

Bill No. HB 79, 1st Eng.

Amendment No. Barcode 860268

CHAMBER ACTION

Senate

House

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Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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

(a) "Cable operator" means a communications service provider who provides some or all of its communications services pursuant to a "cable television franchise" issued by a "franchising authority," as those terms are defined in 47 U.S.C. s. 522(9) and (10) (1992) ~~"cable operator" as defined in 47 U.S.C. s. 522(4) (1988).~~

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

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

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

26 (e) "Communications service provider" means:
27 1. Any person or entity owning or operating any cable
28 system or any fiber optic, photooptical, electromagnetic,
29 photoelectronic, satellite, wireless, microwave, radio, data
30 transmission, or Internet-based distribution network, system,
31 or facility.

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1 2. Any person or entity providing any lawful
2 communications service, whether directly or indirectly, as a
3 reseller or licensee, by or through any such distribution
4 network, system, or facility.

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

11 (g) "Multipurpose device" means any communications
12 device that is capable of more than one function and includes
13 any component thereof.

14 (2)(a) A ~~No~~ person ~~may not knowingly shall~~ intercept,
15 ~~or~~ receive, decrypt, disrupt, transmit, retransmit, or acquire
16 access to ~~or assist in intercepting or receiving~~ any
17 communications service ~~without the express authorization of~~
18 ~~the offered over a cable system, unless specifically~~
19 ~~authorized to do so by a cable operator or other~~
20 ~~communications service provider, or as stated in a contract or~~
21 ~~may~~ otherwise, with the intent to defraud the cable operator
22 ~~or communications service provider, or to knowingly assist~~
23 ~~others in doing those acts with the intent to defraud the~~
24 ~~cable operator or other communications provider~~ ~~be~~
25 ~~specifically authorized by law.~~ For the purpose of this
26 section, the term "assist others" includes:

27 1. The sale, transfer, license, distribution,
28 deployment, lease, manufacture, development, or assembly of a
29 communications device for the purpose of facilitating the
30 unauthorized receipt, acquisition, interception, disruption,
31 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 effective technology, device, or software,
7 or any component or part thereof, used by a cable operator or
8 other communications service provider to protect any
9 communications service from unauthorized receipt, acquisition,
10 interception, 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

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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

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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) All fines shall be imposed as provided in s.
 8 | 775.083 for each communications device involved in the
 9 | prohibited activity or for each day a defendant is in
 10 | violation of this section.

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

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

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

28 | (10)(6)(a) Any person aggrieved by any violation of
 29 | this section may bring a civil action in a circuit court or in
 30 | any other court of competent jurisdiction.

31 | (b) The court may:

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

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

15 ~~3.2.~~ Award damages pursuant to paragraphs (c), (d),
 16 and (e). ~~and~~

17 ~~4.3.~~ Direct the recovery of full costs, including
 18 awarding reasonable attorney's fees, to an aggrieved party who
 19 prevails.

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

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

29 1. The party aggrieved may recover the actual damages
 30 suffered by him or her as a result of the violation and any
 31 profits of the violator that are attributable to the violation

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1 which are not taken into account in computing the actual
 2 damages.~~†~~

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

13 b. In determining the violator's profits, the party
 14 aggrieved ~~must shall be required to~~ prove only the violator's
 15 gross revenue, and the violator ~~must is required to~~ prove his
 16 or her deductible expenses and the elements of profit
 17 attributable to factors other than the violation.~~† or~~

18 2. Upon election of such damages at any time before
 19 final judgment is entered, the party aggrieved may recover an
 20 award of statutory damages for each communications device
 21 ~~violation~~ involved in the action, in a sum of not less than
 22 \$250 or more than \$10,000 for each such device, as the court
 23 considers just.

24 (d) In any case in which the court finds that the
 25 violation was committed willfully and for purposes of
 26 commercial advantage or financial gain, the court in its
 27 discretion may increase the award of damages, whether actual
 28 or statutory under this section, by an amount of not more than
 29 \$50,000 for each communications device involved in the action
 30 and for each day the defendant is in violation of this section
 31 violation.

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

6 (11) This section shall not be construed to impose any
7 criminal or civil liability upon any state or local law
8 enforcement agency; any state or local government agency,
9 municipality, or authority; or any communications service
10 provider unless such entity is acting knowingly and with
11 intent to defraud a communications service provider as defined
12 in this section.

13 (12) A person that manufactures, produces, assembles,
14 designs, sells, distributes, licenses, or develops a
15 multipurpose device shall not be in violation of this section
16 unless that person acts knowingly and with an intent to
17 defraud a communications services provider and the
18 multipurpose device:

19 (a) Is manufactured, developed, assembled, produced,
20 designed, distributed, sold, or licensed for the primary
21 purpose of committing a violation of this section;

22 (b) Has only a limited commercially significant
23 purpose or use other than for the commission of any violation
24 of this section; or

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

28 (13) Nothing in this section shall require that the
29 design of, or design and selection of parts, software code, or
30 components for, a communications device provide for a response
31 to any particular technology, device, or software, or any

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

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

9

10

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Delete everything before the enacting clause

14

15 and insert:

16

A bill to be entitled

17

An act relating to communications services;
 18 amending s. 812.15, F.S.; redefining the terms
 19 "cable operator" and "cable system"; defining
 20 the terms "communications device,"
 21 "communications service," "communications
 22 service provider," and "manufacture,
 23 development, or assembly of a communications
 24 device"; defining the term "multipurpose
 25 device"; prohibiting certain interception,
 26 reception, decryption, disruption,
 27 transmission, retransmission, or acquisition of
 28 access to described communications services and
 29 prohibiting assisting others in these acts;
 30 prohibiting the advertisement of communications
 31 devices for certain unlawful purposes;

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1 providing criminal and civil penalties;
2 providing for actual and statutory damages;
3 providing exceptions; providing an effective
4 date.

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