

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1606

SPONSOR: Criminal Justice Committee and Senator Silver

SUBJECT: Unauthorized cable television reception

DATE: March 17, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill provides an enhanced criminal penalty for an offender who has previously been convicted of any violation of s. 812.15, F.S., relating to unauthorized reception of cable services. Currently, the penalty for most violations of s. 812.15, F.S., is a first-degree misdemeanor (maximum 1 year jail sentence) and repeat offenses are not enhanced. This bill provides that on a second or subsequent offense, the penalty is a third-degree felony (maximum 5 year prison sentence).

The bill creates a new third-degree felony offense, committed when:

- ▶ Any person intentionally possess,
- ▶ 5 or more devices or pieces of equipment,
- ▶ knowing that the design of such devices or pieces of equipment renders them primarily useful for the unauthorized reception of any communications services offered over a cable system.

The bill enhances this new offense to a second-degree felony (maximum 15 year prison sentence) when a person intentionally possesses 50 or more devices or pieces of equipment.

The bill adds the term “electronic medium,” to the existing prohibition against advertising in certain media by promoting the sale of equipment primarily designed for unauthorized reception of cable service. Finally, the bill clarifies that an aggrieved party (generally a cable television company), may recover damage awards “for each violation” of s. 812.13, F.S.

The bill takes effect on July 1, 1999.

This bill substantially amends the following section of the Florida Statutes: 812.15.

## II. Present Situation:

Chapter 812 deals with theft, robbery and related crimes. Section 812.15, F.S., provides penalties for various offenses dealing with the unauthorized reception of cable television services:

- ▶ *Unauthorized reception.* It is a first-degree misdemeanor (maximum 1 year jail sentence), for any person to intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless authorized. s. 812.15(2)(a), F.S. “Assisting in intercepting or receiving” is defined to include the manufacture or distribution of equipment intended for the unauthorized reception of cable services. s. 812.15(2)(b), F.S.
- ▶ *Possession of equipment.* It is a first-degree misdemeanor for any person to intentionally possess equipment, knowing or having reason to know that the design of such equipment renders it primarily useful for the purpose of the unauthorized reception of cable services. s. 812.15(3)(c), F.S.
- ▶ *Prohibited advertisement.* It is a first-degree misdemeanor for any person to place in any newspaper, magazine, handbill, or other publication any advertisement that, in whole or in part, promotes the sale of equipment, if the person does so knowing that the design of such equipment renders it primarily useful for the purpose of the unauthorized reception of cable services. s. 812.15(3)(d), F.S.
- ▶ *Enhancement when act done for “commercial advantage.”* It is a third-degree felony (maximum 5 year prison sentence) for any person to willfully and for purposes of direct or indirect commercial advantage violate s. 812.15, F.S. s. 812.15(3)(b), F.S.

*Damages awards.* Section 812.15, F.S., also provides that any person aggrieved by any violation of its provisions (generally a cable television company), may bring a civil action in circuit court for injunctive relief and damage awards. The aggrieved party may recover actual damages as well as an award of “statutory damages” for all violations in a sum not less than \$250 or more than \$10,000. s. 812.15(4)(c)2., F.S. The court may increase the award, in its discretion, up to \$50,000 for actual or statutory damages if the court finds that the violation was committed for purposes of commercial advantage. s. 812.15(4)(d), F.S.

Federal law also provides substantially similar criminal and civil penalties for the unauthorized reception of cable service. Section 812.15, F.S., is patterned after the federal law. *See* 47 U.S.C. s. 533.

## III. Effect of Proposed Changes:

*Enhanced penalties.* Current law makes it a first-degree misdemeanor (maximum 1 year jail sentence) for a person to receive cable service without authorization or to intentionally possess equipment knowing it is primarily designed to be used for the unauthorized reception of a cable service. The same penalty applies to those who advertise the sale of equipment primarily designed for unauthorized reception of cable service. Repeated violations are treated as a first-degree misdemeanor.

This bill provides an enhanced penalty for an offender who has previously been convicted of any of the above violations of s. 812.15, F.S. For the subsequent offense, the penalty is enhanced to a third-degree penalty (maximum 5 year prison sentence).

***Use of devices or pieces of equipment.*** The bill creates a new third-degree felony offense, committed when:

- ▶ Any person intentionally possess,
- ▶ 5 or more devices or pieces of equipment,
- ▶ knowing that the design of such devices or pieces of equipment renders them primarily useful for the unauthorized reception of any communications services offered over a cable system.

The bill enhances this new offense to a second-degree felony (maximum 15 year prison sentence) when a person intentionally possesses 50 or more devices or pieces of equipment.

An example of a type of device or equipment commonly used is a device known as a decoder or descrambler, which cable operators provide to subscribers for a monthly charge. "A subscriber paying for basic service, however, can gain unauthorized access to premium channels by purchasing a 'pirate' descrambler from a source other than the cable operator." *G.I. Corp. v. Nu-Tek Electronics*, No. 93-CV-3854 (E.D. Pa. Apr. 15, 1998), p.2.

***Advertisements.*** The bill adds the term "electronic medium," to the existing prohibition against advertising in certain media by promoting the sale of equipment primarily designed for unauthorized reception of cable service. The intent is to prohibit such advertisement on the Internet or through electronic mail.

***Damage awards.*** Finally, the bill clarifies that an aggrieved party (generally a cable television company) may recover an award of statutory damages (a fine) "*for each violation*" of s. 812.13, F.S. The intended effect is to allow the party aggrieved to collect no less than \$250 but no more than \$10,000 *for each violation*. The statute is currently susceptible to an interpretation that an award is capped at \$10,000 for all violations combined. The bill also clarifies that if the court finds that the violation was committed for purposes of commercial advantage, the court may in its discretion increase the statutory or actual damages award up to \$50,000, "*for each violation.*"

The bill takes effect on July 1, 1999.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Florida Cable Telecommunications Association, Florida's cable television industry loses approximately \$345 million worth of services annually due to the unauthorized reception of cable services. To the extent that the offense and penalties contained in this bill deters would-be violators, the cable industry stands to benefit by increased sales. As well, the cable industry, as aggrieved parties, may realize an increase in damage awards when sought under that section of current law and the provisions of this bill.

C. Government Sector Impact:

The Criminal Justice Estimating Conference is statutorily charged with reviewing the potential impact of newly created crimes on the state prison system. The Conference has not yet determined the impact of this bill. Given the narrow scope of this bill and the third-degree felony penalties, any impact is expected to be minimal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.