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Citation: 1 Wireless Telephone Protection Act P.L. 105-172 112
53 April 24 1998 S2655 1998

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S. 493

It would not be necessary to introduce this legislation today had OPM taken the corrective action that, in my view, is so clearly warranted. However, I have determined that legislation appears to be the only vehicle to achieve the necessary changes in the pay system for Federal firefighters.

Mr. President, the Firefighter Pay Fairness Act would improve Federal firefighter pay in several important and straightforward ways. Perhaps most importantly, the bill draws from existing provisions in title V to calculate a true hourly rate for firefighters. This would alleviate the current problem of firefighters being paid considerably less than other General Schedule employees at the same GS level. It would also account for the varying length in the tour of duty for Federal firefighters stationed at different locations.

In addition, the bill would use this hourly rate to ensure that firefighters receive true time and one-half overtime for hours worked over 106 in a biweekly pay period. This is designed to correct the problem, under the current system, where the overtime rate is calculated based on an hourly rate considerably less than base pay.

The Firefighter Pay Fairness Act would also extend these pay provisions to so-called wildland firefighters when they are engaged in firefighting duties. Currently, wildland firefighters are often not compensated for all the time spent responding to a fire event. This legislation would ensure that these protectors of our parks and forests would be paid fairly for ensuring the safety of these invaluable national resources.

It also ensures that firefighters promoted to supervisory positions would be paid at a rate of pay at least equal to what they received before the promotion. This would address a situation, under the current pay system, which discourages employees from accepting promotions because of the significant loss of pay which often accompanies a move to a supervisory position.

Similarly, the bill would encourage employees to get the necessary training in hazardous materials, emergency medicine, and other critical areas by ensuring they do not receive a pay cut while engaged in these training activities.

Mr. President, this legislation is based upon a bill I authorized in the 103d Congress. A bipartisan group of more than 150 Members cosponsored the measure in the Senate and the House last year. The legislation I am introducing today reflects several modifications that were suggested to the bill following substantial discussions with various Members. However, it is identical to the so-called compromise measure that has been discussed with the authorizing as well as the appropriations committees in previous years and received widespread support.

To reduce initial costs and allow oversight of the effectiveness of the legislation, the bill I am introducing today would implement the new pay system and other provisions beginning October 1, 1997. However, the new rate of pay would be phased in over a 4-year period ending October 1, 2002.

Mr. President, I consulted many of the affected groups in developing my legislation. I am very pleased that this bill has been endorsed by the American Federation of Government Employees, the International Association of Fire Chiefs, the International Association of Fire Fighters, the National Association of Government Employees, and the National Federation of Federal Employees.

As I have said before, Mr. President, fairness is the key word. There is no reason why Federal firefighters should be paid dramatically less that their municipal counterparts. As a cochairman of the Congressional Fire Services Caucus, I want to urge all members of the caucus and, indeed, all Members of the Senate to join in cosponsoring this important piece of legislation.

By Mr. KYL (for himself and Mr. GORTON):

S. 493. A bill to amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia; to the Committee on the Judiciary.

THE CELLULAR TELEPHONE PROTECTION ACT

Mr. KYL. Mr. President, I rise to introduce the Cellular Telephone Protection Act, which would improve the ability of law enforcement to investigate and prosecute individuals engaged in the activity of cloning cellular phones. Law enforcement officials and wireless carriers support the bill as an important tool to stem this kind of telecommunications fraud.

Cell phones are manufactured with an embedded electronic serial number [ESN], which is transmitted to gain access to the telecommunications network. Those involved in cloning cell phones sit in parked cars outside of airports or along busy roadways to harvest ESN's from legitimate cell phone users and, in a process known as cloning, use software and equipment to insert the stolen numbers into other cell phones, the clones. A single ESN can be implanted into several cloned phones. The cloned phones charge to the account of the lawful, unsuspecting user. Cellular phone carriers must absorb these losses, which, according to the Cellular Telecommunication Industry Association, amounted to about $650 million in 1995, up from $480 million in 1994. The cellular industry is expanding by about 40 percent a year; efforts to combat fraud are imperative to ensure the integrity of our communications network.

Cloning is more than an inconvenience to the 36 million Americans who currently use cellular phone services, and an expense to wireless communication companies who pay for the fraudulent calls. According to the Secret Service, which is the primary Federal agency responsible for investigating telecommunications fraud, cloning abets organized criminal enterprises that use cellular telephones as their preferred method of communication. Cloned phones are extremely popular among drug traffickers and gang members, who oftentimes employ several cloned phones to evade detection by law enforcement. When not selling cloned phones to drug dealers and ruthless street gangs, cloners set up corner-side calling shops where individuals pay a nominal fee to call anywhere in the world on a replicated phone, or simply purchase the illegal phone for a flat amount.

The cellular telephone protection bill clarifies that there is no lawful purpose to posses, produce or sell hardware, known as copycat boxes, or software used for cloning a cellular phone or its ESN. Such equipment and software are easy to obtainn—advertisements hawking cloning equipment appear in computer magazines and on the Internet. There is no legitimate purpose for cloning software and equipment, save for law enforcement and telecommunication service providers using it to improve fraud detection. The bill strikes at the heart of the cloning paraphernalia market by eliminating the requirement for prosecutors to prove that the person selling copycat boxes or cloning software programs intended to defraud. The bill retains an exception for law enforcement to possess otherwise unlawful cloning software, and adds a similar exception. for telecommunications service providers.

Moreover, the Cellular Phone Protection Act expands the definition of "scanning receivers," equipment which, unlike cloning software and devices, does have legitimate uses if not used to scan frequencies assigned to wireless communications. The bill clarifies that the definition of scanning receivers encompasses devices that can be used to intercept ESN's even if they are not capable of receiving the voice channel. As mentioned above, criminals harvest ESN's by employing scanners near busy thoroughfares. The revised definition of scanning receiver will ensure that these devices are unlawful when used with an intent to defraud just like scanners that intercept voice.

Finally, the bill increases penalties for those engaged in cloning. A new paradigm is needed for penalizing cloning offenses. Currently, penalties for cloning crimes are based on the monetary loss a carrier suffers, not the potential loss. First-time offenders oftentimes do not face any jail time, which makes these cases unattractive for prosecution. Carriers and law enforcement are forced to choose between keeping the cloner on the telecommunications network to rack up high losses to ensure jail time, or stemming the losses sooner only to have the cloner back on the streets in days. The penalty scheme should be revised to

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track another indicator of cloning fraud—the number of electronic serial numbers stolen.

Cloning offenses are serious crimes, and the penalties should reflect this. We know that cloned phones are used to facilitate other crimes—particularly drug trafficking. Additionally, cloning offenses are serious economic crimes in themselves that threaten the integrity of the public communications network. In August, two individuals in New York were arrested for allegedly possessing 80,000 electronic serial numbers. Each of the 80,000 ESN's could be implanted into several cloned phones. I look forward to working with the U.S. Sentencing Commission to achieve a more appropriate sentencing structure for cloning fraud.

The cellular phone protection initiative will help to reduce telecommunications fraud. In the process, other criminal activity will be made more difficult to conduct—cloned phones, now a staple of criminal syndicates, would not be so readily available. I urge my colleagues to support this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 493

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 "Cellular Telephone Protection Act".

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) in paragraph (7), by striking "use of" and inserting "access to";

(2) by redesignating paragraph (9) as paragraph (10); and

(3) 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 that may be used for—

"(A) modifying or copying an electronic serial number; or

"(B) altering or modifying a telecommunications instrument so that the instrument may be used to obtain unauthorized access to telecommunications services; or".

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

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

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

"(2) in the case of an offense that occurs after a conviction for another offense under subsection (a) or (b)(1), or an attempt to commit an offense punishable under subsection (a) or (b)(1), a fine under this title or twice the value obtained by the offense, whichever is greater, imprisonment for not more than 20 years, or both.".

(c) DEFINITION OF SCANNING RECEIVER.—Section 1029(e)(8) of title 18, United States Code, is amended by inserting before the period at the end the following: "or any electronic serial number, mobile identification number, personal identification number, or other identifier of any telecommunications service, equipment, or instrument".

(d) EXCEPTION FOR CERTAIN TELECOMMUNICATIONS SERVICES PROVIDERS.—Section 1029 of title 18, United States Code, is amended by adding at the end the following:

"(g) EXCEPTION FOR CERTAIN TELECOMMUNICATIONS SERVICES PROVIDERS.—

"(1) DEFINITIONS.—In this subsection, the term 'telecommunications carrier' has the same meaning as in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

"(2) PERMISSIBLE ACTIVITIES.—This section does not prohibit any telecommunications carrier, or an officer, agent, or employee of, or a person under contract with a telecommunications carrier, engaged in protecting any property or legal right of the telecommunications carrier, from sending through the mail, sending or carrying in interstate or foreign commerce, having control or custody of, or possessing, manufacturing, assembling, or producing any otherwise unlawful—

"(A) device-making equipment, scanning receiver, or access device; or

"(B) hardware or software used for—

"(i) modifying or altering an electronic serial number; or

"(ii) altering or modifying a telecommunications instrument so that the instrument may be used to obtain unauthorized access to telecommunications services.".

By Mr. KYL (for himself, Mr. ABRAHAM, and Mr. REID):

S. 494. A bill to combat the overutilization of prison health care services and control rising prisoner health care costs; to the Committee on the Judiciary.

THE FEDERAL PRISON HEALTH CARE COPAYMENT ACT

Mr. KYL. Mr. President. I introduce the Federal Prisoner Health Care Copayment Act, which would require Federal prisoners to pay a nominal fee when they initiate a visit for medical attention. The fee would be deposited in the Federal Crime Victims' Fund. Each time a prisoner pays to heal himself, he will be paying to heal a victim.

Most working, law-abiding Americans are required to pay a copayment fee when they seek medical care. It is time to impose this requirement on Federal prisoners.

To date, at least 20 States—including my home State of Arizona—have implemented statewide prisoner health care copayment programs. In addition to Arizona, the following States have enacted this reform: California, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Oklahoma, Maryland, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, Utah, Virginia, Tennessee, and Wisconsin. Several other States are expected to soon institute a copayment system, including, Alaska, Connecticut, Maine, Montana, Michigan, North Carolina, Oregon, South Carolina, Washington, and Wyoming.

Moreover, according to the National Sheriffs' Association, at least 25 States—some of which have not adopted medical copayment reform on a statewide basis—have jail systems that impose a copayment.

In June, the National Commission on Correctional Health Care held a conference that examined the statewide fee-for-service programs. At the conference, Dr. Ron Waldron of the Federal Bureau of Prisons provided a survey of some of the States that have adopted inmate medical copayment programs and concluded that "Inmate user fees programs appear to reduce utilization, and do generate modest revenues."

Dr. Waldron reported that prison copayment laws resulted in the reduction of medical utilization of: between 16 and 29 percent in Florida; between 30 and 50 percent in Kansas; 40 percent in Maryland; 50 percent in Nevada; and between 10 and 18 percent in Oklahoma. Terry Stewart, director of the Arizona Department of Corrections, notes that, "Over the life of the [Arizona copayment] program, there has been an overall reduction of about 31 percent in the number of requests for health care services. This strongly suggests that inmates are being more discreet about, and giving more considered thought to, their need for medical attention." I will have his letter placed in the CONGRESSIONAL RECORD.

Reducing frivolous medical visits saves taxpayers money. A December 28, 1996, New York Post editorial, "Toward Healthier Prison Budgets," which I will also include in the RECORD, reported that the copayment law in New Jersey allowed the State to cut its prison health care budget by $17 million.

As to generating revenue, Dr. Waldron reported that California collects about $60,000 per month in prisoner-copayment fees. In my home State of Arizona, the State has collected about $400,000 since the inception of the program in October 1994.

Not only are inmate copayment plans working well on the statewide level, they are achieving success in jail systems across the United States. In the January-February edition of Sheriff, the National Sheriffs' Association President reported that copayment plans—which, as mentioned above, are operational in jail systems in at least 25 States—have: First, discouraged overuse of service; and second, freed health care staff to provide better care to inmates who truly need medical attention. Yavapai County sheriff, G.C. "Buck" Buchanan, in a letter that I will include in the RECORD, writes: "Prior to the institution of [copayment reform], many inmates in custody were taking advantage of the health care which, or course, must be provided to them. This could be construed as frivolous requests if you will, and took up the valuable time of our health care providers * * *. Since this policy has been in effect, we have realized a reduction in inmate requests for medical services between 45 to 50 percent."

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