

SHORT TITLE: Crimes and punishments; prohibiting cloned cellular
telephone. Effective date. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1215

By: Smith

AS INTRODUCED

An Act relating to crimes and punishments; defining terms; prohibiting use of certain telecommunication device for certain purpose or intent; stating penalties; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1870 of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Access device" means any telecommunication device including the telephone calling card number, electronic serial number, account number, mobile identification number, or personal identification number that can be used to obtain telephone services;

2. "Clone cellular telephone" or "counterfeit cellular telephone" means a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer;

3. "Cloning paraphernalia" means materials that, when possessed in combination, could be used to create a cloned cellular telephone. These materials include scanners to intercept the electronic serial number and mobile identification number, cellular telephones,

cables, EPROM chips, EPROM burners, software for programming the cloned telephone with a false electronic serial number and mobile identification number combination, a computer containing such software, and lists of electronic serial number and mobile identification number combinations;

4. "Electronic serial number" means the unique number that:

- a. was programmed into a cellular telephone by its manufacturer,
- b. is transmitted by the cellular telephone, and
- c. is used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device;

5. "EPROM" or "Erasable programmable read-only memory" means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultraviolet light;

6. "Intercept" means to electronically capture, record, reveal, or otherwise access the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver, by means of any instrument, device or equipment;

7. "Manufacture of an unlawful telecommunication device" means to produce or assemble an unlawful telecommunication device, or to modify, alter, program, or reprogram a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider;

8. "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier;

9. "Possess" means to have a physical possession or otherwise to exercise control over tangible property;

10. "Sell" means to offer to, agree to offer to, or to sell, exchange, give, or dispose of an unlawful telecommunications device to another;

11. "Telecommunication device" means:

- a. any type of instrument, device, machine, or equipment which is capable of transmitting or receiving telephonic, electronic, or radio communications, or
- b. any part of an instrument, device, machine, equipment, or other computer circuit, computer chip, electronic mechanism, or other component, which is capable of facilitating the transmission or reception of telephonic or electronic communications within the radio spectrum allocated to cellular radio telephone;

12. "Telecommunication service" means any service provided for a charge or compensation to facilitate the origination, transmission, emission, or receipt of signs, signals, writings, images, and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, television option or other electromagnetic system;

13. "Telecommunication service provider" means any person or entity providing telecommunication service including a cellular telephone or paging company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching officer, or other equipment or telecommunication service; and

14. "Unlawful telecommunication device" means any telecommunication device that is capable of, or has been altered, modified, programmed, or reprogrammed, along or in conjunction with another access device, so as to be capable of acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. Unlawful devices include tumbler phones, counterfeit phones, tumbler microchips, counterfeit microchips, and other instruments capable of

disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1871 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any person who uses a telecommunication device with the intent to avoid the payment of any lawful charge for telecommunication service or with the knowledge that it was to avoid the payment of any lawful charge for telecommunication service and the value of the telecommunication service is not more than One Thousand Dollars (\$1,000.00) or such value cannot be ascertained shall, upon conviction, be guilty of a misdemeanor.

B. Any person who uses a telecommunication device with the intent to avoid the payment of any lawful charge for telecommunication service or with the knowledge that it was to avoid the payment of any lawful charge for telecommunication service and the value of the telecommunication service exceeds One Thousand Dollars (\$1,000.00) shall, upon conviction, be guilty of a Schedule G felony.

C. If the cloned cellular telephone used in violation of this section was used to facilitate the commission of a felony the person, upon conviction, shall be guilty of a Schedule F felony.

D. Any person who has been convicted previously of an offense under this section shall be guilty of a Schedule E felony upon a second and any subsequent conviction.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1872 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any person who knowingly possesses an unlawful telecommunication device shall, upon conviction, be guilty of a misdemeanor.

B. Any person who knowingly possesses five or more unlawful telecommunication devices at the same time shall, upon conviction, be guilty of a Schedule F felony.

C. Any person who:

1. Knowingly possesses an instrument capable of intercepting electronic serial number and mobile identification number combinations under circumstances evidencing an intent to clone; or

2. Knowingly possesses cloning paraphernalia under circumstances evidencing an intent to clone shall, upon conviction, be guilty of a schedule F felony.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1873 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any person who intentionally sells an unlawful telecommunication device or material, including hardware, data, computer software, or other information or equipment, knowing that the purchaser or a third person intends to use such material in the manufacture of an unlawful telecommunication device shall, upon conviction, be guilty of a schedule F felony.

B. If the offense under this section involves the intentional sale of five or more unlawful telecommunication devices within a six-month period, the person committing the offense, upon conviction, shall be guilty of a Schedule E felony.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1874 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any person who intentionally manufacturers an unlawful telecommunication device shall, upon conviction, be guilty of a Schedule F felony.

B. If the offense under this section involves the intentional manufacture of five or more unlawful telecommunication devices

within a six-month period, the person committing the offense shall, upon conviction, be guilty of a Schedule E felony.

SECTION 6. This act shall become effective July 1, 1998.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-1925

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