner
Cannon	Ehrlich	Herger
Cardin	Emerson	Hill
Hilleary	McIntosh	Sawyer
Hilliard	McIntyre	Saxton
Hinchey	McKeon	Schaefer, Dan
Hinojosa	McKinney	Schaffer, Bob
Hobson	McNulty	Schumer
Hoekstra	Meehan	Scott
Holden	Meek (FL)	Sensenbrenner
Hooley	Meeks (NY)	Serrano
Horn	Menendez	Sessions
Hostettler	Metcalf	Shadegg
Houghton	Mica	Shaw
Hoyer	Millender-McDonald	Shays
Hulshof	Miller (FL)	Sherman
Hunter	Minge	Shimkus
Hutchinson	Mink	Shuster
Hyde	Moakley	Sisisky
Inglis	Mollohan	Skaggs
Istook	Moran (KS)	Skeen
Jackson (IL)	Moran (VA)	Skelton
Jackson-Lee (TX)	Morella	Slaughter
Jefferson	Murtha	Smith (MI)
Jenkins	Myrick	Smith (NJ)
John	Nadler	Smith (OR)
Johnson (CT)	Neal	Smith (TX)
Johnson (WI)	Nethercutt	Smith, Adam
Johnson, E. B.	Neumann	Smith, Linda
Johnson, Sam	Ney	Snowbarger
Jones	Norwood	Snyder
Kanjorski	Nussle	Solomon
Kaptur	Oberstar	Souder
Kasich	Obey	Spence
Kelly	Olver	Spratt
Kennedy (MA)	Ortiz	Stabenow
Kennedy (RI)	Owens	Stark
Kennelly	Oxley	Stearns
Kildee	Packard	Stenholm
Kilpatrick	Pallone	Stokes
Kim	Pappas	Strickland
Kind (WI)	Parker	Stump
King (NY)	Pascrell	Stupak
Kingston	Pastor	Sununu
Kleczka	Paxon	Talent
Klug	Payne	Tanner
Knollenberg	Pease	Tauscher
Kolbe	Peterson (MN)	Tauzin
Kucinich	Peterson (PA)	Taylor (MS)
LaFalce	Petri	Taylor (NC)
LaHood	Pickering	Thomas
Lampson	Pickett	Thompson
Lantos	Pitts	Thornberry
Largent	Pombo	Thune
Latham	Pomeroy	Thurman
LaTourette	Porter	Tiahrt
Lazio	Portman	Tierney
Leach	Price (NC)	Torres
Levin	Pryce (OH)	Towns
Lewis (CA)	Quinn	Traficant
Lewis (GA)	Radanovich	Turner
Lewis (KY)	Rahall	Upton
Linder	Ramstad	Velazquez
Lipinski	Rangel	Vento
Livingston	Redmond	Visclosky
LoBiondo	Regula	Walsh
Lofgren	Reyes	Wamp
Lowey	Riggs	Waters
Lucas	Riley	Watkins
Maloney (CT)	Rivers	Watt (NC)
Maloney (NY)	Rodriguez	Watts (OK)
Manton	Roemer	Waxman
Manzullo	Rogan	Weldon (FL)
Markey	Rogers	Weldon (PA)
Martinez	Rohrabacher	Weller
Mascara	Ros-Lehtinen	Wexler
Matsui	Rothman	Weygand
McCarthy (MO)	Roukema	White
McCarthy (NY)	Roybal-Allard	Whitfield
McCollum	Royce	Wicker
McCrery	Rush	Wise
McDade	Ryun	Wolf
McDermott	Sabo	Woolsey
McGovern	Salmon	Wynn
McHale	Sanchez	Yates
McHugh	Sandlin	Young (AK)
McInnis	Sanford	Young (FL)

NAYS—1

Paul

NOT VOTING—15

Brown (FL)	Hastings (WA)	Pelosi
Campbell	Klink	Poshard
Fattah	Luther	Sanders
Ford	Miller (CA)	Scarborough
Gonzalez	Northup	Schiff

□ 1132

So the bill was passed.

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The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mrs. NORTHUP. Mr. Speaker, on Roll Call Vote no. 25, I was unavoidably detained. Had I been present, I would have voted aye.

Mr. McCOLLUM. Mr. Speaker, pursuant to House Resolution 368, I call up from the Speaker's table the Senate bill (S. 493) to amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The text of S. 493 is as follows:

S. 493

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wireless Telephone Protection Act".

SEC. 2. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COUNTERFEIT ACCESS DEVICES.

(a) UNLAWFUL ACTS.—Section 1029(a) of title 18, United States Code, is amended—

(1) by redesignating paragraph (9) as paragraph (10); and

(2) by striking paragraph (8) and inserting the following:

"(8) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a scanning receiver;

"(9) knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured for altering or modifying a telecommunications instrument so that such instrument may be used to obtain unauthorized access to telecommunications services; or".

(b) PENALTIES.—

(1) GENERALLY.—Section 1029(c) of title 18, United States Code, is amended to read as follows:

"(c) PENALTIES.—(1) IN GENERAL.—The punishment for an offense under subsection (a) is—

"(A) in the case of an offense that does not occur after a conviction for another offense under this section, which conviction has become final—

"(i) if the offense is under paragraph (3), (6), (7), or (10) of subsection (a), a fine under this title or imprisonment for not more than 10 years, or both; and

"(ii) if the offense is under paragraph (1), (2), (4), (5), (8), or (9), of subsection (a), a fine under this title or imprisonment for not more than 15 years, or both;

"(B) in the case of an offense that occurs after a conviction for another offense under this section, which conviction has become final, a fine under this title or imprisonment for not more than 20 years, or both; and

"(C) in any case, in addition to any other punishment imposed or any other forfeiture required by law, forfeiture to the United States of any personal property used or intended to be used to commit, facilitate, or promote the commission of the offense.

"(2) APPLICABLE PROCEDURE.—The criminal forfeiture of personal property subject to forfeiture under paragraph (1)(C), any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by subsections (c) and (e) through (p) of section 413 of the Controlled Substances Act (21 U.S.C. 853).".

(2) ATTEMPTS.—Section 1029(b)(1) of title 18, United States Code, is amended by striking "punished as provided in subsection (c) of this section" and inserting "subject to the same penalties as those prescribed for the offense attempted".

(c) DEFINITION OF SCANNING RECEIVER.—Section 1029(e) of title 18, United States Code, is amended—

(1) in paragraph (6), by striking "and" at the end;

(2) in paragraph (7)—

(A) by striking "The" and inserting "the"; and

(B) by striking the period at the end and inserting a semicolon; and

(3) in paragraph (8), by striking the period at the end and inserting "or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument; and".

(d) APPLICABILITY OF NEW SECTION 1029(a)(9).—

(1) IN GENERAL.—Section 1029 of title 18, United States Code, is amended by adding at the end the following:

"(g) It is not a violation of subsection (a)(9) for an officer, employee, or agent of, or a person under contract with, a facilities-based carrier, for the purpose of protecting the property or legal rights of that carrier, to use, produce, have custody or control of, or possess hardware or software configured as described in that subsection (a)(9): *Provided*, That if such hardware or software is used to obtain access to telecommunications service provided by another facilities-based carrier, such access is authorized.".

(2) DEFINITION OF FACILITIES-BASED CARRIER.—Section 1029(e) of title 18, United States Code, as amended by subsection (c) of this section, is amended by adding at the end the following:

"(9) the term 'facilities-based carrier' means an entity that owns communications transmission facilities, is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934.".

(e) AMENDMENT OF FEDERAL SENTENCING GUIDELINES FOR WIRELESS TELEPHONE CLONING.—

(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, if appropriate, to provide an appropriate penalty for offenses involving the cloning of wireless telephones (including offenses involving an attempt or conspiracy to clone a wireless telephone).

(2) FACTORS FOR CONSIDERATION.—In carrying out this subsection, the Commission shall consider, with respect to the offenses described in paragraph (1)—

(A) the range of conduct covered by the offenses;

(B) the existing sentences for the offenses;

(C) the extent to which the value of the loss caused by the offenses (as defined in the Federal sentencing guidelines) is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(D) the extent to which sentencing enhancements within the Federal sentencing guidelines and the court's authority to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offenses;

(E) the extent to which the Federal sentencing guideline sentences for the offenses have been constrained by statutory maximum penalties;

(F) the extent to which Federal sentencing guidelines for the offenses adequately achieve the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code;

(G) the relationship of Federal sentencing guidelines for the offenses to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(H) any other factors that the Commission considers to be appropriate.

MOTION OFFERED BY MR. MCCOLLUM

Mr. McCOLLUM. Mr. Speaker, pursuant to the rule, I offer a motion.

The Clerk read as follows:

Mr. MCCOLLUM of Florida moves to strike out all after the enacting clause of the Senate bill, S. 493, and insert in lieu thereof the text of the bill, H.R. 2460, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend title 18, United States Code, with respect to scanning receivers and similar devices."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 2460) was laid on the table.

GENERAL LEAVE

Mr. McCOLLUM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

CORRECTION OF THE CONGRESSIONAL RECORD OF WEDNESDAY, FEBRUARY 25, 1998

ELECTION OF MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. FAZIO of California. Mr. Speaker, by direction of the Democratic Caucus, I offer a privileged resolution (H. Res. 369) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 369

Resolved, That the following named Members be, and that they are hereby, elected to the following standing committees of the House of Representatives:

Committee on Small Business: Ms. VELÁZQUEZ to rank directly above Mr. SISISKY.

Committee on Banking and Financial Services: That the powers and duties conferred upon the ranking minority members by House rules shall be exercised by the next senior member until otherwise ordered by the House.

The resolution was agreed to.

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A motion to reconsider was laid on the table.

ELECTION OF MEMBER TO THE COMMITTEE ON SMALL BUSINESS

Mr. BONIOR. Mr. Speaker, I offer a resolution (H. Res. 370), and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 370

Resolved, That the following named Members be, and that they are hereby, elected to the following standing committees of the House of Representatives:

Committee on Small Business: Ms. VELAZQUEZ to rank directly above Mr. LAFALCE.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

ELECTION OF MEMBER TO THE COMMITTEE ON THE JUDICIARY

Mr. ARMEY. Mr. Speaker, I offer a resolution (H. Res. 371), and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the following Member be, and he is hereby, elected to the following standing committee of the House of Representatives:

Committee on the Judiciary: Mr. GRAHAM of South Carolina.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PERMISSION FOR COMMITTEE ON WAYS AND MEANS TO HAVE UNTIL MIDNIGHT FRIDAY, FEBRUARY 27, 1998 TO FILE REPORT ON H.R. 3130, CHILD SUPPORT PERFORMANCE AND INCENTIVE ACT OF 1998

Mr. SHAW. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means have until midnight tomorrow, Friday, February 27, 1998 to file a report on H.R. 3130.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. BONIOR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

TRIBUTE TO MARTI THOMAS

Mr. BONIOR. Mr. Speaker, I will inquire shortly of the distinguished gentleman from Texas (Mr. ARMEY) regarding the schedule.

Before I yield to my friend, the gentleman from Texas, I would just like to take this opportunity to let the Members know, those who are not already in knowledge, of the leaving of one of our real fabulous, super persons who have worked this floor for 9 years, Marti Thomas of the staff of the gentleman from Missouri (Mr. GEPHARDT), who has been a real inspiration to a lot of people around here.

She is leaving. She is not going very far, just down to the Treasury Department. We will see her from time to time. I just want her to know that on behalf of all the Members of the House, and I think the gentleman from Texas (Mr. ARMEY) might elaborate on this, who also was honored here last night at a party, we want her to know how much we will miss her, how much we appreciate all the hard work she gave to this institution, and we look forward to seeing her from time to time as she comes back with her new responsibilities.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. BONIOR. I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, if I may just speak for a moment, perhaps I may make a comment about Marti and how much we, too, have enjoyed working with her. She has always been pleasant, even when she was being stubborn. But we have always enjoyed it, and we, too, will miss her.

I would think we may want to hear from the gentleman from Missouri (Mr. GEPHARDT) on this subject before we talk about the schedule.

If I might just say, Marti, from my point of view, I will miss you. I wish you Godspeed wherever you go, and I believe you owe me a lot, so I will be getting in touch with you later on that.

Mr. GEPHARDT. Mr. Speaker, will the gentleman yield?

Mr. BONIOR. I yield to the distinguished gentleman from Missouri.

Mr. GEPHARDT. Mr. Speaker, I thank the gentleman from Texas for his comments. I have known a lot of staff people here, and we rarely thank and recognize our staff for the great work they do. One of the reasons this place works is that we have wonderful human beings who come here to work for us, and work behind the scenes without any celebration or without any sufficient recognition, to make this place work.

I know of no one that we have ever had on staff who has such unanimous acclaim as Marti Thomas. Everybody likes her, everybody loves her, everybody respects her, and everybody wishes her well in her new assignment with the Treasury Department.

Finally, I believe that she has such acclaim because she basically treats other people the way she would like to be treated.

That is her credo, and that is the way she conducts herself. So, Marti, we are going to miss you very, very much, and we know you are going to be a great success. And the only solace I have in this as her direct employer is that she has promised to come back here soon.

Mr. BONIOR. I yield to my friend, the gentleman from Texas (Mr. ARMEY).

Mr. ARMEY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am pleased to announce that we have finished legislative business for the week. The House will reconvene for pro forma session on Monday, March 2 at 2:00 p.m. Of course there will be no legislative business and no votes on that date.

On Tuesday, March 3, the House will meet at 12:30 p.m. for morning hour and 2:00 p.m. for legislative business.

We will consider a number of bills under suspension of the rules, a list of which will be distributed to Members' offices. Members should note that we do not expect any recorded votes on suspensions before 5:00 p.m. on Tuesday, February 3.

On Wednesday and Thursday, the House will meet at 10:00 a.m. to consider the following bills, all of which will be subject to rules: H.R. 856, the United States-Puerto Rico Political Status Act; H.R. 3130, the Child Support Performance and Incentive Act for 1998; and H.R. 2369, the Wireless Privacy Enhancement Act of 1997.

Mr. Speaker, we hope to conclude legislative business for the week by 6:00 p.m. on Thursday, March 5. There will be no votes on Friday, March 6.

I want to thank the gentleman for yielding me this time.

Mr. BONIOR. I thank my colleague from Texas for his remarks and the information that he has given us. Can I ask the gentleman from Texas when we can expect the Puerto Rico bill to be coming to the floor?

Mr. ARMEY. I thank the gentleman for asking. We anticipate having that bill on the floor on Wednesday.

Mr. BONIOR. Wednesday. I thank my friend.

And, finally, the concern we had here is when we will be able to see the list of bills on suspension.

Mr. ARMEY. I thank the gentleman for that inquiry. We have had some late requests. We are trying to get the list together, and we should have them in your offices later today.

Mr. BONIOR. I thank my colleague and wish him a good weekend.

ADJOURNMENT TO MONDAY, MARCH 2, 1998

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 2 p.m. on Monday next.

The SPEAKER pro tempore. Is there objection to the request from the gentleman from New York?

There was no objection.

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