

SENATE BILL REPORT

SB 5820

As Reported By Senate Committee On:
Energy, Telecommunications & Utilities, February 27, 1995

Title: An act relating to theft of telecommunication and cable services.

Brief Description: Penalizing theft of telecommunication and cable services.

Sponsors: Senators Sutherland, Finkbeiner, Snyder, Smith and Quigley.

Brief History:

Committee Activity: Energy, Telecommunications & Utilities: 2/16/95, 2/27/95 [DPS].

SENATE COMMITTEE ON ENERGY, TELECOMMUNICATIONS & UTILITIES

Majority Report: That Substitute Senate Bill No. 5820 be substituted therefor, and the substitute bill do pass.

Signed by Senators Sutherland, Chair; Loveland, Vice Chair; Finkbeiner, Hochstatter and Owen.

Staff: David Danner (786-7784)

Background: Theft of subscription telecommunications services, including cable television and cellular telephone service, has increased dramatically in recent years.

The cellular industry estimates that up to 40 percent of all cellular air time is being stolen. Cable operators estimate that some 5 percent of households in Washington State are receiving some level of service without authorization or payment. Moreover, they find that 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.

Under current state law, theft of cable is a gross misdemeanor. State laws do not address theft of services from cellular, or from subscription services other than cable. 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, are also vulnerable to theft.

Summary of Substitute Bill: Current statutes are amended to expand theft and unlawful sale of cable to include theft and unlawful sale of all subscription video services. New provisions are added dealing with theft of telecommunications services, and with the manufacture and sale of telecommunications devices without authorization of the service provider.

Prohibitions are clarified on theft of subscription video services, to cover those situations where a person seeks to avoid payment by obtaining subscription services through deception or fraud, by using or altering decoders or other equipment without authority of the company providing service, or by possessing devices designed to receive and decode scrambled signals where no authority is given by the service provider.

Provisions are broadened dealing with unlawful sale of subscription services to cover situations where a person acting with intent to avoid payment publishes or advertises for sale a plan to receive a company's service without permission, or manufactures, imports or sells a device or kit to facilitate such reception.

Legal presumption of intent is established to avoid payment where a person who is not an employee or agent of the service provider possesses or installs an unauthorized device that permits reception of subscription video services without payment, where he or she maintains a connection to service after the company has disconnected service, he or she possesses equipment that has been tampered with, or where he or she advertises that a plan, device or kit enables one to receive service without payment.

A class C felony is created for theft of telecommunications services, which is defined as: (1) the use of a device to transmit or receive telephone or electronic telecommunications without having a prior agreement with a service provider for payment, and (2) possession of an unlawful communication device.

Class C felonies are created for unlawful manufacture and unlawful sale of a telecommunications device. Unlawful sale includes the sale of any data or computer software where the seller knows it is going to be used in the manufacture of an unlawful telecommunications device.

Unlawful sale of subscription services is reclassified from a gross misdemeanor to a class C felony. Unlawful sale of subscription services, theft of telecommunications services, and unlawful manufacture of a telecommunications device are added to the lists of crimes covered by the Criminal Profiteering Act.

New civil penalties are provided for theft and unlawful sale of subscription video service, and for theft, unlawful manufacture, and unlawful sale of telecommunication devices and services.

Substitute Bill Compared to Original Bill: The title is amended to clarify that the scope of the bill includes unauthorized use of all subscription video services. Theft of telecommunications services and unlawful manufacture of a telecommunications device are added to the lists of acts that constitute "criminal profiteering" under the state Criminal Profiteering Act.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Theft of cable and cellular service results in losses in the millions of dollars, much of which is passed on to consumers in the form of higher costs. A significant part of this theft is undertaken by drug rings and other organized crime. Devices which facilitate theft of services are readily available in stores; restricting their use is essential to curbing these crimes. Classifying theft and unlawful sale of these services as class C felonies will give prosecutors the incentives and tools necessary to effectively fight theft and unlawful sale of cable and cellular.

Testimony Against: None.

Testified: Ron Main, Washington Cable Association (pro); Diane Lachel, Jim Mains, Viacom (pro); Ross C. Baker, McCaw Cellular/Cellular One (pro); Erick Shawnyea, Cellular One (pro).