

105TH CONGRESS
2^D SESSION

S. 493

AMENDMENTS

In the House of Representatives, U. S.,

February 26, 1998.

Resolved, That the bill from the Senate (S. 493) entitled “An Act to amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia”, do pass with the following

AMENDMENTS:

Strike out all after the enacting clause and insert:

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;*

1 “(9) knowingly uses, produces, traffics in, has
 2 control or custody of, or possesses hardware or soft-
 3 ware, knowing it has been configured to insert or
 4 modify telecommunication identifying information
 5 associated with or contained in a telecommunications
 6 instrument so that such instrument may be used to
 7 obtain telecommunications service without authoriza-
 8 tion; or”.

9 (b) PENALTIES.—

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

12 “(c) PENALTIES.—

13 “(1) GENERALLY.—The punishment for an of-
 14 fense under subsection (a) of this section is—

15 “(A) in the case of an offense that does not
 16 occur after a conviction for another offense under
 17 this section—

18 “(i) if the offense is under paragraph
 19 (1), (2), (3), (6), (7), or (10) of subsection
 20 (a), a fine under this title or imprisonment
 21 for not more than 10 years, or both; and

22 “(ii) if the offense is under paragraph
 23 (4), (5), (8), or (9), of subsection (a), a fine
 24 under this title or imprisonment for not
 25 more than 15 years, or both;

1 “(B) in the case of an offense that occurs
2 after a conviction for another offense under this
3 section, a fine under this title or imprisonment
4 for not more than 20 years, or both; and

5 “(C) in either case, forfeiture to the United
6 States of any personal property used or intended
7 to be used to commit the offense.

8 “(2) *FORFEITURE PROCEDURE.*—The forfeiture
9 of property under this section, including any seizure
10 and disposition of the property and any related ad-
11 ministrative and judicial proceeding, shall be gov-
12 erned by section 413 of the Controlled Substances Act,
13 except for subsection (d) of that section.”.

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

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

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

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

4 “(g)(1) *It is not a violation of subsection (a)(9) for*
 5 *an officer, employee, or agent of, or a person engaged in*
 6 *business with, a facilities-based carrier, to engage in con-*
 7 *duct (other than trafficking) otherwise prohibited by that*
 8 *subsection for the purpose of protecting the property or legal*
 9 *rights of that carrier, unless such conduct is for the purpose*
 10 *of obtaining telecommunications service provided by an-*
 11 *other facilities-based carrier without the authorization of*
 12 *such carrier.*

13 “(2) *In a prosecution for a violation of subsection*
 14 *(a)(9), (other than a violation consisting of producing or*
 15 *trafficking) it is an affirmative defense (which the defend-*
 16 *ant must establish by a preponderance of the evidence) that*
 17 *the conduct charged was engaged in for research or develop-*
 18 *ment in connection with a lawful purpose.”.*

19 (2) *DEFINITIONS.*—Section 1029(e) of title 18,
 20 *United States Code is amended—*

21 (A) *by striking “and” at the end of para-*
 22 *graph (6);*

23 (B) *by striking the period at the end of*
 24 *paragraph (7) and inserting a semicolon; and*

1 (C) by striking the period at the end of
2 paragraph (8); and

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

4 “(9) the term ‘telecommunications service’ has
5 the meaning given such term in section 3 of title I
6 of the Communications Act of 1934 (47 U.S.C. 153);

7 “(10) the term ‘facilities-based carrier’ means an
8 entity that owns communications transmission facili-
9 ties, is responsible for the operation and maintenance
10 of those facilities, and holds an operating license
11 issued by the Federal Communications Commission
12 under the authority of title III of the Communica-
13 tions Act of 1934; and

14 “(11) the term ‘telecommunication identifying
15 information’ means electronic serial number or any
16 other number or signal that identifies a specific tele-
17 communications instrument or account, or a specific
18 communication transmitted from a telecommuni-
19 cations instrument.”.

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

22 (1) *IN GENERAL.—*Pursuant to its authority
23 under section 994 of title 28, United States Code, the
24 United States Sentencing Commission shall review
25 and amend the Federal sentencing guidelines and the

1 *policy statements of the Commission, if appropriate,*
2 *to provide an appropriate penalty for offenses involv-*
3 *ing the cloning of wireless telephones (including of-*
4 *fenses involving an attempt or conspiracy to clone a*
5 *wireless telephone).*

6 (2) *FACTORS FOR CONSIDERATION.*—*In carrying*
7 *out this subsection, the Commission shall consider,*
8 *with respect to the offenses described in paragraph*
9 (1)—

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

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

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

18 (D) *the extent to which sentencing enhance-*
19 *ments within the Federal sentencing guidelines*
20 *and the court's authority to sentence above the*
21 *applicable guideline range are adequate to en-*
22 *sure punishment at or near the maximum pen-*
23 *alty for the most egregious conduct covered by*
24 *the offenses;*

1 (E) the extent to which the Federal sentenc-
2 ing guideline sentences for the offenses have been
3 constrained by statutory maximum penalties;

4 (G) the extent to which Federal sentencing
5 guidelines for the offenses adequately achieve the
6 purposes of sentencing set forth in section
7 3553(a)(2) of title 18, United States Code;

8 (H) the relationship of Federal sentencing
9 guidelines for the offenses to the Federal sentenc-
10 ing guidelines for other offenses of comparable se-
11 riousness; and

12 (I) any other factor that the Commission
13 considers to be appropriate.

Amend the title so as to read “An Act to amend title
18, United States Code, with respect to scanning receivers
and similar devices.”.

Attest:

Clerk.