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105TH CONGRESS
1ST SESSION

S. 493

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

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Mr. KYL (for himself and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

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

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—

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(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

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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.—

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"(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.".

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