

STORAGE NAME: h1441s1.jud

DATE: April 13, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 1441

RELATING TO: Cable TV Services

SPONSOR(S): Committee on Crime & Punishment and Representative Kyle

COMPANION BILL(S): SB 1606(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 5 NAYS 0
- (2) JUDICIARY
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The committee substitute makes it a third degree felony to willfully receive, intercept or assist in intercepting cable services without authority if the offender has previously been convicted of a misdemeanor for the same offense.

The committee substitute makes it a third degree felony to knowingly possess five or more devices that are "primarily useful" for the unauthorized reception of cable services. The intentional possession of 50 such devices is made a second degree felony. A person may receive up to five years in prison for committing a third degree felony and up to 15 years in prison for a second degree felony.

The committee substitute provides that the civil award of \$10,000 for a violation section 812.15 and \$50,000 for a willful violation committed for commercial advantage applies for each violation of the statute and is not a set amount for all violations.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Cable Services

Section 812.15 makes it a first degree misdemeanor to receive, intercept or assist in intercepting cable services without authority, and it is a third degree felony to commit this offense for commercial advantage. The statute defines the phrase "assist in intercepting" to include the manufacture and distribution of equipment intended for unauthorized reception of any cable services. Last session Chapter-law 98-214 added provisions to section 812.15 to make it a first degree misdemeanor to knowingly possess or advertise equipment that is designed or used for the unauthorized reception of any communications service offered over a cable system.

Section 812.15 also authorizes civil actions by an "aggrieved" party for a violation of the section. The authorized sanctions include injunctions, an award of not less than \$250 or more than \$10,000 for all violations, and an additional award of not more than \$50,000 for violations committed willfully and for the purpose of commercial advantage.

B. EFFECT OF PROPOSED CHANGES:

The committee substitute makes it a third degree felony to willfully receive, intercept or assist in intercepting cable services without authority or commit any other violation of section 812.15 if the offender has previously been convicted of a violation of 812.15.

The committee substitute makes it a third degree felony to knowingly possess five or more devices that are "primarily useful" for the unauthorized reception of cable services. The intentional possession of 50 such devices is made a second degree felony. A person may receive up to five years in prison for committing a third degree felony and up to 15 years in prison for a second degree felony.

The committee substitute makes it illegal to advertise devices that are "primarily useful" for the unauthorized reception of cable services *on any electronic medium*. Current law prohibits such advertising in other mediums such as publications.

The committee substitute provides that the civil award of \$10,000 for a violation section 812.15 and \$50,000 for a willful violation committed for commercial advantage applies for each violation of the statute and is not a set amount for all violations.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 812.15, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Reclassifies offense for repeated receiving, intercepting or assisting in intercepting cable services without authority; reclassifies offense for possession of multiple devices primarily useful for the unauthorized reception of cable services; prohibits advertising such devices on electronic medium; increases civil penalties for a violation of the section.

Section 2: Creates an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

See Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has determined that the fiscal impact of the bill to the state prison system is insignificant.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Criminal laws are exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not impair local government revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not significantly reduce the amount of state tax shared with local governments.

V. COMMENTS:

Section 812.15(3)(c), F.S., creating a third degree felony for a person previously convicted for a misdemeanor violation of the section would not apply if the offender receives a withhold of adjudication for the prior misdemeanor instead of an adjudication of guilt.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 30, 1999, the Committee on Crime and Punishment adopted three amendments and made the bill a committee substitute. The first amendment clarified the various penalties provided for in section 812.15. Currently, Section 812.15 provides that a violation of the section is a first degree misdemeanor. The original bill added second and third degree felony penalties to the section which seem inconsistent with the general provision providing for a misdemeanor penalty. Furthermore, the paragraph providing that for a third degree felony for a subsequent violation of the section contradicted the paragraph providing for a second degree felony offense for possession of 50 pieces of equipment that is primarily useful for unauthorized reception of cable services.

The other two amendments were technical and not substantive.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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Staff Director:

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AS REVISED BY THE COMMITTEE ON JUDICIARY:

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