

lution to its adoption or rejection and under the operation thereof, the resolution was agreed to.

A motion to reconsider the vote whereby said resolution was agreed to was, by unanimous consent, laid on the table.

10.5 WIRELESS TELEPHONE PROTECTION

The SPEAKER pro tempore, Mr. TIAHRT, pursuant to House Resolution 368 and rule XXIII, declared the House resolved 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.

The SPEAKER pro tempore, Mr. TIAHRT, by unanimous consent, designated Mr. COLLINS as Chairman of the Committee of the Whole; and after some time spent therein,

After some further time,

The SPEAKER pro tempore, Mr. GILCHREST, assumed the Chair.

When Mr. COLLINS, Chairman, pursuant to House Resolution 368, reported the bill back to the House with an amendment adopted by the Committee.

The previous question having been ordered by said resolution.

The following amendment, reported from the Committee of the Whole House on the state of the Union, was agreed to:

Strike out all after the enacting clause and insert:

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 impris-

onment 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 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.

Amend the title so as to read "An Act to amend title 18, United States Code, with respect to scanning receivers and similar devices."

The bill, as amended, was ordered to be engrossed and read a third time, was read a third time by title.

The question being put, viva voce,

Will the House pass said bill? The SPEAKER pro tempore, Mr. GILCHREST, announced that the yeas had it.

Mr. MCCOLLUM demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the { Yeas ..... 414 affirmative ..... } Nays ..... 1

10.6 [Roll No. 25] YEAS—414

Table with 3 columns: Name, Name, Name. Lists members of the House who voted 'Yeas' and 'Nays' on the bill.