



HB 0079

2003

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A bill to be entitled  
 An act relating to communications services; amending s. 812.15, F.S.; revising definition of "cable operator" and "cable system" and defining "communications device," "communications service," "communications service provider," and "manufacture, development, or assembly of a communications device"; prohibiting certain interception, reception, decryption, disruption, transmission, retransmission, or acquisition of access to described communications services and prohibiting assisting others in doing so; prohibiting described communications devices for certain purposes and promotion of such devices; providing criminal and civil penalties; providing for actual and statutory damages; providing an effective date.

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

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

812.15 Unauthorized reception of communications ~~eable 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).~~



HB 0079

2003

29 (b) "Cable system" means any communications service  
30 network, system, or facility owned or operated by a cable  
31 operator ~~"cable system" as defined in 47 U.S.C. s. 522(6)~~  
32 ~~(1988)~~.

33 (c) "Communications device" means any type of electronic  
34 mechanism, transmission line or connections and appurtenances  
35 thereto, instrument, device, machine, equipment, or software  
36 which is capable of intercepting, transmitting, acquiring,  
37 decrypting, or receiving any communications service, or any  
38 part, accessory, or component thereof, including any computer  
39 circuit, splitter, connector, switches, transmission hardware,  
40 security module, smart card, software, computer chip, electronic  
41 mechanism, or other component, accessory, or part of any  
42 communications device which is capable of facilitating the  
43 interception, transmission, retransmission, acquisition,  
44 decryption, or reception of any communications service.

45 (d) "Communications service" means any service lawfully  
46 provided for a charge or compensation by any cable system or by  
47 any radio, telephone, fiber optic, photo-optical,  
48 electromagnetic, photoelectronic, satellite, microwave, data  
49 transmission, Internet-based or wireless distribution network,  
50 system, or facility, including, but not limited to, any and all  
51 electronic, data, video, audio, Internet access, telephonic,  
52 microwave, and radio communications, transmissions, signals, and  
53 services, and any such communications, transmissions, signals,  
54 and services lawfully provided directly or indirectly by or  
55 through any of those networks, systems, or facilities.

56 (e) "Communications service provider" means:



HB 0079

2003

57 1. Any person or entity owning or operating any cable  
58 system or any fiber optic, photo-optical, electromagnetic,  
59 photoelectronic, satellite, telephone, wireless, microwave,  
60 radio, data transmission, or Internet-based distribution  
61 network, system, or facility.

62 2. Any person or entity providing any communications  
63 service, whether directly or indirectly, as a reseller or  
64 licensee, by or through any such distribution network, system,  
65 or facility.

66 (f) "Manufacture, development, or assembly of a  
67 communications device" means to make, produce, develop, or  
68 assemble a communications device or any part, accessory, or  
69 component thereof, or to modify, alter, program, or reprogram  
70 any communications device so that it is capable of facilitating  
71 the commission of a violation of this section.

72 (2) (a) No person shall knowingly intercept, ~~or~~ receive,  
73 decrypt, disrupt, transmit, retransmit, or acquire access to ~~or~~  
74 ~~assist in intercepting or receiving~~ any communications service  
75 offered by ~~ever~~ a cable operator or any other communications  
76 service provider, or knowingly assist others in doing so ~~system,~~  
77 unless specifically authorized to do so by a cable operator or  
78 other communications service provider, or as may otherwise be  
79 specifically authorized by law. For the purpose of this section,  
80 the term to "assist others" in committing any of these acts  
81 shall include:

82 1. The sale, transfer, license, distribution, lease,  
83 manufacture, development, or assembly of a communications device  
84 for the purpose of facilitating the unauthorized receipt,  
85 acquisition, interception, disruption, decryption, transmission,



HB 0079

2003

86 retransmission, or access to any communications service offered  
87 by a cable operator or any other communications service  
88 provider; or

89 2. The sale, transfer, distribution, lease, manufacture,  
90 development, or assembly of a communications device for the  
91 purpose of defeating or circumventing any technology, device, or  
92 software, or any component or part thereof, used by a cable  
93 operator or other communications service provider to protect any  
94 communications service from unauthorized receipt, acquisition,  
95 interception, disruption, access, decryption, transmission, or  
96 retransmission ~~"assist in intercepting or receiving" shall~~  
97 ~~include the manufacture of or distribution of equipment intended~~  
98 ~~by the manufacturer or distributor, as the case may be, for~~  
99 ~~unauthorized reception of any communications service offered~~  
100 ~~over a cable system in violation of this section.~~

101 (b) Any person who willfully violates this subsection  
102 shall be guilty of a misdemeanor of the first degree, punishable  
103 as provided in s. 775.082 or s. 775.083.

104 (3) (a) Any person who willfully violates paragraph (2) (a),  
105 paragraph (4) (a), or subsection (5) and who has been previously  
106 convicted of any such provision shall be guilty of a felony of  
107 the third degree, punishable as provided in s. 775.082, s.  
108 775.083, or s. 775.084.

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



HB 0079

2003

114 (4) (a) Any person who intentionally possesses a  
115 communications device ~~equipment~~, knowing or having reason to  
116 know that the design of such device ~~equipment~~ renders it  
117 primarily useful for the purpose of committing or assisting  
118 others in committing a violation of paragraph (2) (a) the  
119 ~~unauthorized reception of any communications service offered~~  
120 ~~over a cable system~~, shall be guilty of a misdemeanor of the  
121 first degree, punishable as provided in s. 775.082 or s.  
122 775.083.

123 (b) Any person who intentionally possesses five or more  
124 communications devices ~~or pieces of equipment~~ and knows or has  
125 reason to know that the design of such devices ~~or pieces of~~  
126 ~~equipment~~ renders them primarily useful for committing or  
127 assisting others in committing a violation of paragraph (2) (a)  
128 ~~the unauthorized reception of any communications services~~  
129 ~~offered over a cable system~~ is guilty of a felony of the third  
130 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
131 775.084.

132 (c) Any person who intentionally possesses fifty or more  
133 communications devices ~~or pieces of equipment~~ and knows or has  
134 reason to know that the design of such devices ~~or equipment~~  
135 renders them primarily useful for committing or assisting others  
136 in committing a violation of paragraph (2)(a) the unauthorized  
137 ~~reception of any communications services offered over a cable~~  
138 ~~system~~ is guilty of a felony in the second degree, punishable as  
139 provided in s. 775.082, s. 775.083, or s. 775.084.

140 (5) It is unlawful for any person to place in any  
141 newspaper, magazine, handbill, or other publication, including  
142 any electronic medium, any advertisement that, in whole or in



HB 0079

2003

143 part, promotes the sale of a communications device ~~equipment~~, if  
144 the person placing the advertisement knows or has reason to know  
145 that the device ~~equipment~~ is designed to be primarily useful for  
146 committing or assisting others in committing a violation of  
147 paragraph (2)(a) the unauthorized reception of any  
148 ~~communications service offered over a cable system~~. Any person  
149 who violates this subsection shall be guilty of a misdemeanor of  
150 the first degree, punishable as provided in s. 775.082 or s.  
151 775.083.

152 (6) For purposes of all criminal penalties established for  
153 violations of this section, each communications device involved  
154 in the prohibited activity shall constitute a separate violation  
155 of this section. All fines shall be imposed as authorized by law  
156 for each such communications device and for each day in  
157 violation of this section.

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

161 (8) Upon conviction of a defendant for violating this  
162 section, the court may, in addition to any other sentence  
163 authorized by law, direct that the defendant forfeit any  
164 communications devices in the defendant's possession or control  
165 which were involved in the violation for which the defendant was  
166 convicted.

167 (9) A violation of paragraph (2)(a) may be deemed to have  
168 been committed at either place where the defendant manufactures,  
169 develops, or assembles any communications devices involved in the  
170 violation, or assists others in doing so, or the places where  
171 those communications devices are sold or delivered to a purchaser  
172 or recipient. It shall be no defense to a violation of paragraph



HB 0079

2003

173 (2)(a) that some of the acts constituting the violation occurred  
174 outside the state.

175 (10)(6)(a) Any person aggrieved by any violation of this  
176 section may bring a civil action in a circuit court or in any  
177 other court of competent jurisdiction.

178 (b) The court may:

179 1. Grant temporary and final injunctions on such terms as  
180 it may deem reasonable to prevent or restrain violations of this  
181 section in conformity with the principles that govern the  
182 granting of injunctive relief from threatened loss or damage in  
183 other civil cases, except that no showing of special or  
184 irreparable damages to the person shall have to be made.~~†~~

185 2. At any time while the action is pending, order the  
186 impounding, on such terms as it seems reasonable, of any  
187 communications device that is in the custody or control of the  
188 violator and that the court has reasonable cause to believe was  
189 involved in the alleged violation of this section and grant  
190 other equitable relief, including the imposition of a  
191 constructive trust, as the court considers reasonable and  
192 necessary.

193 ~~3.2.~~ Award damages pursuant to paragraphs (c), (d), and  
194 (e).~~†~~ and

195 ~~4.3.~~ Direct the recovery of full costs, including awarding  
196 reasonable attorney's fees, to an aggrieved party who prevails.

197 5. As part of a final judgment or decree finding a  
198 violation of this section, order the remedial modification or  
199 destruction of any communications devices, or any other devices  
200 or equipment, involved in the violation that are in the custody



HB 0079

2003

201 or control of the violator, or have been impounded under  
202 subparagraph 2.

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

206 1. The party aggrieved may recover the actual damages  
207 suffered by him or her as a result of the violation and any  
208 profits of the violator that are attributable to the violation  
209 which are not taken into account in computing the actual  
210 damages. ~~†~~

211 a. Actual damages include the retail value of all  
212 communications services to which the violator had unauthorized  
213 access as a result of the violation and the retail value of any  
214 communications services illegally available to those persons to  
215 whom the violator directly or indirectly provided or distributed  
216 any communications device. In proving actual damages, the party  
217 aggrieved shall be required to prove only that the violator  
218 manufactured, distributed, or sold any communications devices,  
219 but shall not be required to prove that those devices were  
220 actually used in violation of this section.

221 b. In determining the violator's profits, the party  
222 aggrieved shall be required to prove only the violator's gross  
223 revenue, and the violator is required to prove his or her  
224 deductible expenses and the elements of profit attributable to  
225 factors other than the violation. ~~† or~~

226 2. Upon election of such damages at any time before final  
227 judgment is entered, the party aggrieved may recover an award of  
228 statutory damages for each communications device violation  
229 involved in the action, in a sum of not less than \$1,500 ~~\$250~~ or





HB 0079

2003

230 more than \$10,000 for each such device and for each day the  
231 defendant is in violation of this section, as the court  
232 considers just.

233 (d) In any case in which the court finds that the  
234 violation was committed willfully and for purposes of commercial  
235 advantage or private financial gain, the court in its discretion  
236 may increase the award of damages, whether actual or statutory  
237 under this section, by an amount of not more than \$50,000 for  
238 each communications device involved in the action and for each  
239 day the defendant is in violation of this section ~~violation~~.

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

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