

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
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/13/03

A Bill

HOUSE BILL 2361

5 By: Representatives Wood, Adams, Scroggin
6
7

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

Subtitle

13 AN ACT TO AMEND THE CRIMINAL LAWS
14 PERTAINING TO CABLE TELEVISION AND
15 COMMUNICATION SERVICES.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

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, including the receipt, acquisition, interception,
4 transmission, retransmission, or decryption of communication service provided
5 by or through any cable television, fiber optic, telephone, satellite,
6 microwave, data transmission, radio, Internet based, or wireless distribution
7 network, system, or facility; and

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

14 (2) "Communication service" means:

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

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

30 (3) "Communication service provider" means:

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

35 (B) Any person or entity providing a communication
36 service, whether directly or indirectly as a reseller, including, but not

1 limited to, a cellular, paging, or other wireless communications company or
2 other person or entity which, for a fee, supplies the facility, cell site,
3 mobile telephone switching office, or other equipment or communication
4 service; and

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

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

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

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

32
33 SECTION 2. Arkansas Code § 5-37-402 is amended to read as follows:

34 5-37-402. Theft of ~~eable television~~ communication services - Unlawful
35 communication and access devices.

36 A person commits theft of ~~eable television~~ communication services if he

1 or she knowingly:

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

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

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

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

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

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

34 (4) ~~Makes or maintains any modification or alteration to any~~
35 ~~device installed with the authorization of a cable television company for the~~
36 ~~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~~

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

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

7 5-37-403. ~~Violation~~ Penalties.

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

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

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

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

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

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

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

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

33
 34 SECTION 4. Arkansas Code § 5-37-404 is amended to read as follows:

35 5-37-404. Possession of devices as evidence of intent -- Presumption

36 (a) In a prosecution for a violation of this subchapter the existence

1 on the property and in the actual possession of the defendant of:

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

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

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

19
20 SECTION 5. Arkansas Code § 5-37-405 is amended to read as follows:

21 5-37-405. Satellite dish.

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

27
28 SECTION 6. Arkansas Code Title 5, Chapter 35, Subchapter 4 is amended
29 by adding an additional sections to read as follows:

30 5-37-406. Venue.

31 (a) An offense or violation of § 5-37-402 may be deemed to have been
32 committed at either the place where the defendant manufactures, develops, or
33 assembles a communication or unlawful access device or assists others in
34 doing so, or the places where the communication or unlawful access device is
35 sold or delivered to a purchaser or recipient.

36 (b) It shall be no defense to a violation of § 5-37-402 that some of

1 the acts constituting the violation occurred outside of this state.

2
3 5-37-407. Additional Civil Remedies.

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

7 (2) "Any person aggrieved" includes any communication service
8 provider.

9 (b) The court may:

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

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

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

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

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

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

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

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

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

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

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

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

25
26 /s/ Wood, et al
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