

PREVENTING HARASSMENT THROUGH OUTBOUND
NUMBER ENFORCEMENT ACT OF 2009 (PHONE ACT OF 2009)

NOVEMBER 2, 2009.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1110]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1110) to amend title 18, United States Code, to prevent caller ID spoofing, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preventing Harassment through Outbound Number Enforcement Act of 2009” or the “PHONE Act of 2009”.

SEC. 2. CALLER ID SPOOFING.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

“§ 1041. Caller ID spoofing

“(a) OFFENSE.—Whoever, in or affecting interstate or foreign commerce, knowingly uses or provides to another—

“(1) false caller ID information with intent wrongfully to obtain anything of value; or

“(2) caller ID information pertaining to an actual person or other entity without that person’s or entity’s consent and with intent to deceive any person or other entity about the identity of the caller; or attempts or conspires to do so, shall be punished as provided in subsection (b).

“(b) PUNISHMENT.—Whoever violates subsection (a) shall—

“(1) if the offense is a violation of subsection (a)(1), be fined under this title or imprisoned not more than 5 years, or both; and

“(2) if the offense is a violation of subsection (a)(2), be fined under this title or imprisoned not more than one year, or both.

“(c) LAW ENFORCEMENT EXCEPTION.—This section does not prohibit lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

“(d) FORFEITURE.—

“(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

“(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

“(B) any equipment, software or other technology used or intended to be used to commit or to facilitate the commission of such offense.

“(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

“(e) DEFINITIONS.—In this section—

“(1) the term ‘caller ID information’ means any identifying information regarding the origination of a telephone call, including the name or the telephone number of the caller, that is transmitted with the telephone call;

“(2) the term ‘telephone call’ means a call made or received using any real time voice communications service, regardless of the technology or network used; and

“(3) the term ‘State’ includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding at the end the following new item:

“1041. Caller ID spoofing.”.

SEC. 3. OTHER SPECIFIED UNLAWFUL ACTIVITIES FOR MONEY LAUNDERING.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting “section 1037 (relating to fraud and related activity in connection with electronic mail), section 1041 (relating to caller ID spoofing),” before “section 1111”.

PURPOSE AND SUMMARY

The purpose of H.R. 1110, the “Preventing Harassment through Outbound Number Enforcement (PHONE) Act of 2009,” is to prevent and mitigate identity theft and to ensure privacy by establishing criminal penalties for caller ID “spoofing.” The bill targets spoofing by prohibiting the use of caller ID information to hide the callers’ true identity in order to wrongfully obtain anything of value or to commit other abusive acts. The bill provides for felony

penalties of up to 5 years in prison for violations committed with the intent to wrongfully obtain anything of value. Certain abusive uses of another person's caller ID information without commercial motives are classified as misdemeanors under the bill.

BACKGROUND AND NEED FOR THE LEGISLATION

In recent years, spoofing has become more commonplace, leading to increased security vulnerabilities and identity theft. Spoofing involves the use of a false caller ID to hide the caller's true identity in order to commit fraud or some other abusive act. Recently, spoofing technology has become readily available, either through the purchase of Internet telephone equipment or through Web sites specifically set up to spoof. For example, Voice-Over-Internet-Protocol (VOIP) equipment can easily be configured to populate the caller ID field with information of the user's choosing.

Since caller ID spoofing can make a call appear to come from any phone number, it has the ability to cause damaged credit and financial ruin. Call recipients sometimes divulge personal and private information to the spoofer, under the mistaken belief that it is a legitimate call. For example, the AARP (formerly the American Association of Retired Persons) has reported cases in which spoofers called individuals claiming that they had missed jury duty.¹ These individuals were told that they would be subject to prosecution if they did not provide their Social Security number and other personal information. The phone number that appeared on their caller ID was from the local courthouse, so the victims assumed that the call was legitimate. Such incidences have been reported in at least 15 States, including the District of Columbia.²

In addition to identity theft, spoofing invades the privacy of those individuals whose caller ID is used to mask fraudulent calls, and therefore it can be used as a form of aggressive harassment. Additionally, many business functions, from credit card verification to automatic call routing, opt to use caller ID for security purposes, which spoofing can render useless.

However, there are instances where caller ID information is altered for legitimate reasons. For example, a domestic violence shelter may alter caller ID information to ensure the safety of domestic violence victims. In addition, in many instances where telemarketers are hired by companies, the caller ID information transmitted is that of the actual company, allowing those receiving the call to have a reliable way to call back.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on a predecessor bill, H.R. 740, during the 110th Congress, on February 6, 2007. Testimony was received from two witnesses: Congressman Tim Murphy of Pennsylvania, and Barry M. Sabin, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice.

¹Sid Kirchheimer, Scam Alert: Courthouse Con, AARP Bulletin, May 2006, available at <http://www.aarp.org/bulletin/consumer/courthouse—con.html>

²Id.

COMMITTEE CONSIDERATION

On October 7, 2009, the Committee met in open session and ordered the bill H.R. 1110 favorably reported, with one amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during Committee consideration of H.R. 1110.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1110, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 19, 2009.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1110, the Preventing Harassment through Outbound Number Enforcement (PHONE) Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1110—Preventing Harassment through Outbound Number Enforcement (PHONE) Act of 2009.

CBO estimates that implementing H.R. 1110 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending and revenues, but any such effects would not be significant.

H.R. 1110 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

H.R. 1110 would establish a new federal crime for the fraudulent use of caller-ID information. Because the bill would establish a new offense, the government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that H.R. 1110 would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 1110 could be subject to criminal fines, the Federal Government might collect additional amounts if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO estimates that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

Persons prosecuted and convicted under the bill also could be subject to the seizure of certain assets by the Federal Government. Proceeds from the sale of such assets would be deposited into the Assets Forfeiture Fund and spent from that fund, mostly in the same year. Thus, enacting H.R. 1110 could increase both revenues deposited into the fund and direct spending from the fund. However, CBO estimates that any increase in revenues or spending would be negligible.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1110 will assist in combating caller ID spoofing, particularly spoofing perpetrated for commercial gain.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 3 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1110 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

Section. 1. Short Title. Section 1 sets forth the short title of the bill as the “Preventing Harassment through Outbound Number Enforcement Act of 2009” or the “PHONE Act of 2009.”

Section 2. Caller ID Spoofing. Section 2 amends title 18, United States Code, to prohibit using or providing, in interstate or foreign commerce, false caller ID information with an intent to wrongfully obtain anything of value. For these cases, the prescribed punishment is a fine and/or imprisonment for not more than 5 years. The section also prohibits using or providing the caller ID information of “an actual person or other entity,” without the person or entity’s consent, and with an intent to deceive “the recipient or other entity” about the caller’s identity. For these situations, the punishment is a fine and/or imprisonment for not more than 1 year.

The legislation does not affect legally available blocking of caller ID technology.

Subparagraph (c) of the section exempts from the purview of the statute any lawful investigative, protective, or intelligence activity of a Federal, State, or local law enforcement agency or of a U.S. intelligence agency, or any activity authorized for the protection of witnesses in criminal proceedings.

Subparagraph (d) provides for criminal forfeiture. Specifically, a court could order the convicted party to forfeit the proceeds derived from the offense, along with equipment used to facilitate the offense. This provision is modeled on a similar provision in the CAN-SPAM Act of 2003, 18 U.S.C. § 1037(c).

Subparagraph (e) sets forth definitions for various terms. The definition of “telephone call” includes a call made or received using any real-time voice communications service, regardless of the technology or network used.

Section 3. Other Specified Unlawful Activities for Money Laundering. Section 3 adds the new offense of caller ID spoofing (18 U.S.C. 1041), as well as 18 U.S.C. § 1037 (fraud and fraud related activity in connection with e-mail) to the list of “specified unlawful activities” in 18 U.S.C. § 1956(c)(7)(D) (the money laundering statute). This makes certain financial transactions involving the proceeds of violations of sections 1037 and 1041 money laundering offenses under 18 U.S.C. §§ 1956 and 1957, and provides for the civil forfeiture of such proceeds. See 18 U.S.C. § 981(a)(1)(C) (providing for the civil forfeiture of proceeds of crimes designated as “specified unlawful activity”). Existing law provides that comparable crimes, e.g., violations of 18 U.S.C. § 1030 (computer fraud and abuse) constitute specified unlawful activities under the money laundering statute.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.

1001. Statements or entries generally.

* * * * *

1041. Caller ID spoofing.

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§ 1041. Caller ID spoofing

(a) *OFFENSE.*—Whoever, in or affecting interstate or foreign commerce, knowingly uses or provides to another—

(1) false caller ID information with intent wrongfully to obtain anything of value; or

(2) caller ID information pertaining to an actual person or other entity without that person's or entity's consent and with intent to deceive any person or other entity about the identity of the caller;

or attempts or conspires to do so, shall be punished as provided in subsection (b).

(b) *PUNISHMENT.*—Whoever violates subsection (a) shall—

(1) if the offense is a violation of subsection (a)(1), be fined under this title or imprisoned not more than 5 years, or both; and

(2) if the offense is a violation of subsection (a)(2), be fined under this title or imprisoned not more than one year, or both.

(c) *LAW ENFORCEMENT EXCEPTION.*—This section does not prohibit lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

(d) *FORFEITURE.*—

(1) *IN GENERAL.*—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

(B) any equipment, software or other technology used or intended to be used to commit or to facilitate the commission of such offense.

(2) *PROCEDURES.*—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

(e) *DEFINITIONS.*—In this section—

(1) the term “caller ID information” means any identifying information regarding the origination of a telephone call, including the name or the telephone number of the caller, that is transmitted with the telephone call;

(2) the term “telephone call” means a call made or received using any real time voice communications service, regardless of the technology or network used; and

(3) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

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CHAPTER 95—RACKETEERING

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§ 1956. Laundering of monetary instruments

(a) * * *

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(c) As used in this section—

(1) * * *

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(7) the term “specified unlawful activity” means—

(A) * * *

* * * * *

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to inter-

state communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), *section 1037 (relating to fraud and related activity in connection with electronic mail)*, *section 1041 (relating to caller ID spoofing)*, section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with

the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)

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