

**Calendar No. 167**

105<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 493**

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**A BILL**

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

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SEPTEMBER 18, 1997

Reported with an amendment

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## IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Mr. KYL (for himself, Mr. GORTON, Mr. DEWINE, Mr. HELMS, Mr. LOTT, Mr. DORGAN, Mr. THURMOND, Ms. MIKULSKI, Mr. DURBIN, and Mr. CLELAND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 18, 1997

Reported by Mr. HATCH, with an amendment

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

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## A BILL

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 “Cellular 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) in paragraph (7), by striking “use of” and  
6 inserting “access to”;

7 (2) by redesignating paragraph (9) as para-  
8 graph (10); and

9 (3) by striking paragraph (8) and inserting the  
10 following:

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

14 “(9) knowingly uses, produces, traffics in, has  
15 control or custody of, or possesses hardware or soft-  
16 ware that may be used for—

17 “(A) modifying or copying an electronic se-  
18 rial number; or

19 “(B) altering or modifying a telecommuni-  
20 cations instrument so that the instrument may  
21 be used to obtain unauthorized access to tele-  
22 communications services; or”.

23 (b) **PENALTIES.**—Section 1029(e) of title 18, United  
24 States Code, is amended to read as follows:

25 “(e) **PENALTIES.**—The punishment for an offense  
26 under subsection (a) or (b)(1) is—

1           “(1) in the case of an offense that does not  
2 occur after a conviction for another offense under  
3 subsection (a) or (b)(1), or an attempt to commit an  
4 offense punishable under subsection (a) or (b)(1), a  
5 fine under this title or twice the value obtained by  
6 the offense, whichever is greater, imprisonment for  
7 not more than 15 years, or both; and

8           “(2) in the case of an offense that occurs after  
9 a conviction for another offense under subsection (a)  
10 or (b)(1), or an attempt to commit an offense pun-  
11 ishable under subsection (a) or (b)(1), a fine under  
12 this title or twice the value obtained by the offense,  
13 whichever is greater, imprisonment for not more  
14 than 20 years, or both.”.

15       (c) DEFINITION OF SCANNING RECEIVER.—Section  
16 1029(e)(8) of title 18, United States Code, is amended  
17 by inserting before the period at the end the following:  
18 “or any electronic serial number, mobile identification  
19 number, personal identification number, or other identifier  
20 of any telecommunications service, equipment, or instru-  
21 ment”.

22       (d) EXCEPTION FOR CERTAIN TELECOMMUNI-  
23 CATIONS SERVICES PROVIDERS.—Section 1029 of title 18,  
24 United States Code, is amended by adding at the end the  
25 following:

1       “(g) EXCEPTION FOR CERTAIN TELECOMMUNI-  
2       CATIONS SERVICES PROVIDERS.—

3               “(1) DEFINITIONS.—In this subsection, the  
4       term ‘telecommunications carrier’ has the same  
5       meaning as in section 3 of the Communications Act  
6       of 1934 (47 U.S.C. 153).

7               “(2) PERMISSIBLE ACTIVITIES.—This section  
8       does not prohibit any telecommunications carrier, or  
9       an officer, agent, or employee of, or a person under  
10      contract with a telecommunications carrier, engaged  
11      in protecting any property or legal right of the tele-  
12      communications carrier, from sending through the  
13      mail, sending or carrying in interstate or foreign  
14      commerce, having control or custody of, or possess-  
15      ing, manufacturing, assembling, or producing any  
16      otherwise unlawful—

17               “(A) device-making equipment, scanning  
18      receiver, or access device; or

19               “(B) hardware or software used for—

20               “(i) modifying or altering an elec-  
21      tronic serial number; or

22               “(ii) altering or modifying a tele-  
23      communications instrument so that the in-  
24      strument may be used to obtain unauthor-

1            ized access to telecommunications serv-  
 2            ices.”.

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

12            (2) *by striking paragraph (8) and inserting the*  
 13 *following:*

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

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

23            (b) *PENALTIES.*—

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

1       “(c) *PENALTIES.*—*The punishment for an offense*  
 2 *under subsection (a) section is—*

3               “(1) *in the case of an offense that does not occur*  
 4 *after a conviction for another offense under this sec-*  
 5 *tion that has become final and that was committed on*  
 6 *a separate prior occasion.*

7               “(A) *if the offense is under paragraph (2),*  
 8 *(3), (6), (7), or (10) of subsection (a), a fine*  
 9 *under this title or imprisonment for not more*  
 10 *than 10 years, or both; and*

11              “(B) *if the offense is under paragraph (1),*  
 12 *(4), (5), (8), or (9), of subsection (a), a fine*  
 13 *under this title or imprisonment for not more*  
 14 *than 15 years, or both; and*

15              “(2) *in the case of an offense that occurs after a*  
 16 *conviction for another offense under this section, that*  
 17 *has become final and that was committed on a sepa-*  
 18 *rate prior occasion, that has a fine under this title or*  
 19 *imprisonment for not more than 20 years, or both.”.*

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

1       (c) *DEFINITION OF SCANNING RECEIVER.*—Section  
2 1029(e) of title 18, United States Code, is amended—

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

5           (2) in paragraph (7)—

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

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

10          (3) in paragraph (8), by striking the period at  
11 the end and inserting “or to intercept an electronic  
12 serial number, mobile identification number, or other  
13 identifier of any telecommunications service, equip-  
14 ment, or instrument; and”.

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

16           (1) *IN GENERAL.*—Section 1029 of title 18, Unit-  
17 ed States Code, is amended by adding at the end the  
18 following:

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

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

5           “*(9) the term ‘facilities-based carrier’ means an entity*  
 6           *that owns communications transmission facilities, is re-*  
 7           *sponsible for the operation and maintenance of those facili-*  
 8           *ties, and holds an operating license issued by the Federal*  
 9           *Communications Commission under the authority of title*  
 10          *III of the Communications Act of 1934.”.*

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

13           (1) *IN GENERAL.—Pursuant to its authority*  
 14           *under section 994 of title 28, United States Code, the*  
 15           *United States Sentencing Commission shall review*  
 16           *and amend the Federal sentencing guidelines and the*  
 17           *policy statements of the Commission, if appropriate,*  
 18           *to provide an appropriate penalty for offenses involv-*  
 19           *ing the cloning of wireless telephones (including of-*  
 20           *fenses involving an attempt or conspiracy to clone a*  
 21           *wireless telephone).*

22           (2) *FACTORS FOR CONSIDERATION.—In carrying*  
 23           *out this subsection, the Commission shall consider,*  
 24           *with respect to the offenses described in paragraph*  
 25           *(1)—*

1           (A) the range of conduct covered by the of-  
2           fenses;

3           (B) the existing sentences for the offenses;

4           (C) the extent to which the value of the loss  
5           caused by the offenses (as defined in the Federal  
6           sentencing guidelines) is an adequate measure  
7           for establishing penalties under the Federal sen-  
8           tencing guidelines;

9           (D) the extent to which sentencing enhance-  
10          ments within the Federal sentencing guidelines  
11          and the court's authority to impose a sentence in  
12          excess of the applicable guideline range are ade-  
13          quate to ensure punishment at or near the maxi-  
14          mum penalty for the most egregious conduct cov-  
15          ered by the offenses;

16          (E) the extent to which the Federal sentenc-  
17          ing guideline sentences for the offenses have been  
18          constrained by statutory maximum penalties;

19          (F) the extent to which Federal sentencing  
20          guidelines for the offenses adequately achieve the  
21          purposes of sentencing set forth in section  
22          3553(a)(2) of title 18, United States Code;

23          (G) the relationship of Federal sentencing  
24          guidelines for the offenses to the Federal sentenc-

1            *ing guidelines for other offenses of comparable se-*  
2            *riousness; and*  
3            *(H) any other factors that the Commission*  
4            *considers to be appropriate.*