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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.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wireless Telephone
5 Protection Act”.

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

3 (a) UNLAWFUL ACTS.—Section 1029(a) of title 18,
4 United States Code, is amended—

5 (1) by redesignating paragraph (9) as para-
6 graph (10); and

7 (2) by striking paragraph (8) and inserting the
8 following:

9 “(8) knowingly and with intent to defraud uses,
10 produces, traffics in, has control or custody of, or
11 possesses a scanning receiver;

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

18 (b) PENALTIES.—

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

21 “(c) PENALTIES.—(1) IN GENERAL.—The punish-
22 ment for an offense under subsection (a) is—

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

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

5 “(ii) if the offense is under paragraph (1),
6 (2), (4), (5), (8), or (9), of subsection (a), a
7 fine under this title or imprisonment for not
8 more than 15 years, or both;

9 “(B) in the case of an offense that occurs after
10 a conviction for another offense under this section,
11 which conviction has become final, a fine under this
12 title or imprisonment for not more than 20 years, or
13 both; and

14 “(C) in any case, in addition to any other pun-
15 ishment imposed or any other forfeiture required by
16 law, forfeiture to the United States of any personal
17 property used or intended to be used to commit, fa-
18 cilitate, or promote the commission of the offense.

19 “(2) APPLICABLE PROCEDURE.—The criminal for-
20 feiture of personal property subject to forfeiture under
21 paragraph (1)(C), any seizure and disposition thereof, and
22 any administrative or judicial proceeding in relation there-
23 to, shall be governed by subsections (c) and (e) through
24 (p) of section 413 of the Controlled Substances Act (21
25 U.S.C. 853).”.

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

6 (c) DEFINITION OF SCANNING RECEIVER.—Section
7 1029(e) of title 18, United States Code, is amended—

8 (1) in paragraph (6), by striking “and” at the
9 end;

10 (2) in paragraph (7)—

11 (A) by striking “The” and inserting “the”;

12 and

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

15 (3) in paragraph (8), by striking the period at
16 the end and inserting “or to intercept an electronic
17 serial number, mobile identification number, or other
18 identifier of any telecommunications service, equip-
19 ment, or instrument; and”.

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

21 (1) IN GENERAL.—Section 1029 of title 18,
22 United States Code, is amended by adding at the
23 end the following:

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

1 with, a facilities-based carrier, for the purpose of protect-
 2 ing the property or legal rights of that carrier, to use,
 3 produce, have custody or control of, or possess hardware
 4 or software configured as described in that subsection
 5 (a)(9): *Provided*, That if such hardware or software is
 6 used to obtain access to telecommunications service pro-
 7 vided by another facilities-based carrier, such access is au-
 8 thorized.”.

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

13 “(9) the term ‘facilities-based carrier’ means an en-
 14 tity that owns communications transmission facilities, is
 15 responsible for the operation and maintenance of those fa-
 16 cilities, and holds an operating license issued by the Fed-
 17 eral Communications Commission under the authority of
 18 title III of the Communications Act of 1934.”.

19 (c) AMENDMENT OF FEDERAL SENTENCING GUIDE-
 20 LINES FOR WIRELESS TELEPHONE CLONING.—

21 (1) IN GENERAL.—Pursuant to its authority
 22 under section 994 of title 28, United States Code,
 23 the United States Sentencing Commission shall re-
 24 view and amend the Federal sentencing guidelines
 25 and the policy statements of the Commission, if ap-

1 appropriate, to provide an appropriate penalty for of-
2 fenses involving the cloning of wireless telephones
3 (including offenses involving an attempt or conspir-
4 acy to clone a wireless telephone).

5 (2) FACTORS FOR CONSIDERATION.—In carry-
6 ing out this subsection, the Commission shall con-
7 sider, with respect to the offenses described in para-
8 graph (1)—

9 (A) the range of conduct covered by the of-
10 fenses;

11 (B) the existing sentences for the offenses;

12 (C) the extent to which the value of the
13 loss caused by the offenses (as defined in the
14 Federal sentencing guidelines) is an adequate
15 measure for establishing penalties under the
16 Federal sentencing guidelines;

17 (D) the extent to which sentencing en-
18 hancements within the Federal sentencing
19 guidelines and the court's authority to impose a
20 sentence in excess of the applicable guideline
21 range are adequate to ensure punishment at or
22 near the maximum penalty for the most egre-
23 gious conduct covered by the offenses;

24 (E) the extent to which the Federal sen-
25 tencing guideline sentences for the offenses

1 have been constrained by statutory maximum
2 penalties;

3 (F) the extent to which Federal sentencing
4 guidelines for the offenses adequately achieve
5 the purposes of sentencing set forth in section
6 3553(a)(2) of title 18, United States Code;

7 (G) the relationship of Federal sentencing
8 guidelines for the offenses to the Federal sen-
9 tencing guidelines for other offenses of com-
10 parable seriousness; and

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

Passed the Senate November 10, 1997.

Attest:

GARY SISCO,
Secretary.

