

By Senator Atwater

25-597-03

1 A bill to be entitled
2 An act relating to communications services;
3 amending s. 812.15, F.S.; redefining the terms
4 "communications device,"
5 "communications service," "communications
6 service provider," and "manufacture,
7 development, or assembly of a communications
8 device"; prohibiting certain interception,
9 reception, decryption, disruption,
10 transmission, retransmission, or acquisition of
11 access to described communications services and
12 prohibiting assisting others in these acts;
13 prohibiting the advertisement of communications
14 devices for certain unlawful purposes;
15 providing criminal and civil penalties;
16 providing for actual and statutory damages;
17 providing an effective date.

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20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. Section 812.15, Florida Statutes, is
23 amended to read:

24 812.15 Unauthorized reception of communications ~~cable~~
25 ~~television~~ services; penalties.--

26 (1) As used in this section, the term:

27 (a) "Cable operator" means a communications service
28 provider who provides some or all of its communications
29 services pursuant to a "cable television franchise" issued by
30 a "franchising authority," as those terms are defined in 47

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1 U.S.C. s. 522(9) and (10) (1992)~~"cable operator" as defined~~
2 ~~in 47 U.S.C. s. 522(4) (1988).~~

3 (b) "Cable system" means any communications service
4 network, system, or facility owned or operated by a cable
5 operator~~"cable system" as defined in 47 U.S.C. s. 522(6)~~
6 ~~(1988).~~

7 (c) "Communications device" means any type of
8 electronic mechanism, transmission line or connections and
9 appurtenances thereto, instrument, device, machine, equipment,
10 or software that is capable of intercepting, transmitting,
11 acquiring, decrypting, or receiving any communications
12 service, or any part, accessory, or component thereof,
13 including any computer circuit, splitter, connector, switches,
14 transmission hardware, security module, smart card, software,
15 computer chip, electronic mechanism, or other component,
16 accessory, or part of any communications device which is
17 capable of facilitating the interception, transmission,
18 retransmission, acquisition, decryption, or reception of any
19 communications service.

20 (d) "Communications service" means any service
21 lawfully provided for a charge or compensation by any cable
22 system or by any radio, fiber optic, photooptical,
23 electromagnetic, photoelectronic, satellite, microwave, data
24 transmission, Internet-based, or wireless distribution
25 network, system, or facility, including, but not limited to,
26 any electronic, data, video, audio, Internet access,
27 microwave, and radio communications, transmissions, signals,
28 and services, and any such communications, transmissions,
29 signals, and services lawfully provided directly or indirectly
30 by or through any of those networks, systems, or facilities.

31 (e) "Communications service provider" means:

1 1. Any person or entity owning or operating any cable
2 system or any fiber optic, photooptical, electromagnetic,
3 photoelectronic, satellite, wireless, microwave, radio, data
4 transmission, or Internet-based distribution network, system,
5 or facility.

6 2. Any person or entity providing any communications
7 service, whether directly or indirectly, as a reseller or
8 licensee, by or through any such distribution network, system,
9 or facility.

10 (f) "Manufacture, development, or assembly of a
11 communications device" means to make, produce, develop, or
12 assemble a communications device or any part, accessory, or
13 component thereof, or to modify, alter, program, or reprogram
14 any communications device so that it is capable of
15 facilitating the commission of a violation of this section.

16 (2)(a) A ~~No~~ person may not knowingly ~~shall~~ intercept,
17 or receive, decrypt, disrupt, transmit, retransmit, or acquire
18 access to or assist in intercepting or receiving any
19 communications service offered by ~~over~~ a cable operator or any
20 other communications service provider, or knowingly assist
21 others in those acts ~~system~~, unless specifically authorized to
22 do so by a cable operator or other communications service
23 provider, or as may otherwise be specifically authorized by
24 law. For the purpose of this section, the term "assist others"
25 in committing any of these acts includes:

26 1. The sale, transfer, license, distribution,
27 deployment, lease, manufacture, development, or assembly of a
28 communications device for the purpose of facilitating the
29 unauthorized receipt, acquisition, interception, disruption,
30 decryption, transmission, retransmission, or access to any
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1 communications service offered by a cable operator or any
2 other communications service provider; or
3 2. The sale, transfer, license, distribution,
4 deployment, lease, manufacture, development, or assembly of a
5 communications device for the purpose of defeating or
6 circumventing any technology, device, or software, or any
7 component or part thereof, used by a cable operator or other
8 communications service provider to protect any communications
9 service from unauthorized receipt, acquisition, interception,
10 disruption, access, decryption, transmission, or
11 retransmission. in intercepting or receiving" shall include
12 the manufacture of or distribution of equipment intended by
13 the manufacturer or distributor, as the case may be, for
14 unauthorized reception of any communications service offered
15 over a cable system in violation of this section.
16 (b) Any person who willfully violates this subsection
17 commits shall be guilty of a misdemeanor of the first degree,
18 punishable as provided in s. 775.082 or s. 775.083.
19 (3)(a) Any person who willfully violates paragraph
20 (2)(a), paragraph (4)(a), or subsection (5) and who has been
21 previously convicted of any such provision commits shall be
22 guilty of a felony of the third degree, punishable as provided
23 in s. 775.082, s. 775.083, or s. 775.084.
24 (b) Any person who willfully and for purposes of
25 direct or indirect commercial advantage or private financial
26 gain violates paragraph (2)(a), paragraph (4)(a), or
27 subsection (5) commits shall be guilty of a felony of the
28 third degree, punishable as provided in s. 775.082, s.
29 775.083, or s. 775.084.
30 (4)(a) Any person who intentionally possesses a
31 communications device equipment, knowing or having reason to

1 know that the design of such device ~~equipment~~ renders it
2 primarily useful for the purpose of committing, or assisting
3 others in committing, a violation of paragraph (2)(a) commits
4 ~~the unauthorized reception of any communications service~~
5 ~~offered over a cable system, shall be guilty of a misdemeanor~~
6 of the first degree, punishable as provided in s. 775.082 or
7 s. 775.083.

8 (b) Any person who intentionally possesses five or
9 more communications devices ~~or pieces of equipment~~ and knows
10 or has reason to know that the design of such devices ~~or~~
11 ~~pieces of equipment~~ renders them primarily useful for
12 committing, or assisting others in committing, a violation of
13 paragraph (2)(a) commits ~~the unauthorized reception of any~~
14 ~~communications services offered over a cable system is guilty~~
15 ~~of a felony of the third degree, punishable as provided in s.~~
16 775.082, s. 775.083, or s. 775.084.

17 (c) Any person who intentionally possesses fifty or
18 more communications devices ~~or pieces of equipment~~ and knows
19 or has reason to know that the design of such devices ~~or~~
20 ~~equipment~~ renders them primarily useful for committing, or
21 assisting others in committing, a violation of paragraph
22 (2)(a) commits ~~the unauthorized reception of any~~
23 ~~communications services offered over a cable system is guilty~~
24 ~~of a felony of in the second degree, punishable as provided in~~
25 s. 775.082, s. 775.083, or s. 775.084.

26 (5) It is unlawful for any person to place in any
27 newspaper, magazine, handbill, or other publication, including
28 any electronic medium, any advertisement that, in whole or in
29 part, promotes the sale of a communications device ~~equipment,~~
30 if the person placing the advertisement knows or has reason to
31 know that the device ~~equipment~~ is designed to be primarily

1 ~~useful for committing, or assisting others in committing, a~~
2 ~~violation of paragraph (2)(a) the unauthorized reception of~~
3 ~~any communications service offered over a cable system.~~ Any
4 person who violates this subsection shall be guilty of a
5 misdemeanor of the first degree, punishable as provided in s.
6 775.082 or s. 775.083.

7 (6) For purposes of all criminal penalties established
8 for violations of this section, each communications device
9 involved in the prohibited activity constitutes a separate
10 violation of this section. All fines shall be imposed as
11 authorized by law for each such communications device and for
12 each day a defendant is in violation of this section.

13 (7) The court shall, in addition to any other sentence
14 authorized by law, sentence a person convicted of violating
15 this section to make restitution as authorized by law.

16 (8) Upon conviction of a defendant for violating this
17 section, the court may, in addition to any other sentence
18 authorized by law, direct that the defendant forfeit any
19 communications device in the defendant's possession or control
20 which was involved in the violation for which the defendant
21 was convicted.

22 (9) A violation of paragraph (2)(a) may be deemed to
23 have been committed at any place where the defendant
24 manufactures, develops, or assembles any communications
25 devices involved in the violation, or assists others in these
26 acts, or any place where the communications device is sold or
27 delivered to a purchaser or recipient. It is not a defense to
28 a violation of paragraph (2)(a) that some of the acts
29 constituting the violation occurred outside the state.

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1 ~~(10)(6)~~(a) Any person aggrieved by any violation of
2 this section may bring a civil action in a circuit court or in
3 any other court of competent jurisdiction.

4 (b) The court may:

5 1. Grant temporary and final injunctions on ~~such~~ terms
6 ~~as it finds may deem~~ reasonable to prevent or restrain
7 violations of this section in conformity with the principles
8 that govern the granting of injunctive relief from threatened
9 loss or damage in other civil cases, except that ~~a~~ ~~no~~ showing
10 of special or irreparable damages to the person ~~need not shall~~
11 ~~have to be made.~~

12 2. At any time while the action is pending, order the
13 impounding, on reasonable terms, of any communications device
14 that is in the custody or control of the violator and that the
15 court has reasonable cause to believe was involved in the
16 alleged violation of this section and may grant other
17 equitable relief, including the imposition of a constructive
18 trust, as the court considers reasonable and necessary.

19 ~~3.2.~~ Award damages pursuant to paragraphs (c), (d),
20 and (e). ~~and~~

21 ~~4.3.~~ Direct the recovery of full costs, including
22 awarding reasonable attorney's fees, to an aggrieved party who
23 prevails.

24 5. As part of a final judgment or decree finding a
25 violation of this section, order the remedial modification or
26 destruction of any communications device, or any other device
27 or equipment, involved in the violation which is in the
28 custody or control of the violator or has been impounded under
29 subparagraph 2.

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1 (c) Damages awarded by any court under this section
2 shall be computed in accordance with subparagraph 1. or
3 subparagraph 2. either of the following:

4 1. The party aggrieved may recover the actual damages
5 suffered by him or her as a result of the violation and any
6 profits of the violator that are attributable to the violation
7 which are not taken into account in computing the actual
8 damages.†

9 a. Actual damages include the retail value of all
10 communications services to which the violator had unauthorized
11 access as a result of the violation and the retail value of
12 any communications service illegally available to each person
13 to whom the violator directly or indirectly provided or
14 distributed a communications device. In proving actual
15 damages, the party aggrieved must prove only that the violator
16 manufactured, distributed, or sold a communications device and
17 is not required to prove that any such device was actually
18 used in violation of this section.

19 b. In determining the violator's profits, the party
20 aggrieved must ~~shall be required to~~ prove only the violator's
21 gross revenue, and the violator must ~~is required to~~ prove his
22 or her deductible expenses and the elements of profit
23 attributable to factors other than the violation.† ~~or~~

24 2. Upon election of such damages at any time before
25 final judgment is entered, the party aggrieved may recover an
26 award of statutory damages for each communications device
27 ~~violation~~ involved in the action, in a sum of not less than
28 ~~\$1,500~~\$250 or more than \$10,000 for each such device and for
29 each day the defendant is in violation of this section, as the
30 court considers just.

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1 (d) In any case in which the court finds that the
2 violation was committed willfully and for purposes of
3 commercial advantage or private financial gain, the court in
4 its discretion may increase the award of damages, whether
5 actual or statutory under this section, by an amount of not
6 more than \$50,000 for each communications device involved in
7 the action and for each day the defendant is in violation of
8 this section violation.

9 (e) In any case in which the court finds that the
10 violator was not aware and had no reason to believe that his
11 or her acts constituted a violation of this section, the court
12 in its discretion may reduce the award of damages to a sum of
13 not less than \$100.

14 Section 2. This act shall take effect October 1, 2003.

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17 SENATE SUMMARY

18 Revises a law prohibiting the unauthorized reception of
19 communications services. Prohibits the interception,
20 reception, decryption, disruption, transmission,
21 retransmission, or acquisition of access to certain
22 communications services and prohibits assisting others in
23 these acts. Provides criminal and civil penalties and
24 provides for actual and statutory damages. (See bill for
25 details.)
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