



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 981 and 982 (as enrolled)
Sponsor: Senator Bill Schuette
Senate Committee: Technology and Energy
House Committee: Public Utilities

PUBLIC ACTS 557 and 558 of 1996

Date Completed: 1-15-97

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 contended 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 activity, some people believe that the telecommunications fraud provisions should 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 and 982 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 will give rise to a rebuttable presumption concerning a**

defendant's knowledge and intent in telecommunications fraud violations.

- **Specify that a counterfeit telecommunications device is 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

Telecommunications Fraud Violations

The bill includes 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 expands 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 will 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 is a crime, and the device in the defendant's possession has been tampered with, altered, or modified to permit the unauthorized receipt of a telecommunications service.
- The defendant has published or advertised for sale a plan for a counterfeit telecommunications device and the publication or advertisement states or implies that the plan will enable the unauthorized receipt of telecommunications service.
- The defendant has advertised for the sale of a counterfeit telecommunications device or kit for a counterfeit device and the advertisement states or implies that the counterfeit device or kit will permit the unauthorized receipt of a telecommunications service.
- The defendant has 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 will permit the unauthorized receipt of a telecommunications service.

- The defendant installed an unauthorized connection or provided another with written instructions on such connection.

Concerning the last type of conduct, an unauthorized connection does not include any of the following:

- An internal connection made by a person within his or her residence for the purpose of receiving authorized cable or satellite television service.
- The physical connection of a cable or other device by a person located within his or her residence that was initially placed there by the cable or satellite television service provider.
- The physical connection of a cable or other device by a person located within his or her residence that the person had reason to believe was an authorized connection.

The bill defines "unauthorized receipt of a telecommunications service" as 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 is subject to the RJA's civil forfeiture provisions for criminal acts. The court may order either that the counterfeit telecommunications device be destroyed or that it be returned to the telecommunications service provider, if the device is owned or controlled by a provider.

Senate Bill 982

Civil Actions

The bill allows 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 allows 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 may 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 is not a necessary prerequisite to bring an action under the bill that the cable television operator have suffered actual damages. An action under the bill is in addition to any other penalties or remedies provided by law. Each act prohibited by the bill constitutes a separate cause of action.

Definitions

The bill defines "unauthorized receipt of cable or satellite television service" as 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" means 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" means 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 does not include any of the following:

- An internal connection made by a person within his or her residence for the purpose of receiving authorized cable or satellite television service.
- The physical connection of a cable or other device by a person located within his or her residence that was initially placed there by the cable or satellite television service provider.
- The physical connection of a cable or other device by a person located within his or her residence that the person had reason to believe was an authorized connection.

The bill defines "cable or satellite television system" as a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control cable or satellite system equipment that is designed to provide cable or satellite television service. "Cable or satellite television service" means the transmission

of video programming over a cable or satellite television system.

MCL 750.540c & 750.540h (S.B. 981)
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 will 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 will give rise to a rebuttable presumption pertaining to a defendant's knowledge and intent will make the cable and satellite television violations more enforceable. Further, the authorization in Senate Bill 982 for a cable or satellite television provider to seek a court-ordered injunction and civil damages will give providers another tool with which to combat fraud within their service industry.

Supporting Argument

By specifying that an "unauthorized connection" does not include certain internal connections within a residence, the bills will protect customers who inadvertently receive 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 action 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. 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.

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 is a necessary enforcement tool. Making these violations easier to enforce also will provide a greater deterrent effect.

Legislative Analyst: P. Affholter
S. Margules

FISCAL IMPACT

Senate Bill 981

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

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

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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.