

## House Bill No. 79

An act relating to communications services; amending s. 812.15, F.S.; redefining the terms “cable operator” and “cable system”; defining the terms “communications device,” “communications service,” “communications service provider,” and “manufacture, development, or assembly of a communications device”; defining the term “multipurpose device”; prohibiting certain interception, reception, decryption, disruption, transmission, retransmission, or acquisition of access to described communications services and prohibiting assisting others in these acts; prohibiting the advertisement of communications devices for certain unlawful purposes; providing criminal and civil penalties; providing for actual and statutory damages; providing exceptions; 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 ~~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).~~

(c) “Communications device” means any type of electronic mechanism, transmission line or connections and appurtenances thereto, instrument, device, machine, equipment, or software that is capable of intercepting, transmitting, acquiring, decrypting, or receiving any communications service, or any part, accessory, or component thereof, including any computer circuit, splitter, connector, switches, transmission hardware, security module, smart card, software, computer chip, electronic mechanism, or other component, accessory, or part of any communications device which is capable of facilitating the interception, transmission, retransmission, acquisition, decryption, or reception of any communications service.

(d) “Communications service” means any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photooptical, electromagnetic, photoelectronic, satellite, microwave, data transmission, Internet-based, or wireless distribution network, system, or facility, including, but not limited to, any electronic, data, video, audio,

Internet access, microwave, and radio communications, transmissions, signals, and services, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

(e) “Communications service provider” means:

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

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

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

(g) “Multipurpose device” means any communications device that is capable of more than one function and includes any component thereof.

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

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

2. The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communications device for the purpose of defeating or circumventing any effective technology, device, or software, or any component or part thereof, used by a cable operator or other communications service provider to protect any communications service from unauthorized receipt, acquisition, interception, disruption, access, decryption, transmission, or retransmission. in intercepting or receiving” shall include the manufacture of or distribution of equipment intended by the manufacturer or distributor, as the case may be, for unauthorized reception of any

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The court may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) Nothing in this section shall 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 software, or any component or part thereof, used by the provider, owner, or licensee of any communications service or of any data, audio or video programs, or transmissions, to protect any such communications, data, audio or video service, programs, or transmissions from unauthorized receipt, acquisition, interception, access, decryption, disclosure, communication, transmission, or retransmission.

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

Approved by the Governor June 24, 2003.

Filed in Office Secretary of State June 24, 2003.