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105TH CONGRESS
1ST SESSION

# S. 493

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 12, 1997
Referred to the Committee on the Judiciary

# AN ACT

To amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Wireless Telephone Protection Act".

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**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 for altering or modifying a telecommunications instrument so that such instrument may be used to obtain unauthorized access to telecommunications services; or".

(b) PENALTIES.—

(1) GENERALLY.—Section 1029(c) of title 18, United States Code, is amended to read as follows:

"(c) PENALTIES.—(1) IN GENERAL.—The punishment for an offense under subsection (a) is—

"(A) in the case of an offense that does not occur after a conviction for another offense under this section, which conviction has become final—



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"(i) if the offense is under paragraph (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 (1), (2), (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, which conviction has become final, a fine under this title or imprisonment for not more than 20 years, or both; and

"(C) in any case, in addition to any other punishment imposed or any other forfeiture required by law, forfeiture to the United States of any personal property used or intended to be used to commit, facilitate, or promote the commission of the offense.

"(2) APPLICABLE PROCEDURE.—The criminal forfeiture of personal property subject to forfeiture under paragraph (1)(C), any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by subsections (c) and (e) through (p) of section 413 of the Controlled Substances Act (21 U.S.C. 853).".



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(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) DEFINITION OF SCANNING RECEIVER.—Section 1029(e) of title 18, United States Code, is amended—

(1) in paragraph (6), by striking "and" at the end;

(2) in paragraph (7)—

(A) by striking "The" and inserting "the"; and

(B) by striking the period at the end and inserting a semicolon; and

(3) in paragraph (8), by striking the period at the end and inserting "or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument; and".

(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) It is not a violation of subsection (a)(9) for an officer, employee, or agent of, or a person under contract



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with, a facilities-based carrier, for the purpose of protecting the property or legal rights of that carrier, to use, produce, have custody or control of, or possess hardware or software configured as described in that subsection (a)(9): *Provided,* That if such hardware or software is used to obtain access to telecommunications service provided by another facilities-based carrier, such access is authorized.".

(2) DEFINITION OF FACILITIES-BASED CARRIER.—Section 1029(e) of title 18, United States Code, as amended by subsection (c) of this section, is amended by adding at the end the following:

"(9) 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.".

(c) 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 ap-



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propriate, 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 impose a sentence in excess of 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



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have been constrained by statutory maximum penalties;

(F) 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;

(G) the relationship of Federal sentencing guidelines for the offenses to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(H) any other factors that the Commission considers to be appropriate.

Passed the Senate November 10, 1997.

Attest: GARY SISCO,

*Secretary.*



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