

Calendar No. 134

110TH CONGRESS }
1st Session }

SENATE

{ REPORT
110-61

TERRORIST HOAX IMPROVEMENTS ACT OF 2007

MAY 4, 2007.—Ordered to be printed

Mr. LEAHY, Chairman of the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 735]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 735), to amend title 18, United States Code, to improve the terrorism hoax statute, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

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I. PURPOSE OF THE TERRORIST HOAX IMPROVEMENTS ACT OF 2007

The purpose of this legislation is to extend the prohibition against conveying false information or hoaxes relating to any federal crime of terrorism and increase maximum prison terms for hoaxes involving a member of the Armed Forces during war. The bill also allows a civil remedy for federal, state and local governments that incur damages resulting from hoaxes perpetrated by an individual who engages in conduct that has the effect of conveying false or misleading information, resulting in an emergency response, but then knowingly fails to provide accurate information to investigating authorities about the actual nature of the incident. Finally, the bill contains a technical provision to extend the prohi-

bition against mailing threatening communications to include corporations or governmental entities (as well as individuals).

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

The Terrorist Hoax Improvements Act of 2007, S. 735, is a bipartisan measure introduced on April 12, 2007, by Senator Kennedy, Senator Coleman and Senator Kyl. Chairman Leahy, Senator Schumer, Senator Grassley and Senator Cornyn also joined the bill as cosponsors.

The Act builds on the first federal terrorist-hoax statute, which was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458. The purpose of the anti-hoax provision was to establish definitions and serious penalties to deal with the serious problem of hoax crimes. Events since then have proven the need for additional authority. A significant number of prosecutions have taken place of individuals who disrupt communities with terrorist hoaxes; nevertheless, a disturbing pattern has developed involving circumstances not covered by the original law. Such hoaxes have seriously disrupted many lives and needlessly diverted law enforcement and emergency services resources.

On September 13, 2004, the Senate Judiciary Subcommittee on Terrorism, Technology and Homeland Security held a hearing where witnesses testified about the need for strong federal laws to punish hoaxes about terrorist threats. At the hearing, the Justice Department commented on the harm caused by false information and terrorist hoaxes, noting in its testimony:

Since September 11, hoaxes have seriously disrupted people's lives and needlessly diverted law-enforcement and emergency-services resources. In the wake of the anthrax attacks in the fall of 2001, for example, a number of individuals mailed unidentified white powder, intending for the recipient to believe it was anthrax. Many people were inconvenienced, and emergency responders were forced to waste a great deal of time and effort. Similarly, in a time when those in uniform are making tremendous sacrifices for the country, several people have received hoax phone calls reporting the death of a loved one serving in Iraq or Afghanistan.

The current federal statute punishes hoaxes involving an unduly restricted list of terrorist offenses. For example, the list does not include hoaxes related to the taking of hostages in order to coerce the Federal Government (18 U.S.C. 1203), hoaxes related to blowing up an energy facility (18 U.S.C. 1366(a)), hoaxes related to attacks on military bases aimed at undermining national defense (18 U.S.C. 2156), or hoaxes related to attacks on railways and mass transportation facilities, such as the recent London bombings (18 U.S.C. 1992-93). The Terrorist Hoax Improvements Act of 2007 fills the gaps in current law by expanding the hoax statute to punish hoaxes involving any offense included on the official list of federal terrorist offenses, contained in 18 U.S.C. 2332b(g)(5)(B).

As Senator Kennedy stated in introducing the bill, "It's unconscionable in this post-9/11 world for anyone to be perpetrating hoaxes that cause panic and drain already limited public safety re-

sources. Hopefully, this bill will fulfill its purpose of preventing the false alarms that can be so disruptive of our families and our communities in these difficult and dangerous times.”

In addition, the bill increases the maximum penalties for hoaxes about the death or injury of a U.S. soldier during wartime from 5 years under current law to 10 years under S. 735, and from 20 years to 25 years where bodily injury results. The bill also expands existing civil liability provisions to allow first responders and others to seek reimbursement from a party who engages in conduct that results in an emergency response, becomes aware that first responders believe that a terrorist offense is taking place, but fails to inform authorities that no such event has occurred. Finally, the bill clarifies that threatening communications are punishable under federal law even if they are directed at an organization rather than a natural person.

The Terrorist Hoax Improvements Act of 2007 was first listed on the Judiciary Committee’s agenda on Thursday, April 12, 2007, and the Committee adopted an amendment in the nature of a substitute to the bill without objection. There were no further amendments offered to the bill. By unanimous consent, the Committee ordered S. 735 to be reported favorably on April 25, 2007.

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1

This section states that the short title of the bill is the “Terrorist Hoax Improvements Act of 2007.”

Section 2

This section expands 18 U.S.C. 1038, the terrorism hoax statute, so that it punishes hoaxes about any terrorist offense listed in 2332b(g)(5)(B) of Title 18. In addition, the bill increases the maximum penalties for hoaxes about the death or injury of a U.S. soldier during wartime. The bill also expands existing civil liability provisions to allow first responders and other emergency personnel to seek reimbursement from a party who perpetrates a hoax and becomes aware that first responders believe that a terrorist offense is taking place, but fails to inform authorities that no such event has occurred. Finally, the bill clarifies that threatening communications are punishable under federal law even if they are directed at an organization rather than a natural person.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S.735—Terrorist Hoax Improvements Act of 2007

CBO estimates that implementing S. 735 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues, but CBO estimates that any such effects would not be significant. S. 735 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 735 would broaden the coverage of current laws against the perpetration of hoaxes and would increase the penalties for certain offenses involving false statements. Thus, the government would be

able to pursue cases that it otherwise would not be able to prosecute. We expect that S. 735 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 S. 735 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases affected.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 735.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 735, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * *

PART I—CRIMES, CHAPTER 47—FRAUD AND FALSE STATEMENTS

SEC. 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, or any other offense listed under section 2332b(g)(5)(B) of this title, 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] 10 years, or both;

(B) if serious bodily injury results, shall be fined under this title, imprisoned not more than [20 years] 25 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 an offense listed under subsection a(1) is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.*

(2) EFFECT OF CONDUCT—

(A) IN GENERAL—*A person described in subparagraph (B) is liable in a civil action to any party described in subparagraph (B)(ii) for any expenses that are incurred by that party—*

(i) incident to any emergency or investigative response to any conduct described in subparagraph (B)(i); and

(ii) after the person that engaged in that conduct should have informed the party of the actual nature of the activity.

(B) APPLICABILITY—*A person described in this subparagraph is any person that—*

(i) engages in any conduct that has the effect of conveying false or misleading information under circumstances where such information may reasonably be believed to indicate that an activity is taking place that would constitute an offense listed under subsection (a)(1);

(ii) receives actual notice that another party is taking emergency or investigative action because that party believes that an activity has taken, is taking, or will take place that would constitute an offense listed under subsection (a)(1); and

(iii) after receiving such notice, fails to promptly and reasonably inform 1 or more parties described in clause (ii) of the actual nature of the activity.

(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.

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES, CHAPTER 47—FRAUD AND FALSE STATEMENTS

CHAPTER 42—EXTORTION AND CREDIT TRANSACTIONS

SEC. 877. MAILING THREATENING COMMUNICATIONS FROM FOREIGN COUNTRY

Whoever knowingly deposits in any post office or authorized depository for mail matter of any foreign country any communication addressed to any person within the United States, for the purpose of having such communication delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits as aforesaid, any communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

For purposes of this section, the term “addressed to any person” includes an individual, a corporation or other legal person, and a government or agency or component thereof.

VII. CONCLUSION

The Terrorist Hoax Improvements Act of 2007, S. 735, is a narrowly tailored bipartisan measure to improve current law relating to hoaxes about terrorist threats. It also strengthens and expands criminal penalties to punish hoaxes about the death, injury, capture or disappearance of members of the Armed Forces of the United States. Its provisions will ensure that adequate penalties are available to punish those who perpetrate hoaxes that cause costly disruptions in our communities and drain already limited public resources.

