

By the Committee on Criminal Justice; and Senator Atwater

307-2420-03

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

21  
22 Be It Enacted by the Legislature of the State of Florida:

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24           Section 1. Section 812.15, Florida Statutes, is  
25 amended to read:

26           812.15 Unauthorized reception of communications ~~cable~~  
27 ~~television~~ services; penalties.--

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

29           (a) "Cable operator" means a communications service  
30 provider who provides some or all of its communications  
31 services pursuant to a "cable television franchise" issued by

1 a "franchising authority," as those terms are defined in 47  
2 U.S.C. s. 522(9) and (10) (1992) ~~"cable operator" as defined~~  
3 ~~in 47 U.S.C. s. 522(4) (1988).~~

4 (b) "Cable system" means any communications service  
5 network, system, or facility owned or operated by a cable  
6 operator ~~"cable system" as defined in 47 U.S.C. s. 522(6)~~  
7 ~~(1988).~~

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

21 (d) "Communications service" means any service  
22 lawfully provided for a charge or compensation by any cable  
23 system or by any radio, fiber optic, photooptical,  
24 electromagnetic, photoelectronic, satellite, microwave, data  
25 transmission, Internet-based, or wireless distribution  
26 network, system, or facility, including, but not limited to,  
27 any electronic, data, video, audio, Internet access,  
28 microwave, and radio communications, transmissions, signals,  
29 and services, and any such communications, transmissions,  
30 signals, and services lawfully provided for a charge or  
31

1 compensation, directly or indirectly by or through any of  
2 those networks, systems, or facilities.

3 (e) "Communications service provider" means:

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

9 2. Any person or entity providing any lawful  
10 communications service, whether directly or indirectly, as a  
11 reseller or licensee, by or through any such distribution  
12 network, system, or facility.

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

19 (g) "Multipurpose device" means any communications  
20 device that is capable of more than one function and includes  
21 any component thereof.

22 (2)(a) ~~A No~~ person ~~may not knowingly shall~~ intercept,  
23 ~~or~~ receive, decrypt, disrupt, transmit, retransmit, or acquire  
24 access to ~~or assist in intercepting or receiving~~ any  
25 communications service ~~without the express authorization of~~  
26 ~~the offered over a cable system, unless specifically~~  
27 ~~authorized to do so by a cable operator or other~~  
28 communications service provider, ~~or~~ as stated in a contract or  
29 ~~may~~ otherwise, with the intent to defraud the cable operator  
30 or communications service provider, or to knowingly assist  
31 others in doing those acts with the intent to defraud the

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

1           (b) Any person who willfully and for purposes of  
2 direct or indirect commercial advantage or private financial  
3 gain violates paragraph (2)(a), paragraph (4)(a), or  
4 subsection (5) commits ~~shall be guilty of~~ a felony of the  
5 third degree, punishable as provided in s. 775.082, s.  
6 775.083, or s. 775.084.

7           (4)(a) Any person who intentionally possesses a  
8 communications device ~~equipment~~, knowing or having reason to  
9 know that the design of such device ~~equipment~~ renders it  
10 primarily useful for the purpose of committing, or assisting  
11 others in committing, a violation of paragraph (2)(a) commits  
12 ~~the unauthorized reception of any communications service~~  
13 ~~offered over a cable system, shall be guilty of~~ a misdemeanor  
14 of the first degree, punishable as provided in s. 775.082 or  
15 s. 775.083.

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

25           (c) Any person who intentionally possesses fifty or  
26 more communications ~~devices or pieces of equipment~~ and knows  
27 or has reason to know that the design of such devices ~~or~~  
28 ~~equipment~~ renders them primarily useful for committing, or  
29 assisting others in committing, a violation of paragraph  
30 (2)(a) commits ~~the unauthorized reception of any~~  
31 ~~communications services offered over a cable system is guilty~~

1 ~~of~~ a felony of ~~in~~ the second degree, punishable as provided in  
2 s. 775.082, s. 775.083, or s. 775.084.

3 (5) It is unlawful for any person to place in any  
4 newspaper, magazine, handbill, or other publication, including  
5 any electronic medium, any advertisement that, in whole or in  
6 part, promotes the sale of a communications device ~~equipment~~,  
7 if the person placing the advertisement knows or has reason to  
8 know that the device ~~equipment~~ is designed to be primarily  
9 useful for committing, or assisting others in committing, a  
10 violation of paragraph (2)(a)~~the unauthorized reception of~~  
11 ~~any communications service offered over a cable system~~. Any  
12 person who violates this subsection shall be guilty of a  
13 misdemeanor of the first degree, punishable as provided in s.  
14 775.082 or s. 775.083.

15 (6) All fines shall be imposed as provided in s.  
16 775.083 for each communications device involved in the  
17 prohibited activity or for each day a defendant is in  
18 violation of this section.

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

22 (8) Upon conviction of a defendant for violating this  
23 section, the court may, in addition to any other sentence  
24 authorized by law, direct that the defendant forfeit any  
25 communications device in the defendant's possession or control  
26 which was involved in the violation for which the defendant  
27 was convicted.

28 (9) A violation of paragraph (2)(a) may be deemed to  
29 have been committed at any place where the defendant  
30 manufactures, develops, or assembles any communications  
31 devices involved in the violation, or assists others in these

1 acts, or any place where the communications device is sold or  
2 delivered to a purchaser or recipient. It is not a defense to  
3 a violation of paragraph (2)(a) that some of the acts  
4 constituting the violation occurred outside the state.

5 (10)(6)(a) Any person aggrieved by any violation of  
6 this section may bring a civil action in a circuit court or in  
7 any other court of competent jurisdiction.

8 (b) The court may:

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

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

23 ~~3.2.~~ Award damages pursuant to paragraphs (c), (d),  
24 and (e). ~~and~~

25 ~~4.3.~~ Direct the recovery of full costs, including  
26 awarding reasonable attorney's fees, to an aggrieved party who  
27 prevails.

28 5. As part of a final judgment or decree finding a  
29 violation of this section, order the remedial modification or  
30 destruction of any communications device, or any other device  
31 or equipment, involved in the violation which is in the

1 custody or control of the violator or has been impounded under  
2 subparagraph 2.

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

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

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

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

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



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 financial gain, the court in its  
4 discretion may increase the award of damages, whether actual  
5 or statutory under this section, by an amount of not more than  
6 \$50,000 for each communications device involved in the action  
7 and for each day the defendant is in violation of this section  
8 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           (11) This section shall not be construed to impose any  
15 criminal or civil liability upon any state or local law  
16 enforcement agency; any state or local government agency,  
17 municipality, or authority; or any communications service  
18 provider unless such entity is acting knowingly and with  
19 intent to defraud a communications service provider as defined  
20 in this section.

21           (12) A person that manufactures, produces, assembles,  
22 designs, sells, distributes, licenses, or develops a  
23 multipurpose device shall not be in violation of this section  
24 unless that person acts knowingly and with an intent to  
25 defraud a communications services provider and the  
26 multipurpose device:

27           (a) Is manufactured, developed, assembled, produced,  
28 designed, distributed, sold, or licensed for the primary  
29 purpose of committing a violation of this section;  
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1           (b) Has only a limited commercially significant  
2 purpose or use other than for the commission of any violation  
3 of this section; or

4           (c) Is marketed by that person or another acting in  
5 concert with that person with that person's knowledge for the  
6 purpose of committing any violation of this section.

7           (13) Nothing in this section shall require that the  
8 design of, or design and selection of parts, software code, or  
9 components for, a communications device provide for a response  
10 to any particular technology, device, or software, or any  
11 component or part thereof, used by the provider, owner, or  
12 licensee of any communications service or of any data, audio  
13 or video programs, or transmissions, to protect any such  
14 communications, data, audio or video service, programs, or  
15 transmissions from unauthorized receipt, acquisition,  
16 interception, access, decryption, disclosure, communication,  
17 transmission, or retransmission.

18           Section 2. This act shall take effect October 1, 2003.  
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 Senate Bill 1078

- 4 - Modifies the definition of "communication service" to  
5 indicate the definition includes communications,  
6 transmissions, signals, and services provided for a  
7 charge or compensation.  
8 - Modifies the definition of "communications service  
9 provider" to indicate the definition applies to any  
10 lawful communications service, as specified.  
11 - Defines the term "multipurpose device" and provides  
12 exceptions, as specified, in which manufacture,  
13 production, assembly, design, sale, distribution,  
14 licensing, and development of a multipurpose device do  
15 not violate s. 812.15, F.S.  
16 - Broadens the offense of intercepting or receiving  
17 communications services and modifies its elements so that  
18 it prohibits a person from knowingly intercepting,  
19 receiving, decrypting, disrupting, transmitting,  
20 retransmitting, or acquiring access to any communications  
21 service without the express authorization of the cable  
22 operator or other communications service provider as  
23 stated in a contract or otherwise, with the intent to  
24 defraud either of them, or knowingly assist others in  
25 doing those acts with the intent to defraud either of  
26 them.  
27 - Provides that unlawful assistance includes, in part, the  
28 sale, transfer, license, distribution, deployment, lease,  
29 manufacture, development, or assembly of a communications  
30 device for the purpose of defeating or circumventing any  
31 effective technology, device, or software, or any  
component or part thereof, as specified.  
- Provides that all fines shall be imposed as provided in  
s. 775.083, F.S., for each communications device involved  
in the prohibited activity or for each day a defendant is  
in violation of s. 812.15, F.S.  
- Provides that statutory damages may apply for each such  
device as the court consider just.  
- Specifies that authorization for a court to increase the  
award of damages applies to willful violation for the  
purpose of financial gain.  
- Provides an exception from criminal or civil liability  
for state and local agencies (including law enforcement  
agencies), municipalities, authorities, and communication  
providers if they do not act knowingly and with intent to  
defraud a communications service provider.  
- Provides that s. 812.15, F.S., does not require that the  
design of, or design and selection of parts, software  
code, or components for, a communications device provide  
for a response to any particular technology, device, or

1 software, or any component or part thereof, used by the  
2 provider, owner, or licensee of any communications  
3 service or of any data, audio or video programs, or  
4 transmissions to protect any of them from unauthorized  
5 receipt, acquisition, interception, access, decryption,  
6 disclosure, communication, transmission, or  
7 retransmission.  
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