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

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Mon Apr 8 17:25:03 2013

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105TH CONGRESS
1ST SESSION

H. R. 2460

To amend title 18, United States Code, with respect to scanning receivers
and similar devices.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 1997

Mr. SAM JOHNSON of Texas (for himself, Mr. MCCOLLUM, Mr. SCHUMER, Mr.
NORWOOD, and Mr. SMITH of Texas) introduced the following bill; which
was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, with respect to
scanning receivers and similar devices.

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”.

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—

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

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

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

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

14 (b) PENALTIES.—

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

17 “(c) PENALTIES.—The punishment for an offense
18 under subsection (a) of this section is—

19 “(1) in the case of an offense that does not
20 occur after a conviction for another offense under
21 this section—

22 “(A) if the offense is under paragraph (1),
23 (2), (3), (6), (7), or (10) of subsection (a), a
24 fine under this title or imprisonment for not
25 more than 10 years, or both; and

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

5 “(2) in the case of an offense that occurs after
6 a conviction for another offense under this section,
7 a fine under this title or imprisonment for not more
8 than 20 years, or both.”.

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

14 (c) DEFINITIONS.—Section 1029(c) of title 18, Unit-
15 ed States Code, is amended—

16 (1) in paragraph (6), by striking “and”;

17 (2) in paragraph (7)—

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

19 and

20 (B) by striking the period and inserting “;

21 and”;

22 (3) in paragraph (8), by striking the period and
23 inserting “or to intercept an electronic serial num-
24 ber, mobile identification number, or other identifier

1 of any telecommunications service, equipment, or in-
2 strument;”.

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

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

7 “(g) It is not a violation of subsection (a)(9) for an
8 officer, employee, or agent of, or a person under contract
9 with, a facilities-based carrier, for the purpose of protect-
10 ing the property or legal rights of that carrier, to use,
11 produce, have custody or control of, or possess hardware
12 or software configured as described in that subsection
13 (a)(9).”.

14 (2) DEFINITION.—Section 1029(e) of title 18,
15 United States Code is amended—

16 (A) by striking “and” at the end of para-
17 graph (6);

18 (B) by striking the period at the end of
19 paragraph (7) and inserting a semicolon; and

20 (C) by striking the period at the end of
21 paragraph (8) and inserting “; and”; and

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

23 “(9) As used in this subsection, the term ‘facilities-
24 based carrier’ means an entity that owns communications
25 transmission facilities, is responsible for the operation and

1 maintenance of those facilities, and holds an operating li-
2 cense issued by the Federal Communications Commission
3 under the authority of title III of the Communications Act
4 of 1934.”.

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

7 (1) IN GENERAL.—Pursuant to its authority
8 under section 994 of title 28, United States Code,
9 the United States Sentencing Commission shall re-
10 view and amend the Federal sentencing guidelines
11 and the policy statements of the Commission, if ap-
12 propriate, to provide an appropriate penalty for of-
13 fenses involving the cloning of wireless telephones
14 (including offenses involving an attempt or conspir-
15 acy to clone a wireless telephone).

16 (2) FACTORS FOR CONSIDERATION.—In carry-
17 ing out this subsection, the Commission shall con-
18 sider, with respect to the offenses described in para-
19 graph (1)—

20 (A) the range of conduct covered by the of-
21 fenses;

22 (B) the existing sentences for the offenses;

23 (C) the extent to which the value of the
24 loss caused by the offenses (as defined in the
25 Federal sentencing guidelines) is an adequate

1 measure for establishing penalties under the
2 Federal sentencing guidelines;

3 (D) the extent to which sentencing en-
4 hancements within the Federal sentencing
5 guidelines and the court's authority to sentence
6 above the applicable guideline range are ade-
7 quate to ensure punishment at or near the max-
8 imum penalty for the most egregious conduct
9 covered by the offenses;

10 (E) the extent to which the Federal sen-
11 tencing guideline sentences for the offenses
12 have been constrained by statutory maximum
13 penalties;

14 (G) the extent to which Federal sentencing
15 guidelines for the offenses adequately achieve
16 the purposes of sentencing set forth in section
17 3553(a)(2) of title 18, United States Code;

18 (H) the relationship of Federal sentencing
19 guidelines for the offenses to the Federal sen-
20 tencing guidelines for other offenses of com-
21 parable seriousness; and

22 (I) any other factor that the Commission
23 considers to be appropriate.

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