

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 955

Short Title: Wireless Telephone Fraud.

(Public)

Sponsors: Senator Ballance.

Referred to: Judiciary II/Election Laws

May 2, 1995

A BILL TO BE ENTITLED

AN ACT PROHIBITING THE UNAUTHORIZED USE OF WIRELESS TELECOMMUNICATIONS SERVICES AND ESTABLISHING CIVIL AND CRIMINAL PENALTIES FOR ACTS RELATING TO SUCH USE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-113.5 reads as rewritten:

"§ 14-113.5. **Making, possessing or transferring distributing, possessing, transferring, or programming device for theft of telecommunication service; publication of information regarding schemes, devices, means, or methods for such theft; concealment of existence, origin or destination of any telecommunication.**

(a) It shall be unlawful for any person knowingly to:

(1) ~~Make or possess any instrument, apparatus, equipment, or~~ Make, distribute, possess, use, or assemble an unlawful telecommunications device or modify, alter, program, or reprogram a telecommunication device designed, adapted, or which is used-used:

a. For commission of a theft of telecommunication service or to acquire or facilitate the acquisition of telecommunications service without the consent of the telecommunication service provider in violation of this Article, or

- 1 b. To conceal, or assist another to conceal, from any supplier of a
2 telecommunication service provider or from any lawful authority
3 the existence or place of origin or of destination of any
4 telecommunication, or
- 5 (2) Sell, ~~possess, distribute, give,~~ transport, or otherwise transfer to another
6 or offer or advertise for sale, ~~any instrument, apparatus, equipment, or~~
7 ~~device described in (1) above,~~ sale any:
- 8 a. Unlawful telecommunication device, or plans or instructions for
9 making or assembling the same under circumstances evincing an
10 intent to use or employ ~~such apparatus, equipment, or the unlawful~~
11 telecommunication device, or to allow the same to be used or
12 employed, for a purpose described in (1)a or (1)b above, or
13 knowing or having reason to believe that the same is intended to
14 be so used, or that the aforesaid plans or instructions are intended
15 to be used for making or assembling ~~such apparatus, equipment or~~
16 ~~device.~~ the unlawful telecommunication device; or
- 17 b. Material, including hardware, cables, tools, data, computer
18 software or other information or equipment, knowing that the
19 purchaser or a third person intends to use the material in the
20 manufacture of an unlawful telecommunication device; or
- 21 (3) Publish plans or instructions for making or assembling or using any
22 ~~apparatus, equipment or device described in (1) above,~~ unlawful
23 telecommunication device, or
- 24 (4) Publish the number or code of an existing, cancelled, revoked or
25 nonexistent telephone number, credit number or other credit device, or
26 method of numbering or coding which is employed in the issuance of
27 telephone numbers, credit numbers or other credit devices with
28 knowledge or reason to believe that it may be used to avoid the payment
29 of any lawful telephone or telegraph toll charge under circumstances
30 evincing an intent to have ~~such~~ the telephone number, credit number,
31 credit device or method of numbering or coding so used. ~~As used in this~~
32 ~~section, 'publish' means the communication or dissemination of information to~~
33 ~~any one or more persons, either orally, in person or by telephone, radio or~~
34 ~~television, or in a writing of any kind, including without limitation a letter or~~
35 ~~memorandum, circular or handbill, newspaper or magazine article, or book.~~
- 36 (5) ~~Any instrument, apparatus, device, plans or instructions or publications~~
37 ~~described in this section may be seized under warrant or incident to a~~
38 ~~lawful arrest for a violation of this section, and, upon the conviction of a~~
39 ~~person for a violation of this section, such instrument, apparatus, device,~~
40 ~~plans, instructions or publication may be destroyed as contraband by the~~
41 ~~sheriff of the county in which such person was convicted or turned over~~
42 ~~to the person providing telephone or telegraph service in the territory in~~
43 ~~which the same was seized.~~

1 **(b)** Any unlawful telecommunication device, plans, instructions, or publications
2 described in this section may be seized under warrant or incident to a lawful arrest for a
3 violation of this section. Upon the conviction of a person for a violation of this section,
4 the court may order the sheriff of the county in which the person was convicted to destroy
5 as contraband or to otherwise lawfully dispose of the unlawful telecommunication device,
6 plans, instructions, or publication.

7 **(c)** The following definitions apply in this section and in G.S. 14-113.6:

8 **(1)** Manufacture of an unlawful telecommunication device. – The
9 production or assembly of an unlawful telecommunication device or the
10 modification, alteration, programming or reprogramming of a
11 telecommunication device to be capable of acquiring or facilitating the
12 acquisition of telecommunication service without the consent of the
13 telecommunication service provider.

14 **(2)** Publish. – The communication or dissemination of information to any
15 one or more persons, either orally, in person or by telephone, radio or
16 television, or in a writing of any kind, including without limitation a
17 letter or memorandum, circular or handbill, newspaper or magazine
18 article, or book.

19 **(3)** Telecommunication device. – Any type of instrument, device, machine
20 or equipment that is capable of transmitting or receiving telephonic,
21 electronic or radio communications, or any part of such instrument,
22 device, machine or equipment, or any computer circuit, computer chip,
23 electronic mechanism or other component that is capable of facilitating
24 the transmission or reception of telephonic, electronic or radio
25 communications.

26 **(4)** Telecommunication service. – Any service provided for a charge or
27 compensation to facilitate the origination, transmission, emission or
28 reception of signs, signals, data, writings, images, sounds or intelligence
29 of any nature of telephone, including cellular telephones, wire, radio,
30 electromagnetic, photoelectronic or photo-optical system.

31 **(5)** Telecommunication service provider. – A person or entity providing
32 telecommunication service, including, a cellular, paging or other
33 wireless communications company or other person or entity which, for a
34 fee, supplies the facility, cell site, mobile telephone switching office or
35 other equipment or telecommunication service.

36 **(6)** Unlawful telecommunication device. – Any electronic serial number,
37 mobile identification number, personal identification number or any
38 telecommunication device that is capable, or has been altered, modified,
39 programmed or reprogrammed alone or in conjunction with another
40 access device or other equipment so as to be capable, of acquiring or
41 facilitating the acquisition of a telecommunication service without the
42 consent of the telecommunication service provider. The term includes,
43 telecommunications devices altered to obtain service without the

1 consent of the telecommunication service provider, tumbler phones,
2 counterfeit or clone microchips, scanning receivers of wireless
3 telecommunication service of a telecommunication service provider and
4 other instruments capable of disguising their identity or location or of
5 gaining access to a communications system operated by a
6 telecommunication service provider."

7 Sec. 2. G.S. 14-113.6 reads as rewritten:

8 "**§ 14-113.6. Violation made misdemeanor. Penalties for violation; civil action.**

9 (a) Any person violating any of the provisions of this Article shall be guilty of a
10 Class 2 misdemeanor. However, if the offense is a violation of G.S. 14-113.5 and
11 involves five or more unlawful telecommunication devices the person shall be guilty of a
12 Class G felony.

13 (b) The court may, in addition to any other sentence authorized by law, order a
14 person convicted of violating G.S. 14-113.5 to make restitution for the offense.

15 (c) A telecommunication service provider aggrieved by a violation of G.S. 14-
16 113.5 may, in a civil action in any court of competent jurisdiction, obtain appropriate
17 relief, including preliminary and other equitable or declaratory relief, compensatory and
18 punitive damages, reasonable investigation expenses, costs of suit and any attorney fees
19 as may be provided by law."

20 Sec. 3. This act becomes effective December 1, 1995, and applies to offenses
21 committed on or after that date.