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SENATE BILL NO. 1191

Offered January 29, 1997

A BILL to amend and reenact §§ 18.2-190.1 through 18.2-190.4 of the Code of Virginia and to amend the Code of Virginia by adding in Article 5.1 of Chapter 6 of Title 18.2 sections numbered 18.2-190.5 and 18.2-190.6, relating to offenses involving telecommunication devices; penalties.

Patron—Reasor

Introduced at the request of Governor

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-190.1 through 18.2-190.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 5.1 of Chapter 6 of Title 18.2 sections numbered 18.2-190.5 and 18.2-190.6 as follows:

§ 18.2-190.1. Definitions.

As used in this article, unless the context requires a different meaning:

"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.

"Paraphernalia used to create an unlawful telecommunication device" means equipment or materials that in combination are capable of the creation of an unlawful telecommunication device including, but not limited to, scanners to intercept electronic serial numbers and mobile identification numbers of a cellular telephone; cellular telephones; cables or any technology that can be used to reprogram a cellular telephone; microchips; electronic software or hardware capable of altering or changing the factory-installed electronic serial number of a cellular telephone; a computer containing such software; and a list of electronic serial number and mobile identification number combinations.

"Scanner used to intercept the electronic serial number and mobile identification number of a cellular telephone" means any device capable of intercepting the transmission of a cellular telephone's electronic serial number and mobile identification number.

"Sell" means to sell, exchange, give or dispose of to another or to offer or agree to do the same.

"Telecommunication device" means (i) any type of instrument, device, machine or equipment which is capable of transmitting or receiving telephonic, electronic or radio communications or (ii) any part of such an instrument, device, machine or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, which is capable of facilitating the transmission or reception of telephonic or electronic communications.

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

"Telecommunication service provider" means a person or entity providing telecommunication service including, but not limited to, a cellular telephone or paging company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office, or other equipment or telecommunication service.

"Unlawful telecommunication device" means any telecommunication device that is capable, or has been altered, modified, programmed or reprogrammed so as to be capable, of acquiring, or facilitating the acquisition of, a telecommunication service without the consent of the telecommunication service provider. Such unlawful devices include, but are not limited to, tumbler phones, clone phones, tumbler microchips, clone 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.

§ 18.2-190.2. Possession of an unlawful telecommunication device.

A person who knowingly possesses an unlawful telecommunication device shall be guilty of a Class 6 felony unless such possession is authorized by a law enforcement agency or lawful telecommunications equipment manufacturer or service provider. However, if a person knowingly possesses five or more unlawful telecommunication devices, he shall be guilty of a Class 6 felony.

§ 18.2-190.3. Sale of an unlawful telecommunication device.

A person who sells (i) an unlawful telecommunication device or (ii) material, including hardware,

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60 data, computer software or other information or equipment, knowing that the purchaser or a third person
61 intends to use such material in the manufacture of an unlawful telecommunication device, shall be guilty
62 of a Class 4 ~~misdemeanor~~ 6 *felony*. ~~However, if the offense involves the sale of five or more unlawful~~
63 ~~telecommunication devices, he shall be guilty of a Class 6 felony.~~

64 § 18.2-190.4. Manufacture of an unlawful telecommunication device.

65 A person who manufactures an unlawful telecommunication device shall be guilty of a Class 4
66 ~~misdemeanor~~ 6 *felony*. ~~However, if the offense involves the manufacture of five or more unlawful~~
67 ~~telecommunication devices, he shall be guilty of a Class 6 felony.~~

68 § 18.2-190.5. *Unlawful possession of paraphernalia.*

69 A person who knowingly possesses paraphernalia used to create an unlawful telecommunication
70 device shall be guilty of a Class 6 felony.

71 § 18.2-190.6. *Unlawful possession of scanner.*

72 A person who knowingly possesses a scanner used to intercept the electronic serial number and
73 mobile identification number of a cellular telephone shall be guilty of a Class 6 felony.

74 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
75 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
76 **is \$0.**