

CHAPTER 173

H.B. No. 485

An Act relating to the offenses of use and manufacture, sale, or distribution of devices used to intercept, descramble, or decode subscription television transmissions and cable television services, the offense of making or maintaining an unauthorized cable connection, and to civil actions related to those offenses.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 31.12, Penal Code, is amended to read as follows:

Sec. 31.12. **UNAUTHORIZED USE OF TELEVISION DECODING AND INTERCEPTION DEVICE OR CABLE DESCRAMBLING, DECODING, OR INTERCEPTION DEVICE.** (a) A person commits an offense if, with the intent to intercept and decode a transmission by a subscription television service without the authorization of the provider of the service, the person intentionally or knowingly attaches to, causes to be attached to, or incorporates in a television set, video tape recorder, or other equipment designed to receive a television transmission a device that intercepts and decodes the transmission.

(b) *A person commits an offense if, with the intent to intercept, descramble, or decode a cable television service and without the authorization of the provider of the service, the person intentionally or knowingly:*

(1) physically, electrically, electronically, acoustically, or inductively makes or maintains an unauthorized cable connection or otherwise intercepts cable television service;

(2) attaches to, causes to be attached to, maintains an attachment to, or incorporates in a television set, video tape recorder, other equipment designed to receive a television transmission, or equipment of a cable television company a device that intercepts, descrambles, or decodes the service; or

(3) tampers with, changes, or modifies the equipment of a cable television company.

(c) In this section:

(1) "Cable television service" means a service provided by or through a facility of a cable television system, closed circuit coaxial cable communication system, or microwave or similar transmission service used in connection with a cable television system.

(2) "Device" means a device other than a nondecoding or nondescrambling channel frequency converter or television receiver type-accepted by the Federal Communications Commission.

(3) "Subscription television service" means [~~"Subscription television service" in this section shall mean~~] a service whereby television broadcast programs intended to be received in an intelligible form by members of the public only for a fee or charge are transmitted pursuant to the grant of subscription television authority by the Federal Communications Commission. The term shall not include cable television service or community antenna television service.

(d) If an unauthorized device designed to intercept, descramble, or decode a subscription television transmission or if an unauthorized device designed to intercept, descramble, or decode a cable television service is present on the premises or property occupied and used by a person, it is presumed that the person intentionally or knowingly used the device to intercept, descramble, or decode a transmission or a service. If an unauthorized cable connection is present on the premises or property occupied and used by a person, it is presumed that the person intentionally or knowingly used the connection to intercept cable television service. If equipment of a cable television company that has been tampered with, changed, or modified is present on the premises or property occupied and used by a person, it is presumed that the person intentionally or knowingly used the equipment to intercept, descramble, or decode a cable television service.

(e) The presumptions created by Subsection (d) of this section do not apply if the person accused shows by a preponderance of the evidence that the presence of the unauthorized device or connection, or the tampering, change, or modification of the equipment of the cable television company, may be attributed to the conduct of another.

(f) The presumptions created by Subsection (d) of this section do not apply to a telecommunications company that provides local or long distance communications services and uses equipment described by that subsection in the normal course of its business.

(g) This section does not prohibit the manufacture, distribution, sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.

(h) [(e)] An offense under this section is a Class B misdemeanor unless the actor committed the offense for remuneration, in which event it is a Class A misdemeanor.

SECTION 2. Section 31.13, Penal Code, is amended to read as follows:

Sec. 31.13. **MANUFACTURE, SALE, OR DISTRIBUTION OF TELEVISION DECODING AND INTERCEPTION DEVICE OR CABLE DESCRAMBLING, DECODING, OR INTERCEPTION DEVICE.** (a) A person commits an offense if the person for remuneration intentionally or knowingly manufactures, distributes, or sells, with an intent to aid an offense under Section 31.12 of this code, a device or a plan or part for a device that intercepts and decodes a transmission by a subscription television service or that intercepts, descrambles, or decodes a cable television service.

(b) In this section, "cable television service," "device," and "subscription television service" have the meanings assigned by Section 31.12 of this code. [~~"Subscription television service" in this section shall mean a service whereby television broadcast programs intended to be received in an intelligible form by members of the public only for a fee or charge are transmitted pursuant to the grant of subscription television authority by the Federal Communications Commission. The term shall not include cable television service or community antenna television service.~~]

(c) This section does not prohibit the manufacture, distribution, sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.

(d) An offense under this section is a Class A misdemeanor.

SECTION 3. Section 3, Chapter 29, Acts of the 67th Legislature, Regular Session, 1981, is amended to read as follows:

Sec. 3. (a) A provider of subscription *or cable* television service may bring an action to *restrain or* enjoin a violation or threatened violation of Section 31.12 or 31.13 of the Penal Code *and for damages resulting from the violation*. A party bringing such an action shall be entitled to issuance of such an injunction upon a showing that a violation of Section 31.12 or 31.13 of the Penal Code has occurred or will occur. Irreparable injury, inadequate remedy at law, and probability of recovery need not be shown to prove a prima facie right to such an injunction.

(b) The court shall award [~~three times~~] actual damages and reasonable attorney's fees to a prevailing plaintiff in an action under this section *or \$500, whichever sum is greater*.

SECTION 4. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 5. This Act takes effect September 1, 1985.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 16, 1985, by a non-record vote; passed by the Senate on May 13, 1985, by a viva-voce vote.

Approved: May 24, 1985

Effective: September 1, 1985