

By: Wilson

H.B. No. 2121

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the criminal and civil consequences of conduct
3 involving the theft of or tampering with certain communication or
4 information services.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading of Section 31.12, Penal Code, is
7 amended to read as follows:

8 Sec. 31.12. THEFT OF OR TAMPERING WITH COMMUNICATION
9 ~~[MULTICHANNEL VIDEO OR INFORMATION]~~ SERVICES.

10 SECTION 2. Sections 31.12(a), (b), and (e), Penal Code, are
11 amended to read as follows:

12 (a) A person commits an offense if, with the intent to harm
13 or defraud a communication service ~~[without the authorization of~~
14 ~~the multichannel video or information services]~~ provider, the
15 person ~~[intentionally or knowingly]~~:

16 (1) obtains or uses a communication service without:
17 (A) obtaining the authorization of the provider;
18 or

19 (B) making a payment to the provider in the
20 amount normally charged by the provider for the service; or

21 ~~(2) [makes or maintains a connection, whether~~
22 ~~physically, electrically, electronically, or inductively, to:~~

23 ~~[(A) a cable, wire, or other component of or~~
24 ~~media attached to a multichannel video or information services~~

1 ~~system; or~~

2 ~~[(B) a television set, videotape recorder, or~~
3 ~~other receiver attached to a multichannel video or information~~
4 ~~system;~~

5 ~~[(2) attaches, causes to be attached, or maintains the~~
6 ~~attachment of a device to:~~

7 ~~[(A) a cable, wire, or other component of or~~
8 ~~media attached to a multichannel video or information services~~
9 ~~system; or~~

10 ~~[(B) a television set, videotape recorder, or~~
11 ~~other receiver attached to a multichannel video or information~~
12 ~~services system;~~

13 ~~[(3)] tampers with, modifies, or maintains a~~
14 ~~modification to a communication device provided by or installed by~~
15 ~~the provider [a multichannel video or information services~~
16 ~~provider; or~~

17 ~~[(4) tampers with, modifies, or maintains a~~
18 ~~modification to an access device or uses that access device or any~~
19 ~~unauthorized access device to obtain services from a multichannel~~
20 ~~video or information services provider].~~

21 (b) In this section:

22 (1) "Communication device" means a device,
23 instrument, machine, electronic mechanism, equipment, software,
24 technology, transmission line, or connection capable of accessing,
25 acquiring, decrypting, intercepting, receiving, transmitting, or
26 retransmitting any communication service and includes any
27 appurtenance to and any accessory, component, or part of those

1 items, including any computer chip or circuit, splitter, connector,
2 switch, security module, smart card, and transmission hardware.
3 ~~["Access device," "connection," and "device" mean an access device,~~
4 ~~connection, or device wholly or partly designed to make~~
5 ~~intelligible an encrypted, encoded, scrambled, or other~~
6 ~~nonstandard signal carried by a multichannel video or information~~
7 ~~services provider.]~~

8 (2) "Communication service" means a service directly
9 or indirectly provided to facilitate the origination,
10 transmission, emission, or reception of signs, signals, writing,
11 images, sounds, data, or intelligence of any nature by any means,
12 including:

13 (A) telephone or cellular telephone;

14 (B) wire or wireless, radio, microwave,
15 electromagnetic, photoelectric, photo-electronic, fiber optical,
16 photo-optical, cable television, satellite, or data transmission;
17 or

18 (C) an Internet-based distribution system,
19 network, or facility. ~~["Encrypted, encoded, scrambled, or other~~
20 ~~nonstandard signal" means any type of signal or transmission not~~
21 ~~intended to produce an intelligible program or service without the~~
22 ~~use of a device, signal, or information provided by a multichannel~~
23 ~~video or information services provider.]~~

24 (3) "Communication service provider" means any person
25 or entity directly or indirectly providing a communication service
26 and includes:

27 (A) a cellular, paging, or other wireless

1 communications company or other person or entity that supplies the
2 facility, cell site, mobile telephone switching office, or other
3 equipment or service for the company; and

4 (B) any other person or entity that owns or
5 operates a system, network, or facility that provides a
6 communication service. [~~"Multichannel video or information~~
7 ~~services provider" means a licensed cable television system, video~~
8 ~~dialtone system, multichannel multipoint distribution services~~
9 ~~system, direct broadcast satellite system, or other system~~
10 ~~providing video or information services that are distributed by~~
11 ~~cable, wire, radio frequency, or other media.]~~

12 (e) For the purposes of this section, each [~~connection,~~
13 ~~attachment,~~] modification[~~7~~] or act of tampering is a separate
14 offense.

15 SECTION 3. The heading to Section 31.13, Penal Code, is
16 amended to read as follows:

17 Sec. 31.13. POSSESSION OR USE OF COMMUNICATION DEVICE OR
18 UNAUTHORIZED ACCESS [~~MANUFACTURE, DISTRIBUTION, OR ADVERTISEMENT~~
19 ~~OF MULTICHANNEL VIDEO OR INFORMATION SERVICES]~~ DEVICE.

20 SECTION 4. Sections 31.13(a), (b), and (d), Penal Code, are
21 amended to read as follows:

22 (a) A person commits an offense if, with the intent to harm
23 or defraud a communication service provider, the person possesses
24 or uses a communication device or unauthorized access device [~~for~~
25 ~~remuneration intentionally or knowingly manufactures, assembles,~~
26 ~~modifies, imports into the state, exports out of the state,~~
27 ~~distributes, advertises, or offers for sale, with an intent to aid~~

1 ~~in the commission of an offense under Section 31.12, a device, a kit~~
2 ~~or part for a device, or a plan for a system of components wholly or~~
3 ~~partly designed to make intelligible an encrypted, encoded,~~
4 ~~scrambled, or other nonstandard signal carried or caused by a~~
5 ~~multichannel video or information services provider].~~

6 (b) In this section and Section 31.145:

7 (1) "Communication device," "communication service,"
8 and "communication service provider" [,"device," "encrypted,
9 encoded, scrambled, or other nonstandard signal," and
10 "multichannel video or information services provider"] have the
11 meanings assigned by Section 31.12.

12 (2) "Unauthorized access device" means a device,
13 instrument, machine, electronic mechanism, equipment, software,
14 technology, transmission line, or connection that is manufactured,
15 distributed, advertised, offered for sale, or used for the purpose
16 of defeating or circumventing any technology, device, or software,
17 or any accessory, component, or part of those items used by a
18 communication service provider to protect the provider's
19 communication service from unauthorized access, acquisition,
20 decryption, interception, receipt, transmission, or
21 retransmission.

22 (d) An offense under this section is a Class A misdemeanor,
23 unless it is shown on the trial of the offense that the offense was
24 committed with respect to five or more communication devices or
25 unauthorized access devices in a single criminal episode, in which
26 event it is a state jail felony.

27 SECTION 5. The heading to Section 31.14, Penal Code, is

1 amended to read as follows:

2 Sec. 31.14. MANUFACTURE, DISTRIBUTION, SALE, [OR] LEASE, OR
3 ADVERTISEMENT OF COMMUNICATION DEVICE OR UNAUTHORIZED ACCESS
4 [MULTICHANNEL VIDEO OR INFORMATION SERVICES] DEVICE.

5 SECTION 6. Sections 31.14(a), (b), and (d), Penal Code, are
6 amended to read as follows:

7 (a) A person commits an offense if the person intentionally
8 or knowingly manufactures, assembles, imports into the state,
9 exports out of the state, distributes, advertises, sells, or
10 leases, or offers for sale or lease:

11 (1) a communication device with an intent to:

12 (A) aid in the commission of an offense under
13 Section 31.12 or 31.13; or

14 (B) conceal from a communication service
15 provider, or from any lawful authority, the existence or place of
16 origin or destination of any communication;

17 (2) an unauthorized access device; or

18 (3) plans or instructions for assembling or
19 manufacturing a communication device or unauthorized access
20 device, with the knowledge that another person intends to use the
21 plans or instructions for an unlawful purpose [~~, a device, a kit or~~
22 ~~part for a device, or a plan for a system of components wholly or~~
23 ~~partly designed to make intelligible an encrypted, encoded,~~
24 ~~scrambled, or other nonstandard signal carried or caused by a~~
25 ~~multichannel video or information services provider].~~

26 (b) In this section:

27 (1) "Communication device," "communication service,"

1 and "communication service provider" [,"device," "encrypted,
2 encoded, scrambled, or other nonstandard signal," and
3 "multichannel video or information services provider"] have the
4 meanings assigned by Section 31.12.

5 (2) "Unauthorized access device" has the meaning
6 assigned by Section 31.13.

7 (d) Except as otherwise provided by this subsection, an [An]
8 offense under this section is a Class A misdemeanor. An offense
9 under this section is:

10 (1) a state jail felony if it is shown on the trial of
11 the offense that:

12 (A) the offense was committed with respect to
13 more than one but not more than 50 communication devices or
14 unauthorized access devices in a single criminal episode; or

15 (B) the defendant has been previously convicted
16 one time of an offense under this section or of an offense under
17 federal law or the laws of another state containing elements that
18 are substantially similar to the elements of an offense under this
19 section; or

20 (2) a felony of the third degree if it is shown on the
21 trial of the offense that:

22 (A) the offense was committed with respect to
23 more than 50 communication devices or unauthorized access devices
24 in a single criminal episode; or

25 (B) the defendant has been previously convicted
26 on two or more occasions of an offense under this section or of an
27 offense under federal law or the laws of another state containing

1 elements that are substantially similar to the elements of an
2 offense under this section.

3 SECTION 7. Chapter 31, Penal Code, is amended by adding
4 Section 31.145 to read as follows:

5 Sec. 31.145. PRESUMPTION FOR OFFENSES AFFECTING
6 COMMUNICATION SERVICE. For purposes of the prosecution of an
7 offense under Section 31.12, 31.13, or 31.14, it is prima facie
8 evidence of the actor's intent to harm or defraud a communication
9 service provider that the actor failed to respond within 30 days to
10 written notice from the provider stating that:

11 (1) there is an unauthorized connection between the
12 actor's property and a system, network, or facility owned or
13 operated by the provider;

14 (2) the provider has reason to believe the actor is in
15 possession or control of a communication device that is connected
16 in a manner that facilitates the unauthorized access, acquisition,
17 decryption, interception, receipt, transmission, or retransmission
18 of the provider's communication service; or

19 (3) the provider has reason to believe the actor is in
20 possession of five or more communication devices or unauthorized
21 access devices for a purpose that is prohibited by law.

22 SECTION 8. Section 134.002(2), Civil Practice and Remedies
23 Code, is amended to read as follows:

24 (2) "Theft" means unlawfully appropriating property
25 or unlawfully obtaining services as described by Section 31.03,
26 31.04, 31.05, 31.06, 31.07, or 31.11, [~~31.12, 31.13, or 31.14,~~]
27 Penal Code.

1 SECTION 9. Title 6, Civil Practice and Remedies Code, is
2 amended by adding Chapter 135 to read as follows:

3 CHAPTER 135. COMMUNICATION SERVICES OFFENSES

4 Sec. 135.001. DEFINITIONS. In this section:

5 (1) "Claimant" means a person who files an action
6 under this section.

7 (2) "Communication device," "communication service,"
8 and "communication service provider" have the meanings assigned by
9 Section 31.12, Penal Code.

10 (3) "Communication services offense" means conduct
11 that constitutes an offense under Section 31.12, 31.13, or 31.14,
12 Penal Code.

13 (4) "Unauthorized access device" has the meaning
14 assigned by Section 31.13, Penal Code.

15 Sec. 135.002. EQUITABLE REMEDIES. A claimant, including a
16 communication service provider, aggrieved by a communication
17 services offense may obtain a declaratory judgment or other
18 equitable remedy, including a preliminary or final injunction to
19 prevent or restrain the conduct that constitutes the communication
20 services offense. The claimant may obtain a remedy under this
21 subsection regardless of whether the claimant proves that the
22 claimant has suffered or is threatened with actual damages or
23 irreparable harm or lacks an adequate remedy at law.

24 Sec. 135.003. DAMAGES. (a) A claimant may elect at any
25 time before the final judgment is entered to recover damages under
26 Subsection (b) or under Subsection (c).

27 (b) A claimant that elects to recover damages under this

1 subsection may recover actual damages incurred by the claimant
2 arising out of the communication services offense and any profits
3 of the defendant attributable to the communication services offense
4 that are not included in the computation of the claimant's actual
5 damages. Actual damages computed under this subsection include the
6 retail value of the communication services to which the defendant
7 had unauthorized access as a result of the offense and the retail
8 value of any unauthorized communication services obtained by other
9 persons through the defendant's provision or distribution of a
10 communication device or unauthorized access device. The claimant
11 may prove actual damages by proving only that the defendant
12 manufactured, distributed, or sold any communication device or
13 unauthorized access device and is not required to prove the devices
14 were actually used to commit a communication services offense. The
15 claimant may prove the defendant's profits by proving only the
16 defendant's gross revenue. The defendant's expenses and profits
17 attributable to factors other than the communication services
18 offense may not be deducted unless proved by the defendant.

19 (c) A claimant that elects to recover damages under this
20 subsection may recover, instead of actual damages and the
21 defendant's profits, an amount of damages specified by the court
22 for each communication device or unauthorized access device
23 involved in the communication services offense and for each day the
24 defendant committed the communication services offense. The amount
25 of damages specified by the court must be least \$2,500 and not more
26 than \$10,000, as the court considers just.

27 (d) If the court determines that the communication services

1 offense was committed wilfully and for the purposes of commercial
2 advantage or private financial gain, the court may increase the
3 amount of damages awarded under Subsection (b) or (c) by an amount
4 of not more than \$50,000 for each communication or unauthorized
5 access device involved in the action and for each day the defendant
6 committed the communication services offense.

7 Sec. 135.004. ADDITIONAL REMEDIES. In an action filed
8 under this section, the court may:

9 (1) at any time while the action is pending, order the
10 impoundment, on any terms the court considers reasonable, of any
11 communication device or unlawful access device that is in the
12 custody or control of the defendant and that the court reasonably
13 believes to be involved in the communication services offense;

14 (2) as part of a final judgment or decree in which the
15 court finds the conduct of the defendant constitutes a
16 communication services offense, order the remedial modification or
17 destruction of any communication device, unauthorized access
18 device, or other device or piece of equipment involved in the
19 offense that is in the custody or control of the defendant; and

20 (3) award a claimant who prevails in an action under
21 this section reasonable attorney's fees and costs, including expert
22 witness fees and the costs of investigation, testing, and storage
23 of impounded items.

24 SECTION 10. (a) This Act takes effect September 1, 2003.

25 (b) The changes in law made by Sections 1 through 7 of this
26 Act apply only to an offense committed on or after September 1,
27 2003. An offense committed before September 1, 2003, is covered by

1 the law in effect when the offense was committed, and the former law
2 is continued in effect for that purpose. For purposes of this
3 subsection, an offense was committed before September 1, 2003, if
4 any element of the offense was committed before that date.

5 (c) The changes in law made by Sections 8 and 9 of this Act
6 apply only to a cause of action that accrues on or after September
7 1, 2003. A cause of action that accrues before September 1, 2003,
8 is governed by the law in effect immediately before that date, and
9 that law is continued in effect for that purpose.