



1 A bill to be entitled
 2 An act relating to communications services; amending s.
 3 812.15, F.S.; revising definition of "cable operator" and
 4 "cable system" and defining "communications device,"
 5 "communications service," "communications service
 6 provider," and "manufacture, development, or assembly of a
 7 communications device"; prohibiting certain interception,
 8 reception, decryption, disruption, transmission,
 9 retransmission, or acquisition of access to described
 10 communications services and prohibiting assisting others
 11 in doing so; prohibiting described communications devices
 12 for certain purposes and promotion of such devices;
 13 providing criminal and civil penalties; providing for
 14 actual and statutory damages; exempting described entities
 15 under certain circumstances; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 812.15, Florida Statutes, is amended to
 20 read:

21 812.15 Unauthorized reception of communications ~~cable~~
 22 ~~television~~ services; penalties.--

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

24 (a) "Cable operator" means a communications service
 25 provider who provides some or all of its communications services
 26 pursuant to a "cable television franchise" issued by a
 27 "franchising authority" as those terms are defined in 47 U.S.C.



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

30 (b) "Cable system" means any communications service
31 network, system, or facility owned or operated by a cable
32 operator "cable system" as defined in 47 U.S.C. s. 522(6)
33 (1988).

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

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



55 lawfully provided directly or indirectly by or through any of
 56 those networks, systems, or facilities.

57 (e) "Communications service provider" means:

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

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

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

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



83 | 1. The sale, transfer, license, distribution, deployment,
84 | lease, manufacture, development, or assembly of a communications
85 | device for the purpose of facilitating the unauthorized receipt,
86 | acquisition, interception, disruption, decryption, transmission,
87 | retransmission, or access to any communications service offered
88 | by a cable operator or any other communications service
89 | provider; or

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

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

106 | (3)(a) Any person who willfully violates paragraph(2)(a),
107 | paragraph (4)(a), or subsection (5) and who has been previously
108 | convicted of any such provision shall be guilty of a felony of
109 | the third degree, punishable as provided in s. 775.082, s.
110 | 775.083, or s. 775.084.



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

116 (4)(a) Any person who intentionally possesses a
117 communications device ~~equipment~~, knowing or having reason to
118 know that the design of such device ~~equipment~~ renders it
119 primarily useful for the purpose of committing or assisting
120 others in committing a violation of paragraph (2)(a) the
121 ~~unauthorized reception of any communications service offered~~
122 ~~over a cable system~~, shall be guilty of a misdemeanor of the
123 first degree, punishable as provided in s. 775.082 or s.
124 775.083.

125 (b) Any person who intentionally possesses five or more
126 communications devices ~~or pieces of equipment~~ and knows or has
127 reason to know that the design of such devices ~~or pieces of~~
128 ~~equipment~~ renders them primarily useful for committing or
129 assisting others in committing a violation of paragraph(2)(a)
130 ~~the unauthorized reception of any communications services~~
131 ~~offered over a cable system~~ is guilty of a felony of the third
132 degree, punishable as provided in s. 775.082, s. 775.083, or s.
133 775.084.

134 (c) Any person who intentionally possesses fifty or more
135 communications devices ~~or pieces of equipment~~ and knows or has
136 reason to know that the design of such devices ~~or equipment~~
137 renders them primarily useful for committing or assisting others
138 in committing a violation of paragraph(2)(a) the unauthorized



139 ~~reception of any communications services offered over a cable~~
140 ~~system~~ is guilty of a felony in the second degree, punishable as
141 provided in s. 775.082, s. 775.083, or s. 775.084.

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

153 (6) All fines shall be imposed as provided in s. 775.083
154 for each communications device involved in the prohibited
155 activity or for each day a defendant is in violation of this
156 section.

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

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



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

174 ~~(10)(6)~~(a) Any person aggrieved by any violation of this
 175 section may bring a civil action in a circuit court or in any
 176 other court of competent jurisdiction.

177 (b) The court may:

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

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

192 ~~3.2.~~ Award damages pursuant to paragraphs (c), (d), and
 193 (e). ~~;~~ ~~and~~



194 ~~4.3.~~ Direct the recovery of full costs, including awarding
195 reasonable attorney's fees, to an aggrieved party who prevails.

196 5. As part of a final judgment or decree finding a
197 violation of this section, order the remedial modification or
198 destruction of any communications devices, or any other devices
199 or equipment, involved in the violation that are in the custody
200 or control of the violator, or have been impounded under
201 subparagraph 2.

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

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

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

220 b. In determining the violator's profits, the party
221 aggrieved shall be required to prove only the violator's gross



222 revenue, and the violator is required to prove his or her
223 deductible expenses and the elements of profit attributable to
224 factors other than the violation.~~;~~~~or~~

225 2. Upon election of such damages at any time before final
226 judgment is entered, the party aggrieved may recover an award of
227 statutory damages for each communications device violation
228 involved in the action, in a sum of not less than \$250 or more
229 than \$10,000 for each such device the defendant is in violation
230 of this section, as the court considers just.

231 (d) In any case in which the court finds that the
232 violation involved the possession or sale of five or more
233 communication devices and was committed willfully and for
234 purposes of commercial advantage or private financial gain, the
235 court in its discretion may increase the award of damages,
236 whether actual or statutory under this section, by an amount of
237 not more than \$50,000 for each communications device involved in
238 the action and for each day the defendant is in violation of
239 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 (11) This section shall not apply to any state or local
246 law enforcement agency, any state or local government agency,
247 municipality, or authority, or any provider of communications
248 services, lawfully acting as such in accordance with any other
249 state or federal law.



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