



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 981 (Substitute S-2 as reported)
 Senate Bill 982 (Substitute S-2 as reported)
 Sponsor: Senator Bill Schuette Committee:
 Technology and Energy

Date Completed: 10-24-96

RATIONALE

Public Act 329 of 1996, which will take effect on April 1, 1997, amended the Michigan Penal Code to revise the offense of and penalties for fraudulently avoiding a charge for a telecommunications service and the provision for seizure of telecommunications devices. While Public Act 329 updates the language of the telecommunications fraud provision to encompass a broader range of ongoing and anticipated electronic interception activities, some contend that it falls short of capturing a widespread area of cost avoidance for telecommunications service: cable and satellite television. Combating cable theft appears to be a constant challenge. According to one estimate, service providers in Michigan lose about \$50 million per year in pirated services, and, nationally, the loss figure may be as high as \$3 billion. In order to prosecute effectively those who engage in unscrupulous activities related to intercepting cable and satellite television service, and to deter future criminal actions, some people believe that the telecommunications fraud provisions should be extended to include devices and connections related to television service, rebuttable presumptions as to criminal intent should be enacted, and service providers should be explicitly authorized to seek injunctions and civil damages.

CONTENT

Senate Bills 981 (S-2) and 982 (S-2) would amend the Michigan Penal Code and the Revised Judicature Act (RJA), respectively, to do all of the following:

- **Include cable and satellite television devices and equipment in the Penal Code's definition of**

"telecommunications device", for purposes of telecommunications fraud violations.

- **Identify conditions that would give rise to a rebuttable presumption concerning a defendant's knowledge and intent in telecommunications fraud violations.**
- **Specify that a counterfeit telecommunications device would be subject to forfeiture.**
- **Authorize a cable or satellite television provider to bring certain civil actions and seek damages relating to the unauthorized receipt of television service.**

Senate Bill 981 (S-2)

Telecommunications Fraud Violations

The bill would include in the Penal Code's definition of "telecommunications device" cables, converters, decoders, descramblers, satellite equipment, or other devices and equipment, for purposes of the Code's telecommunications fraud violations. (By including the cable and satellite television interception devices in the definition of "telecommunications device", the bill would expand on revisions made by Public Act 329 of 1996.)

The Code prohibits the manufacture, possession, delivery, offer to deliver, or advertisement of either a counterfeit telecommunications device or of a telecommunications device with intent to use the device or allow its use to do either of the following or knowing or having reason to know that the device is intended to be used to do either of the following:

- Obtain or attempt to obtain telecommunications service with the intent to avoid or aid or abet or cause another person to avoid any lawful charge for telecommunications service.
- Conceal the existence or place of origin or destination of any telecommunications service.

The Code also prohibits the delivery, offer to deliver, or advertisement of plans, instructions, or materials for manufacture of a counterfeit telecommunications device or for manufacture of a telecommunications device that the person intends to be used or knows or has reason to know will be used or is likely to be used to commit a telecommunications violation.

The telecommunications fraud violations are felonies and are punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

Rebuttable Presumption

Under the bill, evidence of any of the following would give rise to a rebuttable presumption that the conduct that violated the Code's telecommunications fraud provisions was engaged in knowingly, with the intent to permit or obtain the "unauthorized receipt of a telecommunications service":

- One or more counterfeit telecommunications devices were present on the defendant's property or in his or her possession.
- The telecommunications service provider placed written warning labels on its telecommunications device explaining that tampering with it would be a crime, and the device in the defendant's possession had been tampered with, altered, or modified to permit the unauthorized receipt of a telecommunications service.
- The defendant had published or advertised for sale a plan for a counterfeit telecommunications device and the publication or advertisement stated or implied that the plan would enable the unauthorized receipt of telecommunications service.
- The defendant had advertised for the sale of a counterfeit telecommunications device or kit for a counterfeit device and the advertisement stated or implied that the counterfeit device or kit would permit the

unauthorized receipt of a telecommunications service.

- The defendant had sold, leased, or offered for sale or lease a counterfeit telecommunications device or a plan or kit for a counterfeit device and, during the course of the transaction, stated or implied to the buyer that the device would permit the unauthorized receipt of a telecommunications service.
- The defendant installed an unauthorized connection or provided another with instructions or advice to do so. (An unauthorized connection would not include an internal connection made by a person within his or her residence for the purpose of receiving authorized telecommunications services.)

"Unauthorized receipt of a telecommunications service" would mean the interception or receipt, by any means, of a telecommunications service, without the specific authorization of the telecommunications service provider.

Forfeiture

The bill provides that a counterfeit telecommunications device used in violation of the telecommunications fraud provisions would be subject to the RJA's civil forfeiture provisions for criminal acts. The court could order either that the counterfeit telecommunications device be destroyed or that it be returned to the telecommunications service provider, if the device were owned or controlled by a provider.

Senate Bill 982 (S-2)

Civil Actions

The bill would allow a cable or satellite television provider to bring an action to enjoin activities relating to the unauthorized receipt of television service or criminal telecommunications violations, and to seek damages for those activities.

Specifically, the bill would allow a cable or satellite television provider to bring an action to enjoin a person from the unauthorized receipt of cable or satellite television service, using an unauthorized device, making an unauthorized connection, or committing an act that would be in violation of the Michigan Penal Code's telecommunications fraud provisions. A cable or satellite television provider also could seek actual damages; exemplary

damages of up to \$1,000 or, if the person's acts were for direct or indirect commercial advantage or financial gain, exemplary damages of up to \$50,000; and/or reasonable attorney fees and costs.

It would not be a necessary prerequisite to bring an action under the bill that the cable television operator had suffered actual damages. An action under the bill would be in addition to any other penalties or remedies provided by law. Each act prohibited by the bill would constitute a separate cause of action.

Definitions

"Unauthorized receipt of cable or satellite television service" would mean the interception or receipt, by any means, of cable or satellite television service over a cable or satellite television system, without the specific authorization of the cable or satellite television provider. "Unauthorized device" would mean any instrument, apparatus, circuit board, equipment, or device designed or adapted for use to avoid fraudulently the lawful charge for any cable or satellite television service. "Unauthorized connection" would mean any physical, electrical, mechanical, acoustical, or other connection to a cable or satellite television system, without the specific authority of the cable or satellite television provider. (An unauthorized connection would not include an internal connection made by a person within his or her residence for the purpose of receiving authorized cable or satellite television service.)

"Cable or satellite television system" would mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control cable or satellite system equipment that was designed to provide cable or satellite television service. "Cable or satellite television service" would mean the transmission of video programming over a cable or satellite television system.

MCL 750.540c et al. (S.B. 981)
Proposed MCL 600.2962 (S.B. 982)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to testimony before the Senate Committee on Technology and Energy, 8% to 11% of nonsubscribers to cable television tap in to cable service facilities to gain unauthorized receipt of basic cable television service. An even bigger problem is the theft of premium cable television services and pay-per-view programming through the use of signal decoders or descramblers. These devices may be counterfeit equipment or actual provider-owned or -supplied devices that have been stolen or tampered with to provide unauthorized service.

Although Public Act 329 of 1996 updates the Michigan Penal Code's telecommunications fraud provisions by prohibiting certain activities with a telecommunications device or counterfeit telecommunications device, that Act's provisions do not include equipment typically used in the theft of cable and satellite television service. Senate Bill 981 (S-2) would broaden the scope of the telecommunications fraud violations by including cable and satellite television equipment in the definition of telecommunications device. In addition, the bill's listing of specific circumstances that would give rise to a rebuttable presumption pertaining to a defendant's knowledge and intent would make the cable and satellite television violations more enforceable. Further, the authorization in Senate Bill 982 (S-2) for a cable or satellite television provider to seek a court-ordered injunction and civil damages would give providers another tool with which to combat fraud within their service industry.

Opposing Argument

Although the bills exclude internal connections within a residence from the definition of "unauthorized connection", the bills would not go far enough to protect customers who inadvertently received services to which they may not have subscribed. It is conceivable, for instance, that a customer who canceled a particular service might continue to receive that service through no illicit actions of his or her own. Also, a rental tenant could receive cable television service because the landlord illegally tapped a cable service facility. The tenant, then, would be the customer receiving intercepted service even though it was the landlord who pirated the signal. The bills should spell out exemptions from prosecution and civil liability for people in these and similar situations.

Response: Cable television providers report that they are interested in pursuing criminal and

civil remedies against people who pirate their services, particularly those who profit from providing unauthorized connections and devices to descramble encoded signals. The service providers are not intent on harassing individuals who inadvertently receive services to which they are not entitled. Indeed, a representative of the Cable Television Association of Michigan testified at the Senate committee meeting that providers' main concern is turning nonsubscribers into subscribers; their first course of action would be to offer authorized service to someone receiving a pirated signal. Since theft of cable and satellite television service has become so widespread, however, the enforcement measures proposed by the bills are necessary to address the problem adequately.

Fiscal Analyst: M. Hansen (S.B. 981)
M. Ortiz (S.B. 982)

Opposing Argument

While including the cable and satellite television devices in the Penal Code's telecommunications fraud provision may be a good idea, including the rebuttable presumption about a person's intent may be excessively oppressive.

Response: The difficulty in showing a defendant's criminal intent serves as an impediment to prosecuting instances of cable television theft. The rebuttable presumption in Senate Bill 981 (S-2) is a necessary enforcement tool. Making these violations easier to enforce also would provide a greater deterrent effect.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 981 (S-2)

The bill would result in increased costs for apprehending, prosecuting, and sanctioning violators of the bill's new provisions. While there are currently no data on the estimated number of potential violators, as a point of reference, in 1995 there was one circuit court conviction of the existing statute regarding altering telephones to avoid bills (MCL 750.540c) and that conviction resulted in a sentence of probation. There is no information on the potential number of convictions for receiving unauthorized cable television service.

Senate Bill 982 (S-2)

The bill would have no fiscal impact on the State, and an indeterminate impact on local government depending on the number of people who could be potential violators of the bill.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.