

HOUSE BILL REPORT

ESSB 5820

As Passed House:

April 6, 1995

Title: An act relating to unauthorized use of telecommunication and subscription video services.

Brief Description: Penalizing theft of telecommunication and cable services.

Sponsors: Senate Committee on Energy, Telecommunications & Utilities (originally sponsored by Senators Sutherland, Finkbeiner, Snyder, Smith and Quigley).

Brief History:

Committee Activity:

Energy & Utilities: 3/29/95 [DP].

Floor Activity:

Passed House: 4/6/95, 97-0.

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: Do pass. Signed by 10 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Kessler, Ranking Minority Member; Kremen, Assistant Ranking Minority Member; Chandler; Huff; Mastin; Mitchell and Patterson.

Staff: Margaret Allen (786-7110).

Background: Cable television and cellular telephone service providers report dramatic increases in the theft or unauthorized use of such services in recent years.

Cable operators estimate approximately 5 percent of households in Washington State are receiving some level of service without authorization or payment. Moreover, cable operators report organized theft rings are increasingly involved in the sale of equipment designed to allow viewers to avoid payment for subscription services.

Because franchise fees paid to local governments by cable companies are based on percentages of the companies' gross revenues, theft of cable services negatively impacts local government budgets.

The cellular industry estimates up to 40 percent of all cellular air time is being stolen.

THEFT OF SERVICES

Under current law, the state can prosecute a person for theft of services. If the value of the stolen services exceeds \$1,500, the person is guilty of theft in the first degree, a class B felony. If the value of the stolen services does not exceed \$1,500, but does exceed \$250, the person is guilty of theft in the second degree, a class C felony. If the value of the stolen services does not exceed \$250, the person is guilty of theft in the third degree, a gross misdemeanor.

A class B felony is punishable by incarceration for up to 10 years, or a fine of up to \$20,000, or both; a class C felony is punishable by incarceration for up to five years, or by a fine of up to \$10,000, or both; a gross misdemeanor is punishable by incarceration of up to one year, or a fine of up to \$5,000, or both.

THEFT OR UNLAWFUL SALE OF CABLE TELEVISION SERVICES

The state also can prosecute a person for the crime of theft of cable television services, or the crime of unlawful sale of cable television services, both gross misdemeanors. A person is guilty of the crime of theft of cable television services if he or she wrongfully obtains cable television services with the intent to avoid payment of any lawful charge for such services. A person is guilty of the crime of unlawful sale of cable television services if he or she offers for sale a decoding or descrambling device with the intent to avoid payment for the services of the cable system.

A person injured by a theft of cable television services or unlawful sale of cable television services has a civil cause of action. A superior court may grant injunctions to prevent or restrain the theft or unlawful sale of subscription television services. The prevailing party may recover actual damages, reasonable attorneys' fees, and costs. However, the statute providing for the cause of action makes no explicit provision for recovery of a successful plaintiff's investigative costs, and does not provide for civil penalties.

OTHER TELECOMMUNICATION SERVICES

Current state law does not specifically address theft of cellular telephone services or subscription television services other than cable. Nor does the law specifically address services such as direct broadcast satellites and microwave-delivered MMDS (multichannel multipoint distribution services), which provide cable-like programming to residents in many parts of Washington, and also are vulnerable to theft.

CRIMINAL PROFITEERING ACT

The state or county can prosecute a person guilty of theft in the first or second degree under the Criminal Profiteering Act if the person has committed a "pattern" of profiteering. ("Profiteering" is the commission, or attempted commission, for financial gain of any one of a number of crimes.) At least three predicate acts occurring within five years of each other are required. In addition to seeking criminal penalties, after filing a criminal action, the state or county may file a criminal profiteering lien against the real and personal property of the defendant.

Examples of other crimes within the Criminal Profiteering Act include murder, robbery, forgery, and extortionate extension of credit. Theft of cable television services and unlawful sale of cable television services are not within the Act.

Under the Criminal Profiteering Act, an individual adversely affected by criminal profiteering can file a civil action for treble damages and the costs of the suit, including reasonable investigative and attorney's fees. In addition, the state or a county may file an action on behalf of injured persons and court to prevent, restrain, or remedy the acts causing the injury, and may recover similar costs of the suit.

In addition to damages, injunctive relief, and costs of the suit, in a civil action under the Criminal Profiteering Act, a court can assess a civil penalty of up to \$250,000, and can order the dissolution or reorganization of the defendant's economic enterprise, or the divestiture of any person's interest in an enterprise.

Summary of Bill: Current law regarding theft and unlawful sale of cable television services is extended to all subscription television services, and new felonies are created regarding telecommunications services.

THEFT OF SUBSCRIPTION TELEVISION SERVICES

Theft of subscription television services includes situations where, with the intent to avoid payment for subscription television service, a person obtains, attempts to obtain, or assists another person in obtaining, subscription television service through the use of a decoding device or by other fraudulent or deceptive means. Theft of subscription television services also includes situations where a person possesses, without authorization, a device designed to receive subscription television services.

UNLAWFUL SALE OF SUBSCRIPTION TELEVISION SERVICES

A person who, with an intent to avoid payment, or to facilitate avoidance of payment, advertises for sale or lease, sells or leases, manufactures, or imports into Washington State an unauthorized device, plan, or kit designed to receive subscription television services, or who publishes a plan for such a device, is guilty of unlawful sale of subscription television services. Unlawful sale of subscription services is a class C felony, rather than a gross misdemeanor.

CIVIL PENALTIES FOR THEFT OR UNLAWFUL SALE

A person adversely affected by a theft or unlawful sale of television services has a civil cause of action. The person (rather than prevailing party) may recover damages and the costs of suit, including reasonable investigative and attorneys' fees and costs. The court also may grant injunctive relief and a civil penalty of up to \$25,000.

TELECOMMUNICATION SERVICES FELONIES

Three additional class C felonies involving telecommunication services are created.

First, a person is guilty of theft of telecommunication services if he or she, knowingly and with intent to avoid payment or to facilitate avoidance of payment: (1) uses a telecommunication device without having entered into a prior agreement with a telecommunication service provider to pay for the telecommunication services; or (2) possesses a telecommunication device.

Second, a person is guilty of unlawful manufacture of a telecommunication device if he or she, knowingly and with intent to avoid payment or to facilitate avoidance of payment: (1) manufactures, produces, or assembles a telecommunication device; (2) modifies, alters, programs, or reprograms a telecommunication device to be capable of acquiring or of facilitating the acquisition of telecommunication service; or (3) writes, creates, or modifies a computer program that he or she knows is thereby capable of being used to manufacture a telecommunication device.

Third, a person is guilty of unlawful sale of a telecommunication device if he or she sells, leases, exchanges, or offers to sell, lease, or exchange: (1) a telecommunication device knowing the recipient or third person intends to use the device to avoid payment or to facilitate avoidance of payment for telecommunication services; or (2) any material, including data, computer software, or other information and equipment, knowing the recipient or a third person intends to use the material to avoid payment or to facilitate avoidance of payment for telecommunication services.

A person adversely affected by a violation of one or more of these three new felony statutes has a civil cause of action. The person may recover damages and the costs of suit, including reasonable investigative and attorneys' fees and costs. The court also may grant injunctive relief and a civil penalty of up to \$25,000.

CRIMINAL PROFITEERING ACT

Unlawful sale of subscription television services, theft of telecommunication services, and unlawful manufacture of a telecommunication device, are added to the list of crimes covered under the Criminal Profiteering Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: All concerns about the bill have been resolved. This is a strong bill to which there is no opposition.

Testimony Against: None.

Testified: (Pro) Ron Main, Washington State Cable Association; and Steve Gano, Cellular One.