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SENATE BILL NO.1191

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 2, 1997)

(Patron Prior to Substitute—Senator Reasor)

*A BILL to amend and reenact §§ 18.2-190.1 through 18.2-190.4 of the Code of Virginia, relating to offenses involving telecommunication devices; penalties.***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 as follows:**

§ 18.2-190.1. Definitions.

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

*"Equipment or materials used to create an unlawful telecommunication device" means a scanner capable of intercepting the electronic serial number or mobile identification number of a cellular or other wireless telephone; electronic software or hardware capable of altering or changing the factory-installed electronic serial number of a cellular or other wireless telephone or a computer containing such software; or a list of cellular or other wireless telephone electronic serial numbers with their associated mobile identification numbers.**"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.**"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 or other wireless 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 or other wireless 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 or equipment or materials used to create an unlawful telecommunication device.**A person who knowingly possesses an unlawful telecommunication device or equipment or material used to create an unlawful telecommunication device shall be guilty of a Class 4 misdemeanor ~~6 felony~~ unless such possession is by a lawful telecommunication equipment manufacturer or a telecommunication service provider, or is authorized by a law-enforcement agency. 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, 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 be guilty of a Class 4 misdemeanor ~~6 felony~~. However, if the offense involves the sale of five or more unlawful telecommunication devices, he shall be guilty of a Class 6 felony.**§ 18.2-190.4. Manufacture of an unlawful telecommunication device.**A person who manufactures an unlawful telecommunication device shall be guilty of a Class 4 misdemeanor ~~6 felony~~. However, if the offense involves the manufacture of five or more unlawful*

60 telecommunication devices, he shall be guilty of a Class 6 felony.

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