

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 955  
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Short Title: Wireless Telephone Fraud.

(Public)

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Sponsors: Senator Ballance.

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Referred to: Appropriations

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May 2, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT PROHIBITING THE UNAUTHORIZED USE OF WIRELESS  
3 TELECOMMUNICATIONS SERVICES AND ESTABLISHING CIVIL AND  
4 CRIMINAL PENALTIES FOR ACTS RELATING TO SUCH USE.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 14-113.5 reads as rewritten:  
7 "**§ 14-113.5. Making, ~~possessing or transferring~~ distributing, possessing, transferring,**  
8 **or programming device for theft of telecommunication service;**  
9 **publication of information regarding schemes, devices, means, or methods**  
10 **for such theft; concealment of existence, origin or destination of any**  
11 **telecommunication.**

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

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

17 a. For commission of a theft of telecommunication service or to  
18 acquire or facilitate the acquisition of telecommunications

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

1 to the person providing telephone or telegraph service in the territory in  
2 which the same was seized.

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

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

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

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

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

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

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

39 (6) Unlawful telecommunication device. – Any telecommunication device  
40 that is capable, or has been altered, modified, programmed or  
41 reprogrammed alone or in conjunction with another access device or  
42 other equipment so as to be capable, of acquiring or facilitating the  
43 acquisition of any electronic serial number, mobile identification

1            number, personal identification number or any telecommunication  
2            service without the consent of the telecommunication service provider.  
3            The term includes, telecommunications devices altered to obtain service  
4            without the consent of the telecommunication service provider, tumbler  
5            phones, counterfeit or clone microchips, scanning receivers of wireless  
6            telecommunication service of a telecommunication service provider and  
7            other instruments capable of disguising their identity or location or of  
8            gaining access to a communications system operated by a  
9            telecommunication service provider. This section shall not apply to any  
10           device operated by a law enforcement agency in the normal course of its  
11           activities."

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

13           **"§ 14-113.6. ~~Violation made misdemeanor.~~ Penalties for violation; civil action.**

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

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

20           (c)    Any person or entity aggrieved by a violation of G.S. 14-113.5 may, in a civil  
21           action in any court of competent jurisdiction, obtain appropriate relief, including  
22           preliminary and other equitable or declaratory relief, compensatory and punitive  
23           damages, reasonable investigation expenses, costs of suit and any attorney fees as may be  
24           provided by law."

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