

# HEINONLINE

Citation: 1 Wireless Telephone Protection Act P.L. 105-172 112  
53 April 24 1998 1 1998

Content downloaded/printed from  
HeinOnline (<http://heinonline.org>)  
Mon Apr 8 17:25:42 2013

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.

## Union Calendar No. 239

105TH CONGRESS  
2D SESSION

# H. R. 2460

[Report No. 105-418]

To amend title 18, United States Code, with respect to scanning receivers and similar devices.

---

### IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 1997

Mr. SAM JOHNSON of Texas (for himself, Mr. McCOLLUM, Mr. SCUMER, Mr. NORWOOD, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

FEBRUARY 24, 1998

Additional sponsors: Mr. GEKAS, Mr. WYNN, Mr. HUTCHINSON, Mr. MEEHAN, and Mr. SESSIONS

FEBRUARY 24, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on September 11, 1997]

---

## A BILL

To amend title 18, United States Code, with respect to scanning receivers and similar devices.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Wireless Telephone Pro-*  
3 *tection Act”.*

4 **SEC. 2. FRAUD AND RELATED ACTIVITY IN CONNECTION**  
5 **WITH COUNTERFEIT ACCESS DEVICES.**

6 (a) *UNLAWFUL ACTS.—Section 1029(a) of title 18,*  
7 *United States Code, is amended—*

8 (1) *by redesignating paragraph (9) as para-*  
9 *graph (10); and*

10 (2) *by striking paragraph (8) and inserting the*  
11 *following:*

12 “(8) *knowingly and with intent to defraud uses,*  
13 *produces, traffics in, has control or custody of, or pos-*  
14 *sesses a scanning receiver;*

15 “(9) *knowingly uses, produces, traffics in, has*  
16 *control or custody of, or possesses hardware or soft-*  
17 *ware, knowing it has been configured for altering or*  
18 *modifying a telecommunications instrument so that*  
19 *such instrument may be used to obtain unauthorized*  
20 *access to telecommunications services; or”.*

21 (b) *PENALTIES.—*

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

24 “(c) *PENALTIES.—The punishment for an offense*  
25 *under subsection (a) of this section is—*

1           “(1) in the case of an offense that does not occur  
2           after a conviction for another offense under this sec-  
3           tion—

4                   “(A) if the offense is under paragraph (1),  
5                   (2), (3), (6), (7), or (10) of subsection (a), a fine  
6                   under this title or imprisonment for not more  
7                   than 10 years, or both; and

8                   “(B) if the offense is under paragraph (4),  
9                   (5), (8), or (9), of subsection (a), a fine under  
10                  this title or imprisonment for not more than 15  
11                  years, or both; and

12                  “(2) in the case of an offense that occurs after a  
13                  conviction for another offense under this section, a  
14                  fine under this title or imprisonment for not more  
15                  than 20 years, or both.”.

16                  (2) *ATTEMPTS.*—Section 1029(b)(1) of title 18,  
17                  United States Code, is amended by striking “pun-  
18                  ished as provided in subsection (c) of this section”  
19                  and inserting “subject to the same penalties as those  
20                  prescribed for the offense attempted”.

21                  (c) *DEFINITIONS.*—Section 1029(e)(8) of title 18,  
22                  United States Code, is amended by inserting before the pe-  
23                  riod “or to intercept an electronic serial number, mobile  
24                  identification number, or other identifier of any tele-  
25                  communications service, equipment, or instrument”.

1       (d) *APPLICABILITY OF NEW SECTION 1029(a)(9).*—

2           (1) *IN GENERAL.*—Section 1029 of title 18,  
3       United States Code, is amended by adding at the end  
4       the following:

5       “(g) It is not a violation of subsection (a)(9) for an  
6       officer, employee, or agent of, or a person under contract  
7       with, a facilities-based carrier, for the purpose of protecting  
8       the property or legal rights of that carrier, to use, produce,  
9       have custody or control of, or possess hardware or software  
10      configured as described in that subsection (a)(9).”.

11           (2) *DEFINITION.*—Section 1029(e) of title 18,  
12      United States Code is amended—

13           (A) by striking “and” at the end of para-  
14      graph (6);

15           (B) by striking the period at the end of  
16      paragraph (7) and inserting a semicolon;

17           (C) by striking the period at the end of  
18      paragraph (8) and inserting “; and”; and

19           (D) by adding at the end the following:

20           “(9) the term ‘facilities-based carrier’ means an  
21      entity that owns communications transmission facili-  
22      ties, is responsible for the operation and maintenance  
23      of those facilities, and holds an operating license  
24      issued by the Federal Communications Commission

1        *under the authority of title III of the Communica-*  
2        *tions Act of 1934.”.*

3        *(e) AMENDMENT OF FEDERAL SENTENCING GUIDE-*  
4        *LINES FOR WIRELESS TELEPHONE CLONING.—*

5            *(1) IN GENERAL.—Pursuant to its authority*  
6        *under section 994 of title 28, United States Code, the*  
7        *United States Sentencing Commission shall review*  
8        *and amend the Federal sentencing guidelines and the*  
9        *policy statements of the Commission, if appropriate,*  
10       *to provide an appropriate penalty for offenses involv-*  
11       *ing the cloning of wireless telephones (including of-*  
12       *fenses involving an attempt or conspiracy to clone a*  
13       *wireless telephone).*

14           *(2) FACTORS FOR CONSIDERATION.—In carrying*  
15       *out this subsection, the Commission shall consider,*  
16       *with respect to the offenses described in paragraph*  
17       *(1)—*

18                *(A) the range of conduct covered by the of-*  
19        *fenses;*

20                *(B) the existing sentences for the offenses;*

21                *(C) the extent to which the value of the loss*  
22        *caused by the offenses (as defined in the Federal*  
23        *sentencing guidelines) is an adequate measure*  
24        *for establishing penalties under the Federal sen-*  
25        *tencing guidelines;*

1           (D) the extent to which sentencing enhance-  
2           ments within the Federal sentencing guidelines  
3           and the court's authority to sentence above the  
4           applicable guideline range are adequate to en-  
5           sure punishment at or near the maximum pen-  
6           alty for the most egregious conduct covered by  
7           the offenses;

8           (E) the extent to which the Federal sentenc-  
9           ing guideline sentences for the offenses have been  
10          constrained by statutory maximum penalties;

11          (F) the extent to which Federal sentencing  
12          guidelines for the offenses adequately achieve the  
13          purposes of sentencing set forth in section  
14          3553(a)(2) of title 18, United States Code;

15          (G) the relationship of Federal sentencing  
16          guidelines for the offenses to the Federal sentenc-  
17          ing guidelines for other offenses of comparable se-  
18          riousness; and

19          (H) any other factor that the Commission  
20          considers to be appropriate.





