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**BILL ANALYSIS**

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Senate Bills 981 and 982 (as introduced 4-24-96)  
Sponsor: Senator Bill Schuette  
Committee: Technology and Energy

Date Completed: 9-25-96

**CONTENT**

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

- **Prohibit certain actions regarding the unauthorized receipt of cable television service.**
- **Provide for criminal penalties for the cable television violations.**
- **Specify certain actions that would give rise to a rebuttable presumption that a defendant acted knowingly and with intent to obtain or permit the unauthorized receipt of cable television service.**
- **Extend criminal forfeiture provisions to an unauthorized device for the receipt of cable television service.**
- **Allow a cable television operator to bring an action to enjoin activities relating to the unauthorized receipt of cable television service.**
- **Allow a cable television operator to seek damages for cable television violations.**

**Senate Bill 981**

The bill would remove "cable television system" from the definition of "telecommunications service" in the Penal Code's telecommunications fraud prohibitions. The bill, instead, would establish new cable television fraud violations and penalties.

**Violations**

Under the bill, a person could not do any of the following:

- Obtain or attempt to obtain the "unauthorized receipt of cable television service".
- Make, use, or possess an "unauthorized device".
- Make or maintain an "unauthorized connection".
- Make or maintain any modification or alteration to any "cable system equipment" to permit the unauthorized receipt of cable television service.
- Publish or advertise for sale plans for an unauthorized device, with the intent that the plans be used for the construction of an unauthorized device.
- Manufacture, import into Michigan, distribute, sell, lease, offer for sale or lease, or advertise for sale or lease an unauthorized device or kit for an unauthorized device, with the intent that the device or kit be used for the unauthorized receipt of cable television service.

## Definitions

“Cable television service” would mean the transmission of video programming over a cable television system. “Cable television system” would mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control cable system equipment that was designed to provide cable television service. “Cable system equipment” would mean any cables, converters, decoders, descramblers, devices, instruments, or other equipment owned by a cable television operator and used in a cable television system, including devices leased from the cable television operator by a subscriber for use in receiving cable television service.

“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 television service. “Unauthorized connection” would mean any physical, electrical, mechanical, acoustical, or other connection to a cable television system, without the specific authority of the cable television operator. “Unauthorized receipt of cable television service” would mean the interception or receipt by any means of cable television service over a cable television system without the specific authorization of the cable television operator.

## Penalties

A violation of the bill would be a misdemeanor, punishable by up to six months’ imprisonment, a maximum fine of \$1,000, or both. A second or subsequent violation would be a felony, punishable by up to one year’s imprisonment, a maximum fine of \$2,000, or both.

A violation of the bill for direct or indirect commercial advantage or financial gain would be a felony, punishable by up to two years’ imprisonment, a maximum fine of \$25,000, or both. A second or subsequent violation for commercial advantage or financial gain would be a felony, punishable by up to four years’ imprisonment, a maximum fine of \$50,000, or both.

A penalty under the bill could be imposed in addition to any other penalty or remedy that could be imposed or would be allowed by law for the same conduct.

## Rebuttable Presumption

Evidence of one or more of the following would give rise to a rebuttable presumption that the defendant knowingly engaged in conduct that violated the bill, with the intent to permit or obtain the unauthorized receipt of cable television service:

- The presence of one or more unauthorized devices on the defendant’s property or in his or her actual possession.
- That the defendant installed an unauthorized connection or provided another with instructions or advice to do so.
- That the cable television operator placed written warning labels on its cable system equipment explaining that tampering with the equipment would be a violation of law and that the equipment in the defendant’s possession had been tampered with, altered, or modified to permit the unauthorized receipt of cable television service.
- The defendant had published or advertised for sale a plan for an unauthorized device and the publication or advertisement stated or implied that the plan would enable the unauthorized receipt of cable television service.
- The defendant had advertised for the sale of an unauthorized device or kit for an unauthorized device and the advertisement stated or implied that the device or kit would permit the unauthorized receipt of cable television service.

- That the defendant had sold, leased, or offered for sale or lease an unauthorized device or a plan or kit for an unauthorized device and that the defendant stated or implied to the buyer that the device would permit the unauthorized receipt of cable television service.

### Forfeiture

An unauthorized device used in violation of the bill would be subject to the RJA's civil forfeiture provisions for criminal acts. The court could order either that the unauthorized device be destroyed or that it be returned to the cable television operator, if it were owned or controlled by the operator.

### **Senate Bill 982**

The bill specifically would allow a cable television operator to bring an action to enjoin a person from the unauthorized receipt of cable television service, using an unauthorized device, making an unauthorized connection, or committing an act that would be in violation of the prohibitions proposed by Senate Bill 981.

A cable television operator also could seek one or more of the following damages:

- 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.
- 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.

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

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

#### **Senate Bill 981**

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**

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.

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