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CHAMBER ACTION

The Committee on Business Regulation recommends the following:

Committee Substitute

Remove the entire bill and insert:

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; exempting described entities under certain circumstances; providing an effective date.

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



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

30 812.15 Unauthorized reception of communications ~~cable~~
31 ~~television~~ services; penalties.--

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

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

39 (b) "Cable system" means any communications service
40 network, system, or facility owned or operated by a cable
41 operator ~~"cable system" as defined in 47 U.S.C. s. 522(6)~~
42 ~~(1988).~~

43 (c) "Communications device" means any type of electronic
44 mechanism, transmission line or connections and appurtenances
45 thereto, instrument, device, machine, equipment, or software
46 which is capable of intercepting, transmitting, acquiring,
47 decrypting, or receiving any communications service, or any
48 part, accessory, or component thereof, including any computer
49 circuit, splitter, connector, switches, transmission hardware,
50 security module, smart card, software, computer chip, electronic
51 mechanism, or other component, accessory, or part of any
52 communications device which is capable of facilitating the
53 interception, transmission, retransmission, acquisition,
54 decryption, or reception of any communications service.



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55 (d) "Communications service" means any service lawfully
56 provided for a charge or compensation by any cable system or by
57 any radio, telephone, fiber optic, photo-optical,
58 electromagnetic, photoelectronic, satellite, microwave, data
59 transmission, Internet-based or wireless distribution network,
60 system, or facility, including, but not limited to, any and all
61 electronic, data, video, audio, Internet access, microwave, and
62 radio communications, transmissions, signals, and services, and
63 any such communications, transmissions, signals, and services
64 lawfully provided directly or indirectly by or through any of
65 those networks, systems, or facilities.

66 (e) "Communications service provider" means:

67 1. Any person or entity owning or operating any cable
68 system or any fiber optic, photo-optical, electromagnetic,
69 photoelectronic, satellite, wireless, microwave, radio, data
70 transmission, or Internet-based distribution network, system, or
71 facility.

72 2. Any person or entity providing any communications
73 service, whether directly or indirectly, as a reseller or
74 licensee, by or through any such distribution network, system,
75 or facility.

76 (f) "Manufacture, development, or assembly of a
77 communications device" means to make, produce, develop, or
78 assemble a communications device or any part, accessory, or
79 component thereof, or to modify, alter, program, or reprogram
80 any communications device so that it is capable of facilitating
81 the commission of a violation of this section.



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82 (2)(a) No person shall knowingly intercept, ~~or~~ receive,
83 decrypt, disrupt, transmit, retransmit, or acquire access to ~~or~~
84 assist in intercepting or receiving any communications service
85 offered by ~~ever~~ a cable operator or any other communications
86 service provider, or knowingly assist others in doing so ~~system,~~
87 unless specifically authorized to do so by a cable operator or
88 other communications service provider, or as may otherwise be
89 specifically authorized by law. For the purpose of this section,
90 the term to "assist others" in committing any of these acts
91 shall include:

92 1. The sale, transfer, license, distribution, deployment,
93 lease, manufacture, development, or assembly of a communications
94 device for the purpose of facilitating the unauthorized receipt,
95 acquisition, interception, disruption, decryption, transmission,
96 retransmission, or access to any communications service offered
97 by a cable operator or any other communications service
98 provider; or

99 2. The sale, transfer, distribution, deployment, lease,
100 manufacture, development, or assembly of a communications device
101 for the purpose of defeating or circumventing any technology,
102 device, or software, or any component or part thereof, used by a
103 cable operator or other communications service provider to
104 protect any communications service from unauthorized receipt,
105 acquisition, interception, disruption, access, decryption,
106 transmission, or retransmission ~~"assist in intercepting or~~
107 ~~receiving"~~ ~~shall include the manufacture of or distribution of~~
108 ~~equipment intended by the manufacturer or distributor, as the~~
109 ~~case may be, for unauthorized reception of any communications~~



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110 ~~service offered over a cable system in violation of this~~
111 ~~section.~~

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

115 (3)(a) Any person who willfully violates paragraph(2)(a),
116 paragraph (4)(a), or subsection (5) and who has been previously
117 convicted of any such provision shall be guilty of a felony of
118 the third degree, punishable as provided in s. 775.082, s.
119 775.083, or s. 775.084.

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

125 (4)(a) Any person who intentionally possesses a
126 communications device ~~equipment~~, knowing or having reason to
127 know that the design of such device ~~equipment~~ renders it
128 primarily useful for the purpose of committing or assisting
129 others in committing a violation of paragraph (2)(a) ~~the~~
130 ~~unauthorized reception of any communications service offered~~
131 ~~over a cable system~~, shall be guilty of a misdemeanor of the
132 first degree, punishable as provided in s. 775.082 or s.
133 775.083.

134 (b) Any person who intentionally possesses five or more
135 communications devices ~~or pieces of equipment~~ and knows or has
136 reason to know that the design of such devices ~~or pieces of~~
137 ~~equipment~~ renders them primarily useful for committing or



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138 assisting others in committing a violation of paragraph(2)(a)
139 ~~the unauthorized reception of any communications services~~
140 ~~offered over a cable system~~ is guilty of a felony of the third
141 degree, punishable as provided in s. 775.082, s. 775.083, or s.
142 775.084.

143 (c) Any person who intentionally possesses fifty or more
144 communications devices ~~or pieces of equipment~~ and knows or has
145 reason to know that the design of such devices ~~or equipment~~
146 renders them primarily useful for committing or assisting others
147 in committing a violation of paragraph(2)(a) ~~the unauthorized~~
148 ~~reception of any communications services offered over a cable~~
149 ~~system~~ is guilty of a felony in the second degree, punishable as
150 provided in s. 775.082, s. 775.083, or s. 775.084.

151 (5) It is unlawful for any person to place in any
152 newspaper, magazine, handbill, or other publication, including
153 any electronic medium, any advertisement that, in whole or in
154 part, promotes the sale of a communications device ~~equipment~~, if
155 the person placing the advertisement knows or has reason to know
156 that the device ~~equipment~~ is designed to be primarily useful for
157 committing or assisting others in committing a violation of
158 paragraph(2)(a) ~~the unauthorized reception of any communications~~
159 ~~service offered over a cable system~~. Any person who violates
160 this subsection shall be guilty of a misdemeanor of the first
161 degree, punishable as provided in s. 775.082 or s. 775.083.

162 (6) For purposes of all criminal penalties established for
163 violations of this section, each communications device involved
164 in the prohibited activity shall constitute a separate violation
165 of this section. All fines shall be imposed as authorized by law



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166 for each such communications device and for each day in
167 violation of this section.

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

171 (8) Upon conviction of a defendant for violating this
172 section, the court may, in addition to any other sentence
173 authorized by law, direct that the defendant forfeit any
174 communications devices in the defendant's possession or control
175 which were involved in the violation for which the defendant was
176 convicted.

177 (9) A violation of paragraph (2)(a) may be deemed to have
178 been committed at either place where the defendant manufactures,
179 develops, or assembles any communications devices involved in
180 the violation, or assists others in doing so, or the places
181 where those communications devices are sold or delivered to a
182 purchaser or recipient. It shall be no defense to a violation of
183 paragraph (2)(a) that some of the acts constituting the
184 violation occurred outside the state.

185 (10)(6)(a) Any person aggrieved by any violation of this
186 section may bring a civil action in a circuit court or in any
187 other court of competent jurisdiction.

188 (b) The court may:

189 1. Grant temporary and final injunctions on such terms as
190 it may deem reasonable to prevent or restrain violations of this
191 section in conformity with the principles that govern the
192 granting of injunctive relief from threatened loss or damage in



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193 other civil cases, except that no showing of special or
194 irreparable damages to the person shall have to be made.†

195 2. At any time while the action is pending, order the
196 impounding, on such terms as it seems reasonable, of any
197 communications device that is in the custody or control of the
198 violator and that the court has reasonable cause to believe was
199 involved in the alleged violation of this section and grant
200 other equitable relief, including the imposition of a
201 constructive trust, as the court considers reasonable and
202 necessary.

203 3.2- Award damages pursuant to paragraphs (c), (d), and
204 (e).† ~~and~~

205 4.3- Direct the recovery of full costs, including awarding
206 reasonable attorney's fees, to an aggrieved party who prevails.

207 5. As part of a final judgment or decree finding a
208 violation of this section, order the remedial modification or
209 destruction of any communications devices, or any other devices
210 or equipment, involved in the violation that are in the custody
211 or control of the violator, or have been impounded under
212 subparagraph 2.

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

216 1. The party aggrieved may recover the actual damages
217 suffered by him or her as a result of the violation and any
218 profits of the violator that are attributable to the violation
219 which are not taken into account in computing the actual
220 damages.†



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221 a. Actual damages include the retail value of all
 222 communications services to which the violator had unauthorized
 223 access as a result of the violation and the retail value of any
 224 communications services illegally available to those persons to
 225 whom the violator directly or indirectly provided or distributed
 226 any communications device. In proving actual damages, the party
 227 aggrieved shall be required to prove only that the violator
 228 manufactured, distributed, or sold any communications devices,
 229 but shall not be required to prove that those devices were
 230 actually used in violation of this section.

231 b. In determining the violator's profits, the party
 232 aggrieved shall be required to prove only the violator's gross
 233 revenue, and the violator is required to prove his or her
 234 deductible expenses and the elements of profit attributable to
 235 factors other than the violation. ~~;~~ ~~or~~

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

243 (d) In any case in which the court finds that the
 244 violation was committed willfully and for purposes of commercial
 245 advantage or private financial gain, the court in its discretion
 246 may increase the award of damages, whether actual or statutory
 247 under this section, by an amount of not more than \$50,000 for



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248 | each communications device involved in the action and for each
249 | day the defendant is in violation of this section ~~violation.~~

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

255 | (11) This section shall not apply to any state or local
256 | law enforcement agency, any state or local government agency,
257 | municipality, or authority, or any provider of communications
258 | services, lawfully acting as such in accordance with any other
259 | state or federal law.

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