

Hall of the House of Representatives

84th General Assembly - Regular Session, 2003

Amendment Form

Subtitle of House Bill No. 2361

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

Amendment No. 1 to House Bill No. 2361.

Amend House Bill No. 2361 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 5-37-401 is amended to read as follows:
5-37-401. ~~Definition~~ Definitions.

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

As used in this subchapter:

(1) "Communication device" means:

(A) Any type of electronic mechanism, transmission lines, or connections and appurtenances thereto, instrument, device, machine, equipment, technology, or software that is capable of intercepting, transmitting, retransmitting, acquiring, decrypting, or receiving any communication service, including the receipt, acquisition, interception, transmission, retransmission, or decryption of communication service provided by or through any cable television, fiber optic, telephone, satellite, microwave, data transmission, radio, Internet based, or wireless distribution network, system, or facility; and

(B) Any component of the communication device, including any computer circuit, splitter, connectors, switches, transmission hardware, security module, smart card, software, computer chip, electronic mechanism, or any component, accessory, or part of any communication device which is capable of facilitating the interception, transmission, retransmission, decryption, acquisition, or reception of any communication service;

(2) "Communication service" means:

(A) Any service lawfully provided for a charge or



compensation to facilitate the lawful origination, transmission, emission, or reception of signs, signals, data, writings, images, and sounds or intelligence of any nature by telephone, including cellular or other wireless telephones, wire, wireless, radio, electromagnetic, photoelectronic, or photo optical systems, networks, or facilities; and

(B) Any service lawfully provided by any cable television, radio, telephone, fiber optic, photo optical, electromagnetic, photoelectric, satellite, microwave, data transmission, wireless, or Internet based distribution system, network, or facility, including, but not limited to, all electronic, data, video, audio, Internet access, telephonic, microwave and radio communications, transmissions, signals, and services, and any communications, transmissions, signals, and services lawfully provided directly or indirectly by or through any of the systems, networks, or facilities described in this subdivision (2)(B);

(3) "Communication service provider" means:

(A) Any person or entity owning or operating any cable television, fiber optic, photo optical, electromagnetic, photoelectronic, satellite, Internet based, telephone, wireless, microwave, data transmission, or radio distribution system, network, or facility;

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

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

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

(5) "Manufacture, assembly, or development of an unlawful access device" means to make, develop, produce, or assemble an unlawful access device or modify, alter, program, or reprogram any instrument, device, machine, equipment, technology, or software so that it is capable of defeating or circumventing any technology, device, or software used by the provider, owner, or licensee of a communication service, or of any data, audio, or video programs, or transmissions, to protect any such communication, data, audio, or video services, programs, or transmissions from unauthorized receipt, interception, acquisition, access, decryption, disclosure, communication, transmission, or retransmission, or to knowingly assist others in those activities; and

(6) "Unlawful access device" means any type of instrument, device, machine, equipment, technology, or software which is primarily designed, developed, assembled, manufactured, sold, distributed, possessed, used, offered, promoted, or advertised, for the purpose of defeating or circumventing any technology, device, or software, or any component or part thereof used by the provider, owner, or licensee of any communication service or of any data, audio, or video programs or transmissions, to protect any communication, data, audio, or video services, programs, or transmissions from unauthorized receipt, acquisition, interception, access, decryption, disclosure, communication, transmission, or retransmission.

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

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

A person commits theft of ~~cable television~~ communication services if he or she knowingly:

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

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

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

(A) For the commission of a theft of a communication service or to receive, intercept, disrupt, transmit, retransmit, decrypt, acquire, or facilitate the receipt, interception, disruption, transmission, retransmission, decryption, or acquisition of any communication service without the express consent or express authorization of the communication service provider; or

(B) With the intent to conceal or to assist another to conceal from any communication service provider, or from any lawful authority, the existence or place of origin or destination of any communication;

(3) ~~Tampers or otherwise interferes with or connects to by any means, whether mechanical, electrical, acoustical, or other means, any cables, wires, or other devices used for the distribution of cable television without authority from the operator of the service~~ Modifies, alters, programs, or reprograms a communication device for the purposes described in subdivision (2) of this section; or

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

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

(A) Plans or instructions for making, assembling, or

developing any unlawful access device, under circumstances evidencing an intent to use or employ the unlawful communication or access device, or to allow the same to be used or employed, for a purpose prohibited by this subchapter, or knowing or having reason to believe that the same is intended to be so used, or that the plans or instructions are intended to be used for manufacturing or assembling the communication or unlawful access device for a purpose prohibited by this subchapter; or

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

~~(6)(A) Manufactures, imports into this state, distributes, sells, leases, or offers, or advertises for sale or lease any device, or any plan or kit for a device or for a printed circuit designed in whole or in part to decode, descramble, or otherwise make intelligible any encoded, scrambled, or other nonstandard signal carried by a cable television company with the intent that the device, plan, or kit be used for the theft of the company's service.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

5-37-407. Additional Civil Remedies.

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

(2) "Any person aggrieved" includes any communication service

provider.

(b) The court may:

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

(2) At any time while an action is pending, order the impounding, on such terms as it deems reasonable, of any communication or unlawful access 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 subchapter;

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

(4) In its discretion, award reasonable attorney fees and costs, including, but not limited to, costs for investigation, testing, and expert witness fees, to an aggrieved party who prevails; and

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

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

(1)(A) Upon his or her election of damages at any time before final judgment is entered, the complaining party may recover the actual damages suffered by him or her as a result of the violation of this subchapter and any profits of the violator that are attributable to the violation.

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

(C) In proving actual damages, the complaining party shall prove only that the violator manufactured, distributed, or sold any communication or unlawful access devices, but shall not be required to prove that those devices were actually used in violation of this subchapter.

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

(2) Upon election by the complaining party at any time before final judgment is entered, that party may recover, in lieu of actual damages, an award of statutory damages of between twenty-five hundred dollars (\$2,500) and ten thousand dollars (\$10,000) for each communication or unlawful access device involved in the action, with the amount of statutory damages to be determined by the court, as the court considers just.

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

day the defendant was in violation of this subchapter."

The Amendment was read _____
By: Representative Wood
LDH/JMB - 031220031358
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Chief Clerk