

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas As Engrossed: H3/13/03 H3/20/03 H3/26/03 H4/10/03

2 84th General Assembly

A Bill

Act 1806 of 2003

3 Regular Session, 2003

HOUSE BILL 2361

4

5 By: Representatives Wood, Adams, Scroggin

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For An Act To Be Entitled

9 AN ACT TO AMEND THE CRIMINAL LAWS PERTAINING TO
10 CABLE TELEVISION AND COMMUNICATION SERVICES; AND
11 FOR OTHER PURPOSES.

12

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Subtitle

14

AN ACT TO AMEND THE CRIMINAL LAWS
15 PERTAINING TO CABLE TELEVISION AND
16 COMMUNICATION SERVICES.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code § 5-37-401 is amended to read as follows:

22 5-37-401. Definition Definitions.

23 ~~As used in this section, unless the context otherwise requires, "cable~~
24 ~~television company" or "company" means any franchised or other duly licensed~~
25 ~~company which is operated or intended to be operated to perform the service~~
26 ~~of receiving and amplifying the signals broadcast by one (1) or more~~
27 ~~television stations and redistributing the signals by wire, cable, or other~~
28 ~~device or means for accomplishing the redistribution, to members of the~~
29 ~~public who subscribe to the service, or distributing through the company's~~
30 ~~antennae, poles, wires, cables, conduits or other property used in providing~~
31 ~~service to its subscribers and customers any television signals whether~~
32 ~~broadcast or not.~~

33 As used in this subchapter:

34 (1) "Communication device" means:

35 (A) Any type of electronic mechanism, transmission lines,
36 or connections and appurtenances thereto, instrument, device, machine,



1 equipment, technology, or software that is capable of intercepting,
2 transmitting, retransmitting, acquiring, decrypting, or receiving any
3 communication service or functionality, including the receipt, acquisition,
4 interception, transmission, retransmission, or decryption of communication
5 service provided by or through any cable television, fiber optic, telephone,
6 satellite, microwave, data transmission, radio, Internet based, or wireless
7 distribution network, system, or facility; and

8 (B) Any component of the communication device, including
9 any electronic serial number, mobile identification number, personal
10 identification number, computer circuit, splitter, connectors, switches,
11 transmission hardware, security module, smart card, software, computer chip,
12 electronic mechanism, or any component, accessory, or part of any
13 communication device which is capable of facilitating the interception,
14 transmission, retransmission, decryption, acquisition, or reception of any
15 communication service or functionality;

16 (2) "Communication service" means:

17 (A) Any service lawfully provided for a charge or
18 compensation to facilitate the lawful origination, transmission, emission, or
19 reception of signs, signals, data, writings, images, and sounds or
20 intelligence of any nature by telephone, including cellular or other wireless
21 telephones, wire, wireless, radio, electromagnetic, photoelectronic, or photo
22 optical systems, networks, or facilities; and

23 (B) Any service lawfully provided for a charge or
24 compensation by any cable television, radio, fiber optic, photo optical,
25 electromagnetic, photoelectric, photoelectronic, satellite, microwave, data
26 transmission, wireless, or Internet based distribution system, network, or
27 facility, including, but not limited to, all electronic, data, video, audio,
28 Internet access, telephonic, microwave and radio communications,
29 transmissions, signals, and services, and any communications, transmissions,
30 signals, and services lawfully provided directly or indirectly by or through
31 any of the systems, networks, or facilities described in this subdivision

32 (2)(B);

33 (3) "Communication service provider" means:

34 (A) Any person or entity owning or operating any cable
35 television, fiber optic, photo optical, electromagnetic, photoelectric,
36 photoelectronic, satellite, Internet based, telephone, wireless, microwave,

1 data transmission, or radio distribution system, network, or facility;

2 (B) Any person or entity providing a communication
3 service, whether directly or indirectly as a reseller, including, but not
4 limited to, a cellular, paging, or other wireless communications company or
5 other person or entity which, for a fee, supplies the facility, cell site,
6 mobile telephone switching office, or other equipment or communication
7 service; and

8 (C) Any person or entity providing any communication
9 service directly or indirectly by or through any distribution systems,
10 networks, or facilities described in this subdivision (3);

11 (4) "Manufacture, assembly, or development of a communication
12 device" means to make, produce, develop, or assemble a communication device,
13 or to knowingly assist others in those activities;

14 (5) "Manufacture, assembly, or development of an unlawful access
15 device" means to make, develop, produce, or assemble an unlawful access
16 device or modify, alter, program, or reprogram any instrument, device,
17 machine, equipment, technology, or software for the purpose of defeating or
18 circumventing any effective technology, device, or software used by the
19 provider, owner, or licensee of a communication service, or of any data,
20 audio, or video programs, or transmissions, to protect any such
21 communication, data, audio, or video services, programs, or transmissions
22 from unauthorized receipt, interception, acquisition, access, decryption,
23 disclosure, communication, transmission, or retransmission, or to knowingly
24 assist others in those activities;

25 (6) "Multipurpose device" means any communication device that is
26 capable of more than one (1) function, and includes any component of the
27 communication device; and

28 (7) "Unlawful access device" means any type of instrument,
29 device, machine, equipment, technology, or software which is primarily
30 designed, developed, assembled, manufactured, sold, distributed, possessed,
31 used, offered, promoted, or advertised, for the purpose of defeating or
32 circumventing any effective technology, device, or software, or any component
33 or part thereof used by the provider, owner, or licensee of any communication
34 service or of any data, audio, or video programs or transmissions, to protect
35 any communication, data, audio, or video services, programs, or transmissions
36 from unauthorized receipt, acquisition, interception, access, decryption,

1 disclosure, communication, transmission, or retransmission.

2
3 SECTION 2. Arkansas Code § 5-37-402 is amended to read as follows:

4 5-37-402. Theft of ~~cable television~~ communication services - Unlawful
5 communication and access devices.

6 (a) A person commits theft of ~~cable television~~ communication services
7 if he or she knowingly and with the intent to defraud a communication service
8 provider:

9 (1)(A) Obtains or attempts to obtain, ~~cable television service~~
10 from another by any means, artifice, trick, deception, or device without the
11 payment to the operator of the service of all lawful compensation for each
12 type of service obtained or uses a communication service without the
13 authorization of, or proper compensation paid to, the communication service
14 provider, or assists or instructs any other person in doing so with the
15 intent to defraud the communication service provider; or

16 (B) Tampers with, modifies, or maintains a modification to
17 a communication device installed or provided by the communication service
18 provider with the intent to defraud that communication service provider;

19 (2) ~~Assists or instructs any other person in obtaining or~~
20 ~~attempting to obtain any cable television service without the payment to the~~
21 ~~operator of all lawful compensation;~~ Possesses with the intent to distribute,
22 manufactures, develops, assembles, distributes, transfers, imports into this
23 state, licenses, leases, sells or offers, promotes or advertises for sale,
24 use, or distribution any communication device:

25 (A) For the commission of a theft of a communication
26 service or to receive, intercept, disrupt, transmit, retransmit, decrypt,
27 acquire, or facilitate the receipt, interception, disruption, transmission,
28 retransmission, decryption, or acquisition of any communication service
29 without the express consent or express authorization of the communication
30 service provider, as stated in a contract or otherwise; or

31 (B) With the intent to conceal or to assist another to
32 conceal from any communication service provider, or from any lawful
33 authority, the existence or place of origin or destination of any
34 communication provided that the concealment is for the purpose of committing
35 a violation of subdivision (a)(2)(A) of this section;

36 (3) Tampers or otherwise interferes with or connects to by any

1 means, whether mechanical, electrical, acoustical, or other means, any
2 cables, wires, or other devices used for the distribution of cable television
3 without authority from the operator of the service, modifies, alters,
4 programs, or reprograms a communication device for the purposes described in
5 subdivision (2) of this section; or

6 ~~(4) Makes or maintains any modification or alteration to any~~
7 ~~device installed with the authorization of a cable television company for the~~
8 ~~purpose of intercepting or receiving any program or other service carried by~~
9 ~~such company which such person is not authorized by such company to receive;~~
10 Possesses, uses, manufactures, develops, assembles, distributes, imports into
11 this state, licenses, transfers, leases, sells, offers, promotes, or
12 advertises for sale, use, or distribution any unlawful access device; or

13 ~~(5) Possesses, any device designed in whole or in part to decode,~~
14 ~~descramble, or otherwise make intelligible any encoded, scrambled, or other~~
15 ~~nonstandard signal carried by a cable television company with the intent that~~
16 ~~the device be used for the theft of the company's service; uses, prepares,~~
17 distributes, sells, gives, transfers or offers, promotes or advertises for
18 sale, use, or distribution any:

19 (A) Plans or instructions for making, assembling, or
20 developing any unlawful access device, under circumstances evidencing an
21 intent to use or employ the communication or unlawful access device, or to
22 allow the same to be used or employed, for a purpose prohibited by this
23 subchapter, or knowing or having reason to believe that the same is intended
24 to be so used, or that the plans or instructions are intended to be used for
25 manufacturing or assembling the communication or unlawful access device for a
26 purpose prohibited by this subchapter; or

27 (B) Material, including hardware, cables, tools, data,
28 computer software, or other information or equipment, knowing that the
29 purchaser or a third person intends to use the material in the manufacture,
30 assembly, or development of a communication device for a purpose prohibited
31 by this subchapter, or for use in the manufacture, assembly, or development
32 of an unlawful access device.

33 ~~(6)(A) Manufactures, imports into this state, distributes, sells,~~
34 ~~leases, or offers, or advertises for sale or lease any device, or any plan or~~
35 ~~kit for a device or for a printed circuit designed in whole or in part to~~
36 ~~decode, descramble, or otherwise make intelligible any encoded, scrambled, or~~

1 ~~other nonstandard signal carried by a cable television company with the~~
2 ~~intent that the device, plan, or kit be used for the theft of the company's~~
3 ~~service.~~

4 ~~(B)(b)(1)~~ However, nothing in this ~~subdivision (6)~~ section
5 shall be construed to prohibit the manufacture, importation, sale, lease, or
6 possession of any television device possessing the internal hardware
7 necessary to receive cable television signals without the use of a converter,
8 device, or box, or of any television advertised as "cable ready"; ~~or.~~

9 ~~(6) Manufactures, imports into this state, distributes, sells, or~~
10 ~~offers for sale, rental, or use, any device of any description, or any plan~~
11 ~~or kit for a device, designed in whole or in part to facilitate the unlawful~~
12 ~~performance of any of the acts set out in this section.~~

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

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

21 (B) Has only a limited commercially significant purpose or
22 use other than as an unlawful access device or for the commission of any
23 other violation of this section; or

24 (C) Is marketed by that person or another acting in
25 concert with that person with that person's knowledge for use as an unlawful
26 access device or for the purpose of committing any other violation of this
27 section.

28 (3) Nothing in this section shall require that the design of, or
29 design and selection of parts, software code, or components for, a
30 communication device provide for a response to any particular technology,
31 device, or software, or any component or part thereof, used by the provider,
32 owner, or licensee of any communication service or of any data, audio, or
33 video programs, or transmissions, to protect any such communication, data,
34 audio, or video service, programs, or transmissions from unauthorized
35 receipt, acquisition, interception, access, decryption, disclosure,
36 communication, transmission, or re-transmission.

1 (4) This section shall not apply to the following entities or
2 persons when lawfully acting in the capacity listed in this subdivision
3 (b)(4) and as expressly authorized to do so by any other state or federal
4 statute or regulation:

5 (A) State or local law enforcement agency;

6 (B) State or local government authority, municipality, or
7 agency; and

8 (C) Communication service provider.

9
10 SECTION 3. Arkansas Code § 5-37-403 is amended to read as follows:

11 5-37-403. ~~Violation~~ Penalties.

12 (a)(1) Any person violating the provisions of § 5-37-402(1) shall,
13 upon conviction, be guilty of a Class B misdemeanor.

14 (2) Any person violating the provisions of ~~except for~~
15 ~~violations of § 5-37-402(2), (3), (4), or (5) (6)(A), any person violating~~
16 ~~the provisions of § 5-37-402(6)(A) shall, upon conviction, be guilty of a~~
17 Class D felony.

18 (3) An offense under this subchapter is a Class C felony if:

19 (A) The defendant has been convicted previously on two (2)
20 or more occasions for offenses under this subchapter or for any similar crime
21 in this state or any federal or other state jurisdiction; or

22 (B) The violation of this subchapter involves possession
23 of more than fifty (50) communication or unlawful access devices.

24 (b) The penalty for an offense under this section when based upon a
25 prior conviction, shall include, but not be limited to, felony offenses
26 involving theft of service or fraud under this subchapter or violations of
27 the federal Cable Communications Policy Act of 1984, Public Law 98-549, 98
28 Stat. 2779, as in effect on March 1, 2003.

29 (c) The court shall, in addition to any other sentence authorized by
30 law, sentence a person convicted of violating this subchapter to make
31 restitution as authorized by law.

32 (d) Upon conviction of a defendant under this subchapter, the court
33 may, in addition to any other sentence authorized by law, direct that the
34 defendant forfeit any communication or unlawful access devices in the
35 defendant's possession or control which were involved in the violation for
36 which the defendant was convicted.

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SECTION 4. Arkansas Code § 5-37-404 is amended to read as follows:

5-37-404. Possession of devices as evidence of intent -- Presumption

(a) In a prosecution for a violation of this subchapter the existence on the property and in the actual possession of the defendant of:

(1) Any ~~connection, wire, conductor, or any device~~ communication or unlawful access device whatsoever, which is connected in such a manner as would permit the receipt of ~~cable television~~ a communication service without the service being reported for payment to and specifically authorized by the ~~cable television company~~ communication service provider;

(2) The existence on the property and in the actual possession of the defendant, where the totality of the circumstances, including quantities or volumes, surrounding the defendant's arrest indicates possession for resale, of any device designed in whole or in part to facilitate the performance of any of the illegal acts set out in § 5-37-402 shall constitute prima facie evidence of the defendant's intent to violate, and of the violation of, the provisions of this subchapter.

(b) It shall be presumed that any person who receives ~~cable television~~ a communication service to their residence, dwelling, or business shall be criminally and civilly liable for the conduct of other persons at the residence, dwelling, or business for any violation of the provisions of this subchapter.

SECTION 5. Arkansas Code § 5-37-405 is amended to read as follows:

5-37-405. Satellite dish.

The provisions of this subchapter shall not be construed or otherwise interpreted to prohibit an individual from owning or operating a device commonly known as a satellite receiving dish for the purpose of lawfully receiving and utilizing satellite-relayed television signals for his or her own use.

SECTION 6. Arkansas Code Title 5, Chapter 35, Subchapter 4 is amended by adding an additional sections to read as follows:

5-37-406. Venue.

(a) An offense or violation of § 5-37-402 may be deemed to have been committed at either the place where the defendant manufactures, develops, or

1 assembles a communication or unlawful access device or assists others in
2 doing so, or the places where the communication or unlawful access device is
3 sold or delivered to a purchaser or recipient.

4 (b) It shall be no defense to a violation of § 5-37-402 that some of
5 the acts constituting the violation occurred outside of this state.

6
7 5-37-407. Additional Civil Remedies.

8 (a)(1) In addition to the other provisions of this subchapter, any
9 person aggrieved by a violation of this subchapter may bring a civil action
10 in any court of competent jurisdiction.

11 (2) "Any person aggrieved" includes any communication service
12 provider.

13 (b) The court may:

14 (1) Award declaratory relief and other equitable remedies,
15 including preliminary and final injunctions to prevent or restrain violations
16 of this subchapter, without requiring proof that the plaintiff has suffered
17 or will suffer actual damages or irreparable harm or lacks an adequate remedy
18 at law;

19 (2) At any time while an action is pending, order the
20 impounding, on such terms as it deems reasonable, of any communication or
21 unlawful access device that is in the custody or control of the violator and
22 that the court has reasonable cause to believe was involved in the alleged
23 violation of this subchapter;

24 (3) Award damages as described in subsection (c) of this
25 section;

26 (4) In its discretion, award reasonable attorney fees, costs,
27 and expenses to an aggrieved party who prevails; and

28 (5) As part of a final judgment or decree finding a violation of
29 this subchapter, order the remedial modification or destruction of any
30 communication or unlawful access device, or any other device or equipment
31 involved in the violation, that is in the custody or control of the violator,
32 or has been impounded under subdivision (b)(2) of this section.

33 (c) Damages awarded by a court under this subchapter shall be computed
34 as either of the following:

35 (1)(A) Upon his or her election of damages at any time before
36 final judgment is entered, the complaining party may recover the actual

1 damages suffered by him or her as a result of the violation of this
2 subchapter and any profits of the violator that are attributable to the
3 violation.

4 (B) Actual damages include the retail value of any
5 communication service illegally available to those persons to whom the
6 violator directly or indirectly provided or distributed any communication or
7 unlawful access devices.

8 (C) In proving actual damages, the complaining party shall
9 prove only that the violator manufactured, distributed, or sold any
10 communication or unlawful access devices.

11 (D) In determining the violator's profits, the complaining
12 party shall prove only the violator's gross revenue and the violator shall
13 prove his or her deductible expenses; or

14 (2) Upon election by the complaining party at any time before
15 final judgment is entered, that party may recover, in lieu of actual damages,
16 an award of statutory damages of one thousand dollars (\$1,000) for each
17 communication or unlawful access device involved in the action, with the
18 amount of statutory damages to be determined by the court, as the court
19 considers just.

20 (d) In any case where the court finds that any of the violations of
21 this subchapter were committed willfully and for purposes of commercial
22 advantage or private financial gain, the court in its discretion may increase
23 the total award of any damages under subdivision (c) of this section, by an
24 amount of not more than fifty thousand dollars (\$50,000) for each
25 communication or unlawful access device involved in the action or for each
26 day the defendant was in violation of this subchapter.

27
28 /s/ Wood, et al

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31 **APPROVED: BECAME LAW ON 5/6/2003, THIS BILL HAVING REMAINED WITH THE**
32 **GOVERNOR 20 AFTER ADJOURNMENT HAS BECOME LAW.**
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