

CHAPTER 143

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 98-1041

BY REPRESENTATIVES Dean, May, Musgrave, Spradley, and Tupa;
also SENATORS Schroeder, Arnold, Chlouber, and Tebedo.

AN ACT

CONCERNING THE THEFT OF CABLE SERVICES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 18-4-701, Colorado Revised Statutes, is amended to read:

18-4-701. Theft of cable service - definitions. (1) ~~A person commits theft of cable television service if he knowingly~~ AS USED IN THIS PART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) ~~Obtains cable television service from a licensed or duly permitted cable television system without the authorization of the cable television system supplying said service; or~~ "CABLE OPERATOR" MEANS ANY PERSON WHO:

(I) PROVIDES CABLE SERVICE OVER A CABLE SYSTEM IN WHICH SUCH PERSON DIRECTLY OR THROUGH ONE OR MORE AFFILIATES OWNS A SIGNIFICANT INTEREST; OR

(II) CONTROLS OR IS RESPONSIBLE FOR THE MANAGEMENT AND OPERATION OF SUCH CABLE SYSTEM THROUGH ANY ARRANGEMENT.

(b) ~~Makes or maintains a connection or connections, whether mechanically, electrically, or acoustically, or attaches or maintains an attachment of any device or devices to any cable, wire, or other component of a licensed or duly permitted cable television system without the authorization of such system or makes or maintains any modification or alteration to any device installed with the authorization of a licensed or duly permitted cable television system, but shall not include the attachment of a wire or cable to extend service he has paid for or which has been authorized; or~~ "CABLE SERVICE" MEANS:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(I) THE ONE-WAY TRANSMISSION TO SUBSCRIBERS OF A VIDEO PROGRAMMING SERVICE;

(II) TWO-WAY INTERACTIVE SERVICES DELIVERED OVER A CABLE SYSTEM;

(III) SUBSCRIBER INTERACTION, IF ANY, THAT IS REQUIRED FOR THE SELECTION OR USE OF SUCH VIDEO PROGRAMMING OR INTERACTIVE SERVICE.

~~(c) Manufactures, distributes, sells, or offers for sale, rental, or use any decoding or descrambling device or any plan or kit for such device, designed in whole or in part to facilitate the doing of any of the acts specified in paragraphs (a) and (b) of this subsection (1).~~ "CABLE SYSTEM" MEANS A FACILITY CONSISTING OF A SET OF CLOSED TRANSMISSION PATHS AND ASSOCIATED SIGNAL OPERATION, RECEPTION, AND CONTROL EQUIPMENT THAT IS DESIGNED TO PROVIDE CABLE SERVICE.

(2) ~~The provisions of this section do not apply to satellite dishes~~ A PERSON COMMITS THEFT OF CABLE SERVICE IF SUCH PERSON KNOWINGLY:

(a) OBTAINS CABLE SERVICE FROM A CABLE OPERATOR BY TRICK, ARTIFICE, DECEPTION, USE OF AN UNAUTHORIZED DEVICE OR DECODER, OR OTHER MEANS WITHOUT AUTHORIZATION OR WITH THE INTENT TO DEPRIVE SUCH CABLE OPERATOR OF LAWFUL COMPENSATION FOR THE SERVICES RENDERED;

(b) (I) MAKES OR MAINTAINS, WITHOUT AUTHORITY FROM OR PAYMENT TO A CABLE OPERATOR, A CONNECTION OR CONNECTIONS, WHETHER PHYSICAL, ELECTRICAL, MECHANICAL, ACOUSTICAL, OR OTHERWISE WITH ANY CABLE, WIRE, COMPONENT, OR OTHER DEVICE USED FOR THE DISTRIBUTION OF CABLE SERVICES.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THIS PARAGRAPH (b) SHALL NOT INCLUDE CIRCUMSTANCES WHERE A PERSON HAS ATTACHED A WIRE OR CABLE TO EXTEND SERVICE THAT THE PERSON HAS PAID FOR OR THAT HAS BEEN AUTHORIZED TO AN ADDITIONAL OUTLET, OR WHERE THE CABLE OPERATOR HAS FAILED TO DISCONNECT A PREVIOUSLY AUTHORIZED CABLE SERVICE.

(c) MODIFIES, ALTERS, OR MAINTAINS A MODIFICATION OR ALTERATION TO A DEVICE INSTALLED OR CAPABLE OF BEING INSTALLED WITH THE AUTHORIZATION OF A CABLE OPERATOR, WHICH MODIFICATION OR ALTERATION IS FOR THE PURPOSE OF INTERCEPTING OR RECEIVING CABLE SERVICE CARRIED BY SUCH CABLE OPERATOR WITHOUT AUTHORITY FROM OR PAYMENT TO SUCH CABLE OPERATOR;

(d) POSSESSES WITHOUT AUTHORITY, WITH THE INTENT TO RECEIVE CABLE OPERATOR SERVICES WITHOUT AUTHORIZATION FROM OR PAYMENT TO A CABLE OPERATOR, A DEVICE OR PRINTED CIRCUIT BOARD DESIGNED IN WHOLE OR IN PART TO FACILITATE THE FOLLOWING ACTS:

(I) TO RECEIVE CABLE SERVICES OFFERED FOR SALE OVER A CABLE SYSTEM; OR

(II) TO PERFORM OR FACILITATE THE PERFORMANCE OF ANY ACT SET FORTH IN PARAGRAPHS (a) TO (c) OF THIS SUBSECTION (2).

(e) MANUFACTURES, IMPORTS INTO THIS STATE, DISTRIBUTES, SELLS, LEASES, OR

OFFERS OR ADVERTISES FOR SALE OR LEASE, WITH THE INTENT TO RECEIVE CABLE SERVICES OR WITH THE INTENT TO PROMOTE THE RECEPTION OF CABLE SERVICES WITHOUT PAYMENT OR AUTHORIZATION FROM A CABLE OPERATOR, ANY DEVICE, PRINTED CIRCUIT BOARD, OR PLAN OR KIT FOR A DEVICE OR PRINTED CIRCUIT BOARD DESIGNED IN WHOLE OR IN PART TO FACILITATE THE FOLLOWING ACTS:

(I) TO RECEIVE ANY CABLE SERVICES OFFERED FOR SALE OVER A CABLE SYSTEM;
OR

(II) TO PERFORM OR FACILITATE THE PERFORMANCE OF ANY ACT SET FORTH IN PARAGRAPHS (a) TO (c) OF THIS SUBSECTION (2).

(f) FAILS TO RETURN OR SURRENDER EQUIPMENT USED TO RECEIVE CABLE SERVICE AND PROVIDED BY A CABLE OPERATOR, AFTER SUCH SERVICE HAS BEEN TERMINATED FOR ANY REASON.

(3) ~~Any violation of this section is a class 2 misdemeanor.~~ THIS SECTION DOES NOT APPLY TO SATELLITE DISHES.

(4) ANY PERSON WHO VIOLATES THIS SECTION COMMITS A CLASS 2 MISDEMEANOR.

SECTION 2. 18-4-702, Colorado Revised Statutes, is amended to read:

18-4-702. Civil action - damages. (1) (a) A licensed or duly permitted cable ~~television system~~ OPERATOR may bring a civil action for damages against any person who commits civil theft of cable ~~television~~ service.

(b) Civil theft of cable ~~television~~ service is the willful or intentional commission of ~~an~~ ANY act described in section ~~18-4-701 (1) (a) or (1) (b)~~ 18-4-701 (2).

(c) NO PLAINTIFF THAT FILES AN ACTION PURSUANT TO THIS SECTION FOR THEFT OF CABLE SERVICES SHALL BE REQUIRED TO PLEAD DAMAGES WITH PARTICULARITY AS A CONDITION PRECEDENT FOR MAINTAINING SUCH AN ACTION.

(d) THERE SHALL BE A REBUTTABLE PRESUMPTION THAT A VIOLATION OF SECTION 18-4-701 (2) (a) HAS OCCURRED IF THERE EXISTS IN THE ACTUAL POSSESSION OF THE PERSON A DEVICE THAT PERMITS THE RECEPTION OF UNAUTHORIZED CABLE SERVICES FOR WHICH NO PAYMENT HAS BEEN MADE TO A CABLE OPERATOR AND NO LEGITIMATE PURPOSE EXISTS.

(e) THERE SHALL BE A REBUTTABLE PRESUMPTION THAT A VIOLATION OF SECTION 18-4-701 (2) (b) HAS OCCURRED IF CABLE SERVICE TO THE PERSON'S BUSINESS OR RESIDENTIAL PROPERTY WAS DISCONNECTED BY A CABLE OPERATOR, NOTIFICATION OF SUCH ACTION BY CERTIFIED MAIL WAS PROVIDED TO SUCH PERSON, AND A CONNECTION OF SUCH SERVICE EXISTS AT SUCH PERSON'S BUSINESS OR RESIDENTIAL PROPERTY AFTER THE DATE OF THE DISCONNECTION.

(f) THERE SHALL BE A REBUTTABLE PRESUMPTION THAT A VIOLATION OF SECTION 18-4-701 (2) (c) HAS OCCURRED IF THE CABLE OPERATOR, AS A MATTER OF STANDARD PROCEDURE:

(I) PLACES WRITTEN WARNING LABELS ON ITS CONVERTERS OR DECODERS EXPLAINING THAT TAMPERING WITH SUCH DEVICES IS A VIOLATION OF LAW AND A CONVERTER OR DECODER IS FOUND TO HAVE BEEN TAMPERED WITH, ALTERED, OR MODIFIED SO AS TO ALLOW THE RECEPTION OR INTERCEPTION OF CABLE SERVICES WITHOUT AUTHORITY FROM OR PAYMENT TO A CABLE OPERATOR; OR

(II) SEALS ITS CONVERTERS OR DECODERS WITH A LABEL OR MECHANICAL DEVICE AND THE LABEL OR DEVICE HAS BEEN REMOVED OR BROKEN.

(g) THERE SHALL BE A REBUTTABLE PRESUMPTION THAT A VIOLATION OF SECTION 18-4-701 (2) (d) HAS OCCURRED IF A PERSON POSSESSES TEN OR MORE DEVICES OR PRINTED CIRCUIT BOARDS. IF SUCH REBUTTABLE PRESUMPTION IS NOT OVERCOME, THE COURT SHALL FIND THAT SUCH PERSON COMMITTED CIVIL THEFT OF CABLE SERVICE WILLFULLY AND FOR PURPOSES OF COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL GAIN AND SHALL INCREASE THE DAMAGES AWARD IN ACCORDANCE WITH PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION.

(h) THERE SHALL BE A REBUTTABLE PRESUMPTION THAT A VIOLATION OF SECTION 18-4-701 (2) (e) HAS OCCURRED IF THE PERSON, WHILE ENGAGING IN ANY OF THE PROHIBITED ACTS, MADE APPARENT TO THE BUYER THAT THE PRODUCT WOULD ENABLE THE BUYER TO OBTAIN CABLE SERVICE WITHOUT PAYMENT TO A CABLE OPERATOR. IF SUCH REBUTTABLE PRESUMPTION IS NOT OVERCOME, THE COURT SHALL FIND THAT SUCH PERSON COMMITTED CIVIL THEFT OF CABLE SERVICE WILLFULLY AND FOR PURPOSES OF COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL GAIN AND SHALL INCREASE THE DAMAGES AWARD IN ACCORDANCE WITH PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION.

(i) THERE IS A REBUTTABLE PRESUMPTION THAT A VIOLATION OF SECTION 18-4-701 (2) (f) HAS OCCURRED IF A CABLE OPERATOR MAILED BY CERTIFIED MAIL TO THE PERSON, AT THE PROVIDED ADDRESS, A WRITTEN DEMAND REQUESTING THE RETURN OF AN OPERATOR-OWNED CONVERTER, DECODER, OR OTHER DEVICE AND THE PERSON FAILED TO RETURN SAID DEVICE OR TO MAKE REASONABLE ARRANGEMENTS TO DO SO WITHIN FIFTEEN DAYS AFTER THE DATE OF SUCH NOTICE. SUCH REASONABLE ARRANGEMENTS MAY INCLUDE REQUESTING THAT THE CABLE OPERATOR COLLECT THE EQUIPMENT, SUBJECT TO THE CABLE OPERATOR'S POLICIES.

(2) In any civil action brought pursuant to this section, ~~said~~ A cable ~~television system~~ OPERATOR shall be entitled, upon proof of civil theft of cable ~~television~~ service, to recover THE GREATER OF THE FOLLOWING AMOUNTS as damages: ~~three times the amount of the actual damages, if any, plus all reasonable expenses and costs incurred on account of said theft, but not limited to costs and expenses for investigation, disconnection, reconnections, service calls, employees and equipment, and expert witnesses, costs of the suit, and reasonable attorney fees pursuant to subsection (3) of this section.~~

(a) FOUR THOUSAND DOLLARS; OR

(b) THREE TIMES THE AMOUNT OF ANY ACTUAL DAMAGES SUSTAINED.

(3) (a) ~~In any action for civil theft of cable television service, the prevailing party shall be entitled to an award for his reasonable attorney fees.~~ NOTWITHSTANDING

ANY PROVISION OF SUBSECTION (2) OF THIS SECTION TO THE CONTRARY, A COURT MAY INCREASE THE AWARD OF DAMAGES IN ANY CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION BY AN AMOUNT OF NOT MORE THAN FIFTY THOUSAND DOLLARS IF SUCH COURT FINDS THAT CIVIL THEFT OF CABLE SERVICE WAS COMMITTED WILLFULLY AND FOR THE PURPOSE OF COMMERCIAL ADVANTAGE.

(b) IN ANY CIVIL ACTION DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3), A CABLE OPERATOR NEED NOT PROVE THAT THE FINAL PURCHASER ACTUALLY USED THE DEVICE, PLAN, KIT, OR PRINTED CIRCUIT BOARD WITHOUT AUTHORIZATION FROM OR PAYMENT TO A CABLE OPERATOR.

(c) NO ATTEMPT BY A PERSON TO LIMIT OR SHIFT LEGAL LIABILITY IN AN ACTION DESCRIBED IN THIS SUBSECTION (3) BY REQUIRING PURCHASERS TO SIGN A DISCLAIMER ACKNOWLEDGING THEIR RESPONSIBILITY TO REPORT USE OF A DEVICE, PLAN, KIT, OR PRINTED CIRCUIT BOARD TO A CABLE OPERATOR SHALL BE EFFECTIVE, AND ANY SUCH DISCLAIMER SHALL BE VOID.

(d) FOR PURPOSES OF THIS SUBSECTION (3), "PRIVATE FINANCIAL GAIN" SHALL NOT INCLUDE THE MONETARY GAIN REALIZED BY AN INDIVIDUAL AVOIDING MONTHLY CABLE SERVICE BILLS AS A RESULT OF THE INDIVIDUAL'S PRIVATE USE OF UNAUTHORIZED PROGRAMMING.

~~(4) In an action for civil theft of cable television service, the existence on the property and in the actual possession of the accused of the following shall be prima facie evidence of his intent to commit civil theft of cable television service and of his commission of civil theft of cable television service: Any connection, wire, or conductor, or any device whatsoever, which is connected in such a manner as would appear to permit the use of cable television service without the same being reported for payment to and specifically authorized by the cable television system supplying the service.~~ IN ANY ACTION FOR CIVIL THEFT OF CABLE SERVICE, THE PREVAILING PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND DIRECT COSTS INCURRED AS A RESULT OF SUCH THEFT, INCLUDING, BUT NOT LIMITED TO, THE COSTS OF ANY INVESTIGATION, DISCONNECTION OR RECONNECTION, SERVICE CALLS, EMPLOYEES, EQUIPMENT, AND EXPERT WITNESSES AND COSTS OF THE CIVIL ACTION.

(5) A CABLE OPERATOR MAY SEEK AN INJUNCTION TO ENJOIN OR RESTRAIN A VIOLATION OF THIS SECTION AND DAMAGES ARISING FROM SUCH VIOLATION IN THE SAME ACTION.

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to offenses committed on or after the applicable effective date of this act.

Approved: April 21, 1998