House
REPUBLICAN
Conference

FloorPrep

Legislative Digest **Thursday, February 26, 1998**

John Boehner
Chairman
8th District, Ohio

House Meets at 10:00 a.m. for Legislative Business

Anticipated Floor Action:
H.R. 2460—Wireless Telephone Protection Act

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H.R. 2460—Wireless Telephone Protection Act

Floor Situation: The House will consider H.R. 2460 as its only order of business today. On Wednesday, the Rules Committee granted an open rule which provides for one hour of general debate, equally divided between the chairman and ranking member of the Judiciary Committee. The rule waives the three-day layover requirement for the committee report and makes in order a Judiciary Committee amendment in the nature of a substitute as base text. The rule accords priority in recognition to members whose amendments have been pre-printed in the *Congressional Record*. The rule allows the chairman of the Committee of the Whole to postpone votes during consideration of the bill, and reduce the voting time on a postponed vote to five minutes, so long as it follows a regular 15-minute vote. The rule provides one motion to recommit, with or without instructions. Finally, the rule makes in order a motion, after passage of the House bill, to insert the House-passed language into a companion Senate bill, S. 493.

Summary: H.R. 2460 amends section 1029 of Title 18 of the U.S. Code to penalize individuals who possess or produce hardware or software that has been designed to alter or modify a telecommunications instrument in order to obtain unauthorized access to telecommunications services. However, the bill permits certain persons, including law enforcement officials and employees or entities which own communications transmission facilities, to produce or use such hardware or software. Specifically, the cellular technology employed is computer-based technology which allows duplication—cloning—of established cellular telephone numbers. The cellular telephone industry and law enforcement officials are concerned about the use of cloned cellular phones to facilitate drug-related and other types of crime. Most often, drug traffickers will employ cloned cellular phones to communicate with each other and conduct their drug businesses. Officials find vexing attempts to prosecute criminals based on such cloning behavior; specifically, when cloning equipment alone (that is, without actual cloned cellular phones) is discovered in the possession of criminal

operations, it is done as an indirect discovery. Thus, as current law provides, it is virtually impossible to show their "intent to defraud," as the law requires. H.R. 424, therefore, seeks to rectify this unintended consequence by deleting the "intent to defraud" requirement from the law, allowing law enforcement to more easily prosecute those who possess illegal cellular technology. Possession of such equipment is deemed to have criminal intent because, based on its purpose, it is useful only to law enforcement, industry specialists, or criminals. CBO estimates that enactment will result in less than $500,000 per year in discretionary spending over five years. H.R. 2460 was introduced by Mr. Johnson (TX) and was reported by the Judiciary Committee by voice vote on October 29, 1997.

Views: The Republican Leadership supports passage of the bill. A Clinton Administration viewpoint was unavailable at press time.

Amendments: At press time, the *Legislative Digest* was aware of the following amendments to H.R. 2460:

Mr. McCollum will offer a manager's amendment to make the following major changes to the bill:

* **Hardware or Software Prohibition.** The bill as reported by the committee prohibits possession or production of hardware or software that has been designed to alter or modify a telecommunications instrument in order to obtain unauthorized access to telecommunications services. The manager's amendment changes this language to prohibit hardware or software configured to insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument. Such identifying information refers to electronic serial numbers or other signals which uniquely identify a specific cellular phone. The effect of the change is to clarify that only devices which can insert or modify the unique cellular phone imprint will be made illegal by the bill;

* **Asset Forfeiture.** The reported version of the bill contains no provision for asset forfeiture. The manager's amendment adds a new provision which requires forfeiture to the government of any personal property used or intended to be used to commit an offense under section 1029. This provision does not require the forfeiture of real property, and only targets property which was used or intended to be used to commit the offense;

* **Right to Possess Telecommunication Identifying Information Equipment.** The committee bill exempts certain entities from the prohibitions in the bill, including entities under contract with a facilities-based carrier. The manager's amendment strikes this provision and requires only that a third party be engaged in business with a facilities-based carrier. The purpose of this new language is to include within the exception third parties that have a business relationship with the carrier which may not entail a written contract. However, this provision is not meant to include cellular service subscribers in its exemption of third parties. Additionally, the manager's amendment clarifies that cellular communications carriers may not use their equipment to obtain cellular services that are provided by a competing carrier without the competitor's authorization; and

* **Affirmative Defense To Prosecution.** The manager's amendment creates an affirmative defense to prosecution in cases where a defendant is charged with using, maintaining custody or control of, or possessing an illegal device. A defendant may employ this defense if, by a preponderance of the evidence, he can prove that his use, custody or control, or possession of the device was for research or development in connection with an otherwise lawful purpose. However, the affirmative defense may not be employed against a charge of producing or trafficking in the otherwise illegal devices.

Additional Information: See *Legislative Digest*, Vol. XXVII, #3, February 20, 1998.

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PLEASE NOTE: UNDER AN OPEN RULE, MEMBERS MAY OFFER NEW AMENDMENTS TO A BILL AT ANY TIME, REGARDLESS OF WHETHER THEY HAVE BEEN PRE-PRINTED IN THE *CONGRESSIONAL RECORD*

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Amendment Alert!

Please attach the text of the amendment (if available) and fax to the *Legislative Digest* at x5-7298

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Chairman
8th District, Ohio

Member Sponsoring Amendment: _____ Bill #: _____

Additional Co-sponsors (if any): _____

Staff Contact: _____ Phone #: _____ Evening Phone #: _____

Description of the amendment: _____

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(Please include any additional or contextual information)

Reason for offering amendment (e.g., How will this change the bill or current law? Why should members support this change?): _____

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Legislative Digest reserves the right to edit descriptions for style, readability, and provisional accuracy.

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