

(b) **PENALTIES.**—The punishment for an offense under subsection (a) is—

(1) a fine under this title, imprisonment for not more than 5 years, or both, if—

(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

(A) the offense is an offense under subsection (a)(1);

(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

(D) the offense caused loss to one or more persons aggregating \$5,000 or more in value during any 1-year period;

(E) as a result of the offense any individual committing the offense obtained anything of value aggregating \$5,000 or more during any 1-year period; or

(F) the offense was undertaken by the defendant in concert with three or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

(c) **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.

(d) **DEFINITIONS.**—In this section:

(1) **LOSS.**—The term “loss” has the meaning given that term in section 1030(e) of this title.

(2) **MATERIALLY.**—For purposes of paragraphs (3) and (4) of subsection (a), header information or registration information is materially falsified if it is altered or concealed in a manner that would impair the ability of a recipi-

ent of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation.

(3) **MULTIPLE.**—The term “multiple” means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

(4) **OTHER TERMS.**—Any other term has the meaning given that term by section 3 of the CAN-SPAM Act of 2003.

(Added Pub. L. 108-187, §4(a)(1), Dec. 16, 2003, 117 Stat. 2703.)

#### REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (c)(2), are set out in the Appendix to this title.

Section 3 of the CAN-SPAM Act of 2003, referred to in subsec. (d)(4), is classified to section 7702 of Title 15, Commerce and Trade.

#### EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108-187, set out as a note under section 7701 of Title 15, Commerce and Trade.

### § 1038. False information and hoaxes

(a) **CRIMINAL VIOLATION.**—

(1) **IN GENERAL.**—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505(b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49, shall—

(A) be fined under this title or imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, be fined under this title or imprisoned not more than 20 years, or both; and

(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

(2) **ARMED FORCES.**—Any person who makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged—

(A) shall be fined under this title, imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, shall be fined under this title, imprisoned not more than 20 years, or both; and

(C) if death results, shall be fined under this title, imprisoned for any number of years or for life, or both.

(b) CIVIL ACTION.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(c) REIMBURSEMENT.—

(1) IN GENERAL.—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any state or local government, or private not-for-profit organization that provides fire or rescue service incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(2) LIABILITY.—A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

(3) CIVIL JUDGMENT.—An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

(d) ACTIVITIES OF LAW ENFORCEMENT.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.

(Added Pub. L. 108–458, title VI, § 6702(a), Dec. 17, 2004, 118 Stat. 3764.)

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

(a) CRIMINAL VIOLATION.—Whoever, in interstate or foreign commerce, knowingly and intentionally obtains, or attempts to obtain, confidential phone records information of a covered entity, by—

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

(2) making such false or fraudulent statements or representations to a customer of a covered entity;

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

(4) accessing customer accounts of a covered entity via the Internet, or by means of conduct that violates section 1030 of this title, without prior authorization from the customer to whom such confidential phone records information relates;

shall be fined under this title, imprisoned for not more than 10 years, or both.

**(b) PROHIBITION ON SALE OR TRANSFER OF CONFIDENTIAL PHONE RECORDS INFORMATION.—**

(1) Except as otherwise permitted by applicable law, whoever, in interstate or foreign commerce, knowingly and intentionally sells or transfers, or attempts to sell or transfer, confidential phone records information of a covered entity, without prior authorization from the customer to whom such confidential phone records information relates, or knowing or having reason to know such information was obtained fraudulently, shall be fined under this title, imprisoned not more than 10 years, or both.

(2) For purposes of this subsection, the exceptions specified in section 222(d) of the Communications Act of 1934 shall apply for the use of confidential phone records information by any covered entity, as defined in subsection (h).

**(c) PROHIBITION ON PURCHASE OR RECEIPT OF CONFIDENTIAL PHONE RECORDS INFORMATION.—**

(1) Except as otherwise permitted by applicable law, whoever, in interstate or foreign commerce, knowingly and intentionally purchases or receives, or attempts to purchase or receive, confidential phone records information of a covered entity, without prior authorization from the customer to whom such confidential phone records information relates, or knowing or having reason to know such information was obtained fraudulently, shall be fined under this title, imprisoned not more than 10 years, or both.

(2) For purposes of this subsection, the exceptions specified in section 222(d) of the Communications Act of 1934 shall apply for the use of confidential phone records information by any covered entity, as defined in subsection (h).

(d) ENHANCED PENALTIES FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, subsection (a), (b), or (c) while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000, or more than 50 customers of a covered entity, in a 12-month period shall, in addition to the penalties provided for in such subsection, be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of this title, imprisoned for not more than 5 years, or both.

**(e) ENHANCED PENALTIES FOR USE OF INFORMATION IN FURTHERANCE OF CERTAIN CRIMINAL OFFENSES.—**

(1) Whoever, violates, or attempts to violate, subsection (a), (b), or (c) knowing that such information may be used in furtherance of, or with the intent to commit, an offense described in section 2261, 2261A, 2262, or any other crime of violence shall, in addition to the penalties provided for in such subsection, be fined under this title and imprisoned not more than 5 years.

(2) Whoever, violates, or attempts to violate, subsection (a), (b), or (c) knowing that such information may be used in furtherance of, or with the intent to commit, an offense under section 111, 115, 1114, 1503, 1512, 1513, or to intimidate, threaten, harass, injure, or kill any