

**First Regular Session  
Sixty-fourth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 03-0904.01 Duane Gall

**HOUSE BILL 03-1303**

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**HOUSE SPONSORSHIP**

**Crane**

**SENATE SPONSORSHIP**

**(None)**

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**House Committees**

Information & Technology

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING CRIMES INVOLVING THE UNAUTHORIZED USE OF**  
102             **COMMUNICATION DEVICES, AND, IN CONNECTION THEREWITH,**  
103             **MAKING AN APPROPRIATION.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Amends existing statutes pertaining to telecommunications crime, including the manufacture and use of "cloned" cellular telephones and other devices for obtaining unauthorized access to proprietary signals, codes, access numbers, content, and services. Defines certain crimes as felonies and makes statutorily required 5-year appropriations and transfers from the general fund to the capital construction fund.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds, determines, and declares that:

4 (a) Since the original enactment, in 1971, of statutes criminalizing  
5 the theft of telecommunication services, communications technology has  
6 undergone continual and far-reaching changes;

7 (b) The last significant revision of these statutes occurred in 1997,  
8 with the advent of cellular telephones;

9 (c) In the intervening six years, a host of new wireless devices as  
10 well as an entire new industry, the internet service provider industry, have  
11 developed, so that it may truly be said that a new world of technology has  
12 come on line;

13 (d) Almost simultaneously with each such development, thieves  
14 have adapted the new technology to threaten the financial health of  
15 communication service providers, the privacy of consumers, and the  
16 security of on-line commerce; and

17 (e) Therefore, it is necessary once again to revisit and refine  
18 Colorado's statutes dealing with criminal conduct that employs  
19 communications technology.

20 (2) The purpose of this act is to update this state's approach to  
21 telecommunications crime by broadening technical definitions where  
22 necessary, increasing penalties where appropriate, and addressing the  
23 phenomenon of malicious "hacking". This act is not intended to punish  
24 innocent users.

25 **SECTION 2.** 18-9-309, Colorado Revised Statutes, is amended  
26 to read:

1           **18-9-309. Communications crime - definitions.** (1) As used in  
2 this section and section 18-9-309.5:

3           (a) "Access device" means any card, plate, code, account number,  
4 or other means of access that can be used, alone or in conjunction with  
5 another access device, to obtain ~~telecommunications~~ COMMUNICATION  
6 service.

7           ~~(a.5)~~ (b) "Cellular phone" means a radio ~~telecommunications~~  
8 COMMUNICATION device that may be used to obtain telecommunications  
9 services and that is programmed with an electronic serial number by or  
10 with the consent of the cellular phone manufacturer.

11           ~~(a.7)~~ (c) "Cloned cellular phone" means a cellular phone, the  
12 electronic serial number of which has been altered without the consent of  
13 the cellular phone's manufacturer.

14           ~~(a.8)~~ (d) "Cloning equipment" means any instrument, apparatus,  
15 equipment, computer hardware, computer software, operating procedure  
16 or code, or device, whether used separately or in combination, that is  
17 designed or adapted and is used, is intended to be used, or is capable of  
18 being used:

19           (I) To intercept signals, including signals transmitted to or from  
20 cellular phones, between a ~~telecommunications~~ COMMUNICATION provider  
21 and persons using ~~telecommunications~~ COMMUNICATION services or  
22 between persons using ~~telecommunications~~ COMMUNICATION services; or

23           (II) To create cloned cellular phones.

24           (e) (I) "COMMUNICATION DEVICE" MEANS ANY ELECTRONIC OR  
25 ELECTROMECHANICAL DEVICE, MECHANISM, INSTRUMENT, MACHINE, OR  
26 EQUIPMENT, INCLUDING ANY ASSOCIATED SOFTWARE AND ANY  
27 ASSOCIATED TRANSMISSION LINES OR CONNECTIONS AND APPURTENANCES

1       THERETO, THAT IS CAPABLE OF INTERCEPTING, TRANSMITTING,  
2       RETRANSMITTING, ACQUIRING, DECRYPTING, OR RECEIVING ANY  
3       COMMUNICATION SERVICE OR THE FACILITATION THEREOF.

4               (II) "COMMUNICATION DEVICE" INCLUDES, WITHOUT LIMITATION:

5               (A) CLONING EQUIPMENT, TECHNOLOGY, OR SOFTWARE;

6               (B) ANY COMPONENT OR SUBASSEMBLY OF A DEVICE DESCRIBED  
7       IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (e), INCLUDING ANY COMPUTER  
8       CIRCUIT, SPLITTER, CONNECTOR, SWITCH, TRANSMISSION HARDWARE,  
9       SECURITY MODULE, SMART CARD, DISK DRIVE OR OTHER DATA STORAGE  
10      MEDIUM, SOFTWARE PROGRAM, COMPUTER CHIP, ELECTRONIC MECHANISM,  
11      OR ANY OTHER COMPONENT, ACCESSORY, OR PART THAT IS CAPABLE OF  
12      FACILITATING THE INTERCEPTION, TRANSMISSION, RETRANSMISSION,  
13      DECRYPTION, ACQUISITION, OR RECEPTION OF ANY COMMUNICATION  
14      SERVICE; AND

15              (C) ANY ELECTRONIC SERIAL NUMBER, MOBILE IDENTIFICATION  
16      NUMBER, PERSONAL IDENTIFICATION NUMBER, OR COMMUNICATION  
17      DEVICE THAT IS CAPABLE OF ACQUIRING OR FACILITATING THE  
18      ACQUISITION OF A COMMUNICATION SERVICE.

19              (f) (I) "COMMUNICATION SERVICE" MEANS ANY SERVICE  
20      LAWFULLY PROVIDED FOR A CHARGE OR COMPENSATION TO FACILITATE  
21      THE LAWFUL ORIGINATION, TRANSMISSION, EMISSION, OR RECEPTION OF  
22      SIGNS, SIGNALS, DATA, WRITINGS, IMAGES, AND SOUNDS OR INTELLIGENCE  
23      OF ANY NATURE BY TELEPHONE, INCLUDING CELLULAR OR OTHER  
24      WIRELESS TELEPHONES, WIRE, WIRELESS, RADIO, ELECTROMAGNETIC,  
25      PHOTOELECTRONIC, OR PHOTO-OPTICAL SYSTEMS, NETWORKS, OR  
26      FACILITIES; AND ANY SERVICE LAWFULLY PROVIDED BY ANY RADIO,  
27      TELEPHONE, FIBER OPTIC, PHOTO-OPTICAL, ELECTROMAGNETIC,

1 PHOTOELECTRIC, CABLE TELEVISION, SATELLITE, MICROWAVE, DATA  
2 TRANSMISSION, WIRELESS, OR INTERNET-BASED DISTRIBUTION SYSTEM,  
3 NETWORK, OR FACILITY.

4 (II) "COMMUNICATION SERVICE" INCLUDES, WITHOUT LIMITATION,  
5 ANY AND ALL ELECTRONIC, DATA, VIDEO, AUDIO, INTERNET ACCESS,  
6 TELEPHONIC, MICROWAVE, AND RADIO COMMUNICATIONS,  
7 TRANSMISSIONS, SIGNALS, AND SERVICES, AND ANY SUCH  
8 COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND SERVICES LAWFULLY  
9 PROVIDED DIRECTLY OR INDIRECTLY BY OR THROUGH ANY SUCH SYSTEMS,  
10 NETWORKS, OR FACILITIES.

11 (g) "COMMUNICATION SERVICE PROVIDER" MEANS ANY PERSON OR  
12 ENTITY THAT:

13 (I) PROVIDES A COMMUNICATION SERVICE, WHETHER DIRECTLY OR  
14 INDIRECTLY AS A RESELLER, INCLUDING, WITHOUT LIMITATION, TO A  
15 CELLULAR, PAGING, OR OTHER WIRELESS COMMUNICATION COMPANY OR  
16 OTHER PERSON OR ENTITY THAT, FOR A FEE, SUPPLIES THE FACILITY, CELL  
17 SITE, MOBILE TELEPHONE SWITCHING OFFICE, OR OTHER EQUIPMENT OR  
18 COMMUNICATION SERVICE;

19 (II) OWNS OR OPERATES ANY FIBER OPTIC, PHOTO-OPTICAL,  
20 ELECTROMAGNETIC, PHOTOELECTRONIC, CABLE TELEVISION, SATELLITE,  
21 INTERNET-BASED, TELEPHONE, WIRELESS, MICROWAVE, DATA  
22 TRANSMISSION, OR RADIO DISTRIBUTION SYSTEM, NETWORK, OR FACILITY;  
23 OR

24 (III) PROVIDES ANY COMMUNICATION SERVICE DIRECTLY OR  
25 INDIRECTLY BY OR THROUGH ANY SUCH DISTRIBUTION SYSTEMS,  
26 NETWORKS, OR FACILITIES.

27 (b) (h) "Credit card number" means the card number appearing on

1 a credit card ~~which is~~ THAT FUNCTIONS AS an identification card or plate  
2 AND THAT IS issued to a person by any supplier of telecommunications  
3 COMMUNICATION service ~~which permits the~~ SO AS TO PERMIT SUCH person  
4 ~~to whom the card has been issued~~ to obtain telecommunications  
5 COMMUNICATION service on credit. ~~The term~~ "CREDIT CARD NUMBER"  
6 includes the number or description of the card or plate even if the card or  
7 plate itself is not produced at the time of obtaining telecommunications  
8 A COMMUNICATION service.

9 (b.7) (i) "Electronic serial number" means an electronic number  
10 that is programmed into a cellular phone by or with the consent of the  
11 manufacturer, transmitted by the cellular phone, and used by cellular  
12 phone telecommunications COMMUNICATION providers to validate radio  
13 transmissions as having been made by cellular phones authorized or  
14 approved by telecommunications providers A COMMUNICATION SERVICE  
15 PROVIDER.

16 (c) ~~"Illegal telecommunications equipment" means any~~  
17 ~~instrument, apparatus, equipment, computer hardware, computer~~  
18 ~~software, mechanism, operating procedure or code, or device, whether~~  
19 ~~used separately or in combination, that is designed or adapted and is used~~  
20 ~~or is intended to be used to evade the lawful charges for any~~  
21 ~~telecommunications service or for concealing from any~~  
22 ~~telecommunications provider or lawful authority the existence, place of~~  
23 ~~origin, or destination of any telecommunication. Illegal~~  
24 ~~telecommunications equipment includes cloned cellular phones.~~

25 (e.5) (j) To "intercept signals" means to electronically capture,  
26 record, reveal, or otherwise access signals, including data, electronic  
27 serial numbers, and mobile identification numbers, that are emitted,

1 transmitted, or received by a ~~telecommunications~~ COMMUNICATION  
2 ~~SERVICE~~ provider without consent of the ~~telecommunications~~  
3 COMMUNICATION ~~SERVICE~~ provider or the person receiving or initiating  
4 the signal.

5 (k) "MANUFACTURE, ASSEMBLY, OR DEVELOPMENT OF A  
6 COMMUNICATION DEVICE" MEANS THE PROCESS OF:

7 (I) MAKING, PRODUCING, DEVELOPING, OR ASSEMBLING A  
8 COMMUNICATION DEVICE; OR

9 (II) KNOWINGLY ASSISTING OTHERS IN SUCH ACTIVITY.

10 (l) "MANUFACTURE, ASSEMBLY, OR DEVELOPMENT OF AN  
11 UNLAWFUL ACCESS DEVICE" MEANS THE PROCESS OF:

12 (I) MAKING, DEVELOPING, PRODUCING, OR ASSEMBLING AN  
13 UNLAWFUL ACCESS DEVICE OR MODIFYING, ALTERING, PROGRAMMING, OR  
14 REPROGRAMMING ANY INSTRUMENT, DEVICE, MACHINE, EQUIPMENT,  
15 TECHNOLOGY, OR SOFTWARE SO THAT IT IS CAPABLE OF DEFEATING OR  
16 CIRCUMVENTING ANY TECHNOLOGY, DEVICE, OR SOFTWARE USED BY THE  
17 PROVIDER, OWNER, OR LICENSEE OF A COMMUNICATION SERVICE OR OF  
18 ANY DATA OR AUDIO OR VIDEO PROGRAMS OR TRANSMISSIONS TO PROTECT  
19 ANY SUCH COMMUNICATION, DATA, OR AUDIO OR VIDEO PROGRAMS OR  
20 TRANSMISSIONS FROM UNAUTHORIZED RECEIPT, INTERCEPTION,  
21 ACQUISITION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION,  
22 TRANSMISSION, OR RETRANSMISSION; OR

23 (II) KNOWINGLY ASSISTING OTHERS IN SUCH ACTIVITY.

24 ~~(e.7)~~(m) "Mobile identification number" means the cellular phone  
25 number assigned to a cellular phone by the cellular phone  
26 ~~telecommunications~~ COMMUNICATION ~~SERVICE~~ provider.

27 ~~(d) "Telecommunications device" means any instrument,~~

1 apparatus, method, system, or equipment which controls, measures,  
2 directs, or facilitates telecommunications service. The term includes, but  
3 is not limited to, computer hardware, software, programs, electronic mail  
4 systems, voice mail systems, identification validation systems, and private  
5 branch exchanges.

6 (e) ~~"Telecommunications provider" means any person, firm,~~  
7 ~~association, or any corporation, private or municipal, owning, operating,~~  
8 ~~or managing any facilities used to provide telecommunications service.~~

9 (f) ~~"Telecommunications service" means a service which, in~~  
10 ~~exchange for a pecuniary consideration, provides or offers to provide~~  
11 ~~transmission of messages, signals, facsimiles, or other communication~~  
12 ~~between persons who are physically separated from each other by means~~  
13 ~~of telephone, telegraph, cable, wire, or the projection of energy without~~  
14 ~~physical connection.~~

15 (g) (n) "Telephone company" means any telecommunications  
16 COMMUNICATION SERVICE provider which THAT provides BASIC local  
17 exchange telecommunications service, AS DEFINED IN SECTION 40-15-102  
18 (3), C.R.S.

19 (2) A person commits a class 3 misdemeanor VIOLATION UNDER  
20 THIS SECTION if he or she knowingly:

21 (a) ~~Accesses, uses, manipulates, or damages any~~  
22 ~~telecommunications device without the authority of the owner or person~~  
23 ~~who has the lawful possession or use thereof~~ POSSESSES, USES,  
24 MANUFACTURES, DEVELOPS, ASSEMBLES, DISTRIBUTES, TRANSFERS,  
25 IMPORTS INTO THIS STATE, LICENSES, LEASES, SELLS, OFFERS TO SELL,  
26 PROMOTES, OR ADVERTISES FOR SALE, USE, OR DISTRIBUTION ANY  
27 COMMUNICATION DEVICE:

1 (I) FOR THE COMMISSION OF A THEFT OF A COMMUNICATION  
2 SERVICE;

3 (II) TO RECEIVE, INTERCEPT, DISRUPT, TRANSMIT, RETRANSMIT,  
4 DECRYPT, OR ACQUIRE A COMMUNICATION SERVICE WITHOUT THE EXPRESS  
5 CONSENT OR EXPRESS AUTHORIZATION OF THE COMMUNICATION SERVICE  
6 PROVIDER;

7 (III) TO FACILITATE THE RECEIPT, INTERCEPTION, DISRUPTION,  
8 TRANSMISSION, RETRANSMISSION, DECRYPTION, OR ACQUISITION OF ANY  
9 COMMUNICATION SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS  
10 AUTHORIZATION OF THE COMMUNICATION SERVICE PROVIDER; OR

11 (IV) TO CONCEAL OR TO ASSIST ANOTHER TO CONCEAL FROM ANY  
12 COMMUNICATION SERVICE PROVIDER, OR FROM ANY LAWFUL AUTHORITY,  
13 THE EXISTENCE OR PLACE OF ORIGIN OR DESTINATION OF ANY  
14 COMMUNICATION THAT UTILIZES A COMMUNICATION DEVICE;

15 (b) ~~Makes, possesses, or uses illegal telecommunications~~  
16 ~~equipment; except that a person who knowingly uses cloning equipment~~  
17 ~~to create a cloned cellular phone commits a class 4 felony as provided in~~  
18 ~~subsection (4) of this section~~ MODIFIES, ALTERS, PROGRAMS, OR  
19 REPROGRAMS A COMMUNICATION DEVICE FOR ANY PURPOSE DESCRIBED IN  
20 PARAGRAPH (a) OF THIS SUBSECTION (2);

21 (c) POSSESSES, USES, MANUFACTURES, DEVELOPS, ASSEMBLES,  
22 DISTRIBUTES, IMPORTS INTO THIS STATE, LICENSES, sells, gives, or  
23 furnishes to another, or ~~advertises or offer for sale illegal~~  
24 ~~telecommunications equipment~~ OFFERS, PROMOTES, OR ADVERTISES FOR  
25 SALE, USE, OR DISTRIBUTION ANY UNLAWFUL ACCESS DEVICE;

26 (d) ~~Sells, gives, or furnishes to another or advertises or offers for~~  
27 ~~sale any plans or instructions for making, assembling, or using illegal~~

1 ~~telecommunications equipment;~~ or POSSESSES, USES, PREPARES,  
2 DISTRIBUTES, SELLS, GIVES OR TRANSFERS TO ANOTHER, OR OFFERS,  
3 PROMOTES, OR ADVERTISES FOR SALE, USE, OR DISTRIBUTION ANY:

4 (I) PLANS OR INSTRUCTIONS FOR MAKING, ASSEMBLING, OR  
5 DEVELOPING ANY COMMUNICATION OR UNLAWFUL ACCESS DEVICE WITH  
6 AN INTENT TO USE OR EMPLOY SUCH COMMUNICATION OR UNLAWFUL  
7 ACCESS DEVICE, OR TO ALLOW THE SAME TO BE USED OR EMPLOYED, FOR  
8 A PURPOSE PROHIBITED BY THIS SECTION; OR

9 (II) MATERIAL, INCLUDING WITHOUT LIMITATION HARDWARE,  
10 CABLES, TOOLS, DATA, COMPUTER SOFTWARE, OR OTHER INFORMATION OR  
11 EQUIPMENT, KNOWING THAT THE PURCHASER OR A THIRD PERSON INTENDS  
12 TO USE THE MATERIAL IN THE MANUFACTURE, ASSEMBLY, OR  
13 DEVELOPMENT OF A COMMUNICATION DEVICE FOR A PURPOSE PROHIBITED  
14 BY THIS SECTION OR FOR USE IN THE MANUFACTURE, ASSEMBLY, OR  
15 DEVELOPMENT OF AN UNLAWFUL ACCESS DEVICE.

16 (e) Sells, rents, lends, gives, publishes, or otherwise transfers or  
17 discloses to another or offers or advertises for sale or rental the number  
18 or code of a counterfeited, cancelled, expired, revoked, or nonexistent  
19 telephone number or credit card number or method of numbering or  
20 coding which THAT is employed in the issuance of telephone numbers,  
21 access devices, or credit card numbers or an existing number or code or  
22 method of numbering or coding without the authority of the owner or  
23 person who has the lawful possession or use thereof.

24 (3) A PERSON WHO KNOWINGLY POSSESSES OR USES A  
25 COMMUNICATION DEVICE FOR A PURPOSE PROHIBITED BY THIS SECTION, OR  
26 POSSESSES OR USES AN UNLAWFUL ACCESS DEVICE, COMMITS A CLASS 3  
27 MISDEMEANOR.

1 (4) A PERSON COMMITS A CLASS 4 FELONY IF HE OR SHE:

2 (a) KNOWINGLY MANUFACTURES, DEVELOPS, ASSEMBLES,  
3 DISTRIBUTES, IMPORTS INTO THIS STATE, LICENSES, LEASES, SELLS OR  
4 TRANSFERS TO ANOTHER, OR OFFERS, PROMOTES, OR ADVERTISES FOR  
5 SALE, USE, OR DISTRIBUTION ANY COMMUNICATION DEVICE FOR A PURPOSE  
6 PROHIBITED UNDER THIS SECTION;

7 (b) KNOWINGLY MANUFACTURES, DEVELOPS, ASSEMBLES,  
8 DISTRIBUTES, IMPORTS INTO THIS STATE, LICENSES, LEASES, SELLS OR  
9 TRANSFERS TO ANOTHER, OR OFFERS, PROMOTES, OR ADVERTISES FOR  
10 SALE, USE, OR DISTRIBUTION ANY UNLAWFUL ACCESS DEVICE FOR A  
11 PURPOSE PROHIBITED UNDER THIS SECTION; OR

12 (c) KNOWINGLY AIDS, ABETS, ADVISES, OR OTHERWISE ASSISTS  
13 ANOTHER PERSON IN COMMITTING ANY ACT LISTED IN PARAGRAPH (a) OR  
14 (b) OF THIS SUBSECTION (4).

15 ~~(2.5)~~ (5) A person commits a class 6 felony if, within five years  
16 after a previous violation of subsection (2) of this section, the person  
17 commits a second or subsequent violation of subsection (2) of this  
18 section; except that a second or subsequent violation of subsection (2) of  
19 this section involving knowingly using cloning equipment to create a  
20 cloned cellular phone ~~as described in paragraph (b) of subsection (2) of~~  
21 ~~this section~~, is a class 4 felony.

22 ~~(3)~~ (6) A person commits theft as defined in section 18-4-401 and  
23 shall be subject to the penalties as set forth in that section if he OR SHE  
24 knowingly:

25 (a) Obtains any ~~telecommunications~~ COMMUNICATION service by  
26 charging such service to or causing such service to be charged to an  
27 existing telephone number, access device, or credit card number without

1 the authority of the person to whom issued or of the subscriber thereto or  
2 of the lawful holder thereof or to a nonexistent, counterfeit, expired,  
3 revoked, or cancelled credit card number, or by any method of code  
4 calling, or by installing, rearranging, or tampering with any equipment,  
5 physically or electronically, or by the use of any other fraudulent means,  
6 method, trick, ~~or~~ device, or scheme;

7 (b) Obtains ~~telecommunications~~ ANY COMMUNICATION service  
8 with fraudulent intent through the use of a false or fictitious name,  
9 telephone number, address, or credit information or through the  
10 unauthorized use of the name, telephone number, address, or credit  
11 information of another.

12 ~~(4)~~ (7) (a) A person commits a class 4 felony if he or she  
13 knowingly uses cloning equipment OR ANY OTHER UNLAWFUL ACCESS  
14 DEVICE to:

15 (I) Intercept signals, including signals transmitted to or from  
16 cellular phones, between a ~~telecommunications~~ COMMUNICATION SERVICE  
17 provider and persons using ~~telecommunications~~ ANY COMMUNICATION  
18 services or between persons using ~~telecommunications~~ ANY  
19 COMMUNICATION services; or

20 (II) Create a cloned cellular phone.

21 ~~(b) A person commits a class 4 felony if he or she aids, abets,~~  
22 ~~advises, or encourages one or more persons who engage in the activities~~  
23 ~~described in paragraph (a) of this subsection~~ (4) AN OFFENSE OR  
24 VIOLATION UNDER THIS SUBSECTION (7) MAY BE DEEMED TO HAVE BEEN  
25 COMMITTED AT EITHER THE PLACE WHERE THE DEFENDANT  
26 MANUFACTURES, DEVELOPS, OR ASSEMBLES A COMMUNICATION OR  
27 UNLAWFUL ACCESS DEVICE OR ASSISTS OTHERS IN DOING SO, OR THE PLACE

1 WHERE THE COMMUNICATION OR UNLAWFUL ACCESS DEVICE IS SOLD OR  
2 DELIVERED TO A PURCHASER OR RECIPIENT. IT SHALL NOT BE A DEFENSE  
3 TO A VIOLATION OF THIS SUBSECTION (7) THAT SOME OF THE ACTS  
4 CONSTITUTING THE VIOLATION OCCURRED OUTSIDE OF COLORADO.

5 ~~(e) (8) Each violation of this subsection (4), including each~~  
6 ~~instance of intercepting signals or of creating a cloned cellular phone,~~  
7 ~~shall be~~ SECTION, AND EACH DAY OF A CONTINUING VIOLATION, SHALL  
8 CONSTITUTE a separate offense.

9 (9) **Fines.** FOR THE PURPOSE OF IMPOSING FINES UPON  
10 CONVICTION OF A DEFENDANT FOR AN OFFENSE UNDER THIS SECTION, ALL  
11 FINES SHALL BE IMPOSED AS AUTHORIZED BY LAW FOR EACH DAY A PERSON  
12 IS IN VIOLATION OF THIS SECTION AND FOR EACH COMMUNICATION OR  
13 UNLAWFUL ACCESS DEVICE INVOLVED IN THE VIOLATION.

14 (10) **Restitution.** THE COURT SHALL, IN ADDITION TO ANY OTHER  
15 SENTENCE AUTHORIZED BY LAW, SENTENCE A PERSON CONVICTED OF  
16 VIOLATING THIS SECTION TO MAKE RESTITUTION AS AUTHORIZED BY LAW.

17 ~~(5)~~ (11) The provisions of this section do not apply to:

18 (a) Officers, employees, or agents of ~~telecommunications~~  
19 COMMUNICATION SERVICE providers who engage in conduct prohibited by  
20 this section for the purpose of constructing, maintaining, or conducting  
21 ~~telecommunications~~ COMMUNICATION services ~~or~~ SOLELY for law  
22 enforcement purposes;

23 (b) Law enforcement officers and public officials in charge of  
24 jails, police premises, sheriffs' offices, department of corrections'  
25 institutions, or other penal or correctional institutions or any other person  
26 under the color of law who engages in conduct prohibited by this section  
27 for the purpose of law enforcement or in the normal course of the officer's

1 or official's employment activities or duties; or

2 (c) Officers, employees, or agents of federal or state agencies who  
3 are authorized to monitor or intercept cellular telephone service in the  
4 normal course of the officer's, employee's, or agent's employment.

5 ~~(6)~~ (12) Prosecution under this section does not preclude civil  
6 liability under any applicable provision of law.

7 **SECTION 3.** 18-9-309.5, Colorado Revised Statutes, is amended  
8 to read:

9 **18-9-309.5. Civil remedies - injunctions - forfeiture.**

10 (1) Whenever it appears that any person is engaged in or about to engage  
11 in any act ~~which~~ THAT constitutes or will constitute a violation of section  
12 18-9-309, ~~(2) or (3)~~, the attorney general, the district attorney, a  
13 ~~representative of a telecommunications~~ COMMUNICATION SERVICE  
14 provider, or any person or company harmed by such alleged violation  
15 may initiate a civil proceeding in a ~~district~~ court OF COMPETENT  
16 JURISDICTION to enjoin such violation and may petition the court to issue  
17 an order for the discontinuance of ~~telecommunications~~ ANY  
18 COMMUNICATION service used in violation of section 18-9-309. ~~(2) or (3)~~.

19 (2) An action under this section shall be brought in the county in  
20 which the ~~subject matter of the action, or some part thereof, is located or~~  
21 ~~found~~ VIOLATION OCCURRED and shall be commenced by the filing of a  
22 complaint, which shall be verified by affidavit.

23 (3) ~~If it is shown to the satisfaction of the court, either by verified~~  
24 ~~complaint or affidavit, that a person is engaged in or about to engage in~~  
25 ~~any act which constitutes a violation of section 18-9-309 (2) or (3), the~~  
26 ~~court shall issue a temporary restraining order to abate and prevent the~~  
27 ~~continuance or recurrence of such act. The court shall direct the sheriff~~

1 ~~to seize and retain until further order of the court any device which is~~  
2 ~~being used in violation of section 18-9-309 (2) or (3). While the~~  
3 ~~temporary restraining order remains in effect, all property seized pursuant~~  
4 ~~to the order of the court shall remain in the custody of the court. Within~~  
5 ~~ten days following the filing of a motion of any person adversely affected~~  
6 ~~by a temporary restraining order, the court shall conduct a hearing and~~  
7 ~~determine whether such temporary restraining order shall be continued~~  
8 ~~pending final determination of the action. Until such hearing takes place,~~  
9 ~~the temporary restraining order shall remain in full force and effect. THE~~  
10 COURT MAY:

11 (a) AWARD DECLARATORY RELIEF AND OTHER EQUITABLE  
12 REMEDIES, INCLUDING PRELIMINARY AND FINAL INJUNCTIONS TO PREVENT  
13 OR RESTRAIN VIOLATIONS OF SECTION 18-9-309, WITHOUT REQUIRING  
14 PROOF THAT THE PLAINTIFF HAS SUFFERED, OR WILL SUFFER, ACTUAL  
15 DAMAGES OR IRREPARABLE HARM OR LACKS AN ADEQUATE REMEDY AT  
16 LAW;

17 (b) AT ANY TIME WHILE AN ACTION IS PENDING, ORDER THE  
18 IMPOUNDING, ON SUCH TERMS AS IT DEEMS REASONABLE, OF ANY  
19 COMMUNICATION OR UNLAWFUL ACCESS DEVICE THAT IS IN THE CUSTODY  
20 OR CONTROL OF THE ALLEGED VIOLATOR AND THAT THE COURT HAS  
21 REASONABLE CAUSE TO BELIEVE WAS INVOLVED IN THE ALLEGED  
22 VIOLATION OF SECTION 18-9-309;

23 (c) AWARD DAMAGES AS DESCRIBED IN SUBSECTION (8) OF THIS  
24 SECTION;

25 (d) IN ITS DISCRETION, AWARD REASONABLE ATTORNEY FEES AND  
26 COSTS, INCLUDING, BUT NOT LIMITED TO, COSTS FOR INVESTIGATION,  
27 TESTING, AND EXPERT WITNESS FEES, TO AN AGGRIEVED PARTY WHO

1 PREVAILS; AND

2 (e) AS PART OF A FINAL JUDGMENT OR DECREE FINDING A  
3 VIOLATION OF THIS SECTION, ORDER THE REMEDIAL MODIFICATION OR  
4 DESTRUCTION OF ANY COMMUNICATION OR UNLAWFUL ACCESS DEVICE, OR  
5 ANY OTHER DEVICES OR EQUIPMENT INVOLVED IN THE VIOLATION, THAT IS  
6 IN THE CUSTODY OR CONTROL OF THE VIOLATOR, OR HAS BEEN IMPOUNDED  
7 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3).

8 ~~(4) The court may issue a permanent injunction to restrain, abate,~~  
9 ~~or prevent the continuance or recurrence of the violation of section~~  
10 ~~18-9-309 (2) or (3). The court may grant declaratory relief, mandatory~~  
11 ~~orders, or any other relief deemed necessary to accomplish the purposes~~  
12 ~~of the injunction. The court may retain jurisdiction of the case for the~~  
13 ~~purpose of enforcing its orders.~~

14 ~~(5) If it is shown to the satisfaction of the court, either by verified~~  
15 ~~complaint or affidavit, that a person is engaged in or is about to engage~~  
16 ~~in any act which constitutes a violation of section 18-9-309 (2) or (3), the~~  
17 ~~court may issue an order which shall be promptly served upon the person~~  
18 ~~in whose name the illegal telecommunications equipment is listed,~~  
19 ~~requiring the party, within a reasonable time to be fixed by the court but~~  
20 ~~not exceeding forty-eight hours from the time of service of the petition on~~  
21 ~~said party, to show cause before the judge why telecommunications~~  
22 ~~service should not promptly be discontinued. At the hearing the burden~~  
23 ~~of proof shall be on the complainant.~~

24 ~~(6) (4) Upon a finding by the court that the illegal~~  
25 ~~telecommunications equipment~~ COMMUNICATION DEVICE OR UNLAWFUL  
26 ACCESS DEVICE is being used or has been used in violation of section  
27 18-9-309, ~~(2) or (3)~~; the court shall issue an order requiring the ~~telephone~~

1 ~~company which~~ COMMUNICATION SERVICE PROVIDER THAT is rendering  
2 service over the device to disconnect such service. Upon receipt of such  
3 order, which shall be served upon an officer of the ~~telephone company~~  
4 COMMUNICATION SERVICE PROVIDER by the sheriff of the county in which  
5 the ~~illegal telecommunications equipment~~ COMMUNICATION DEVICE OR  
6 UNLAWFUL ACCESS DEVICE is installed or by a duly authorized deputy, the  
7 ~~telephone company~~ COMMUNICATION SERVICE PROVIDER shall proceed  
8 promptly to disconnect and remove such device and discontinue all  
9 ~~telecommunications~~ COMMUNICATION service until further order of the  
10 court.

11 ~~(7)~~ (5) The ~~telecommunications~~ COMMUNICATION SERVICE  
12 provider who petitions the court for the removal of any ~~illegal~~  
13 ~~telecommunications equipment~~ COMMUNICATION DEVICE OR UNLAWFUL  
14 ACCESS DEVICE under this section shall be a necessary party to any CIVIL  
15 proceeding or action ~~arising out of or under~~ BASED ON AN ALLEGED  
16 VIOLATION OF section 18-9-309. ~~(2) or (3)~~.

17 ~~(8)~~ (6) No ~~telephone company~~ COMMUNICATION SERVICE  
18 PROVIDER shall be liable for any damages, penalty, or forfeiture, whether  
19 civil or criminal, for any act performed in good faith and in compliance  
20 with any order issued by the court.

21 ~~(9)~~ (7) Property seized pursuant to the direction of the court ~~which~~  
22 THAT the court has determined to have been used in violation of section  
23 18-9-309 ~~(2) or (3)~~ shall be forfeited to the state. Prior to the disposition  
24 of the seized property, a petition for the remission or mitigation of  
25 forfeiture may be filed. The court may remit or mitigate the forfeiture  
26 upon terms and conditions as the court deems reasonable if it finds that  
27 such forfeiture was incurred without willful negligence or without any

1 intention on the petitioner to violate the law or finds the existence of such  
2 mitigating circumstances as to justify the remission or the mitigation of  
3 the forfeiture. In determining whether to remit or mitigate forfeiture, the  
4 court shall consider losses ~~which~~ THAT may have been suffered by  
5 victims as the result of the use of the forfeited property.

6 (8) **Types of damages recoverable.** (a) DAMAGES AWARDED BY  
7 A COURT UNDER THIS SECTION SHALL BE COMPUTED AS EITHER OF THE  
8 FOLLOWING, UPON THE ELECTION BY THE COMPLAINING PARTY OF SUCH  
9 DAMAGES AT ANY TIME BEFORE FINAL JUDGMENT IS ENTERED:

10 (I) THE COMPLAINING PARTY MAY RECOVER ITS ACTUAL DAMAGES  
11 SUFFERED AS A RESULT OF THE VIOLATION OF SECTION 18-9-309 AND ANY  
12 PROFITS OF THE VIOLATOR THAT ARE ATTRIBUTABLE TO THE VIOLATION  
13 AND ARE NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES.  
14 ACTUAL DAMAGES INCLUDE THE RETAIL VALUE OF ANY COMMUNICATION  
15 SERVICES ILLEGALLY AVAILABLE TO THOSE PERSONS TO WHOM THE  
16 VIOLATOR DIRECTLY OR INDIRECTLY PROVIDED OR DISTRIBUTED ANY  
17 COMMUNICATION OR UNLAWFUL ACCESS DEVICES. IN PROVING ACTUAL  
18 DAMAGES, THE COMPLAINING PARTY SHALL BE REQUIRED TO PROVE ONLY  
19 THAT THE VIOLATOR MANUFACTURED, DISTRIBUTED, OR SOLD ANY  
20 COMMUNICATION OR UNLAWFUL ACCESS DEVICES, BUT SHALL NOT BE  
21 REQUIRED TO PROVE THAT THOSE DEVICES WERE ACTUALLY USED IN  
22 VIOLATION OF SECTION 18-9-309. IN DETERMINING THE VIOLATOR'S  
23 PROFITS, THE COMPLAINING PARTY SHALL BE REQUIRED TO PROVE ONLY  
24 THE VIOLATOR'S GROSS REVENUE ATTRIBUTABLE TO SUCH VIOLATION, AND  
25 THE VIOLATOR SHALL BE REQUIRED TO PROVE ANY DEDUCTIBLE EXPENSES  
26 AND THE ELEMENTS OF PROFIT ATTRIBUTABLE TO FACTORS OTHER THAN  
27 THE VIOLATION.

1 (II) THE COMPLAINING PARTY MAY RECOVER, IN LIEU OF ACTUAL  
2 DAMAGES, AN AWARD OF STATUTORY DAMAGES, NOT LESS THAN TWO  
3 THOUSAND FIVE HUNDRED DOLLARS AND NOT MORE THAN TEN THOUSAND  
4 DOLLARS, FOR EACH COMMUNICATION OR UNLAWFUL ACCESS DEVICE  
5 INVOLVED IN THE ACTION. THE AMOUNT OF STATUTORY DAMAGES SHALL  
6 BE DETERMINED BY THE COURT AS THE COURT CONSIDERS JUST.

7 (b) IN ANY CASE WHERE THE COURT FINDS THAT A VIOLATION OF  
8 SECTION 18-9-309 WAS COMMITTED WILLFULLY AND FOR PURPOSES OF  
9 COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL GAIN, THE COURT IN ITS  
10 DISCRETION MAY INCREASE THE TOTAL AWARD BY AN AMOUNT NOT TO  
11 EXCEED FIFTY THOUSAND DOLLARS FOR EACH COMMUNICATION OR  
12 UNLAWFUL ACCESS DEVICE INVOLVED IN THE ACTION AND FOR EACH DAY  
13 THE DEFENDANT WAS IN VIOLATION OF SECTION 18-9-309. [REDACTED]

14 [REDACTED]

15 **SECTION 4. Effective date - applicability.** (1) This act shall  
16 take effect at 12:01 a.m. on the day following the expiration of the  
17 ninety-day period after final adjournment of the general assembly that is  
18 allowed for submitting a referendum petition pursuant to article V,  
19 section 1 (3) of the state constitution; except that, if a referendum petition  
20 is filed against this act or an item, section, or part of this act within such  
21 period, then the act, item, section, or part, if approved by the people, shall  
22 take effect on the date of the official declaration of the vote thereon by  
23 proclamation of the governor.

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