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PUBLIC UTILITIES AND TRANSPORTATION

Telephone and Telegraph Service: Define Telecommunication Service and Prohibited Telecommunication Device; Increase Criminal Penalties and Civil Remedies for Avoiding Lawful Telecommunication Charges or for Producing, Using, or Selling Prohibited Telecommunication Devices

CODE SECTIONS:	O.C.G.A. §§ 46-5-2 to -4 (amended)
BILL NUMBER:	SB 597
ACT NUMBER:	953
GEORGIA LAWS:	1996 Ga. Laws 1085
SUMMARY:	The Act refines the scope of and penalty for the crime of avoiding charges for telecommunication services. The Act also defines "unlawful telecommunication device" and provides increased penalties for the use, sale, or production of such devices.
EFFECTIVE DATE:	July 1, 1996

History

Electronic theft of cellular telephone identification numbers is a significant and growing problem, which costs the legitimate telecommunications industry and individuals up to one billion dollars annually.[1] In a typical scenario, the thief, parked at an airport or on the side of the highway, uses a scanning device to read the identification signal emitted by any activated cellular telephone.[2] The phone need not be in use.[3] The thief then programs the stolen identification number into another telephone and is able to make multiple calls, the costs of which will be charged to the authorized user.[4] Senator Charles Clay introduced SB 597 for the purpose of addressing this problem.[5]

1. Telephone Interview with Sen. Charles "Chuck" Clay, Senate District No. 37 (Apr. 22, 1996) [hereinafter Clay Interview]; Telephone Interview with Rep. Jimmy Skipper, House District No. 137 (May 1, 1996) [hereinafter Skipper Interview].
2. Skipper Interview, *supra* note 1.
3. *Id.*
4. *Id.*
5. Clay Interview, *supra* note 1.

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SB 597

The Act amends Code sections 46-5-2 to -4, which generally define the scope and punishment for theft of telecommunication services.[6] Subsection (a) of Code section 46-5-2 prohibits avoiding or attempting to avoid lawful charges for any "telecommunication service" or for transmission of any message or signal over any telecommunication facility, either by a fraudulent scheme or by use of an unlawful "telecommunication device."[7] The Act changes the limiting words "telephone" and "cable TV" to the broader language "telecommunication"[8] in order to ensure that cellular and other wireless communication service providers are protected under Georgia laws prohibiting theft of such services.[9] This subsection was also amended on the Senate floor to delete unnecessary language,[10] making the subsection internally consistent.[11]

Subsection (b) changes the penalty for unlawful avoidance of telecommunication service charges from a misdemeanor to a felony for a second offense or for stealing services valued in excess of $10,000.[12] SB 597 was amended both by House committee substitute and House floor substitute to redefine the circumstances under which the crime becomes a felony.[13] The House Industry Committee substitute amended the bill to provide felony penalties for avoiding lawful charges for telecommunication services valued in excess of $10,000.[14] That change was made in order to conform in structure to other theft codes that frequently use an economic threshold in determining whether a crime warrants felony penalties.[15] Subsequently, the bill was amended by House floor substitute to add that a second conviction for avoidance of lawful charges (at any value) also triggers felony penalties.[16] That

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6. *Compare* O.C.G.A. §§ 46-5-2 to -4 (Supp. 1996) *with* 1975 Ga. Laws 1534, §§ 1-3, at 1534-35, as amended by 1976 Ga. Laws 1179, §§ 1-3, at 1180-81 *and* 1977 Ga. Laws 1170, § 1, at 1170-71 (formerly found at O.C.G.A. §§ 46-5-2 to -4 (1992)).

7. O.C.G.A. § 46-5-2(a) (Supp. 1996).

8. *Compare id. with* 1977 Ga. Laws 1170, § 1, at 1170-71 (formerly found at O.C.G.A. § 46-5-2(a) (1995)).

9. Clay Interview, *supra* note 1.

10. SB 597 (SFA), 1996 Ga. Gen. Assem.

11. Clay Interview, *supra* note 1.

12. *Compare* O.C.G.A. § 46-5-2(b)(1), (2) (Supp. 1996) *with* 1976 Ga. Laws 1179 § 3, at 1181 (formerly found at O.C.G.A. § 46-5-2(b) (1995)).

13. SB 597 (HFS), 1996 Ga. Gen. Assem; SB 597 (HCS), 1996 Ga. Gen. Assem.

14. *Compare* SB 597, as introduced, 1996 Ga. Gen. Assem. *with* SB 597 (HCS), 1996 Ga. Gen. Assem.

15. Skipper Interview, *supra* note 1. For comparison of similarly structured theft codes, see, e.g., 1978 Ga. Laws 2257, § 2, at 2259 (codified at O.C.G.A. § 16-8-14 (1996)) (theft by shoplifting) and 1984 Ga. Laws 900, § 3, at 901-02 (codified at O.C.G.A. § 16-8-12 (1996)) (punishment for theft of services or property, and for related offenses).

16. *Compare* SB 597 (HCS), 1996 Ga. Gen. Assem. *with* SB 597 (HFS), 1996 Ga.

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amendment was made to prevent someone repeatedly convicted of stealing services valued at $9000, for example, from receiving only misdemeanor penalties.[17]

Subsection (a) of Code section 46-5-3 provides detailed definitions for "telecommunication service," "telecommunication service provider," and "unlawful telecommunication device" as used in this chapter.[18] The Senate Science, Technology and Industry Committee amended subsection (a)(3), which defines unlawful telecommunication device.[19] The amendment was made to clarify that the term did not apply to devices operated by a telecommunication service provider in the normal course of its activities.[20]

A House floor amendment modified subsection (a)(3) of Code section 46-5-3 to clarify that an "unlawful telecommunication device" includes only a telecommunication device that has been illegally altered or programmed without the consent of the telecommunication service provider or authorized user of the telecommunication device.[21] The reason for this change was to avoid application of the law to those individuals and industries that have a legitimate and lawful need to alter such phones.[22]

Subsection (b) of Code section 46-5-3 prohibits one from knowingly making, possessing, selling, or using an unlawful telecommunication device, or in any way aiding another in so doing.[23] Subsection (c) has been amended to increase the penalties available for violations of this Code section, including higher fines and longer jail terms for repeat offenses, as well as court ordered restitution.[24] The Act further permits civil actions, with recovery of attorney's fees and costs available to the plaintiff.[25]

Code section 46-5-4 is amended to incorporate the revised terms "unlawful telecommunication device" and "telecommunication service

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Gen. Assem.

17. Skipper Interview, *supra* note 1.
18. O.C.G.A. § 46-5-3(a) (Supp. 1996).
19. SB 597 (SCA), 1996 Ga. Gen. Assem.
20. Clay Interview, *supra* note 1.
21. *Compare* SB 597 (HFSFA), 1996 Ga. Gen. Assem. *with* SB 597 (HFS), 1996 Ga. Gen. Assem.
22. Skipper Interview, *supra* note 1.
23. O.C.G.A. § 46-5-3(b) (Supp. 1996).
24. *Id.* § 46-5-3(c)
25. *Id.* § 46-5-3(c)(3).

provider" into the language dealing with seizure and disposal of unlawful telecommunication devices.[26]

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26. *Id.* § 46-5-4.

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