

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

INTRODUCED

LLS NO. 03-0904.01 Duane Gall

HOUSE BILL 03-1303

HOUSE SPONSORSHIP

Crane

SENATE SPONSORSHIP

(None)

House Committees

Information & Technology

Senate Committees

A BILL FOR AN ACT

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

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.

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

2 **SECTION 1.** 18-9-309, Colorado Revised Statutes, is amended
3 to read:

4 **18-9-309. Communications crime - definitions.** (1) As used in
5 this section and section 18-9-309.5:

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

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

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

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

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

26 (II) To create cloned cellular phones.

1 (e) (I) "COMMUNICATION DEVICE" MEANS ANY ELECTRONIC OR
2 ELECTROMECHANICAL DEVICE, MECHANISM, INSTRUMENT, MACHINE, OR
3 EQUIPMENT, INCLUDING ANY ASSOCIATED SOFTWARE AND ANY
4 ASSOCIATED TRANSMISSION LINES OR CONNECTIONS AND APPURTENANCES
5 THERETO, THAT IS CAPABLE OF INTERCEPTING, TRANSMITTING,
6 RETRANSMITTING, ACQUIRING, DECRYPTING, OR RECEIVING ANY
7 COMMUNICATION SERVICE OR THE FACILITATION THEREOF.

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

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

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

19 (C) ANY ELECTRONIC SERIAL NUMBER, MOBILE IDENTIFICATION
20 NUMBER, PERSONAL IDENTIFICATION NUMBER, OR COMMUNICATION
21 DEVICE THAT IS CAPABLE OF ACQUIRING OR FACILITATING THE
22 ACQUISITION OF A COMMUNICATION SERVICE.

23 (f) (I) "COMMUNICATION SERVICE" MEANS ANY SERVICE
24 LAWFULLY PROVIDED FOR A CHARGE OR COMPENSATION TO FACILITATE
25 THE LAWFUL ORIGINATION, TRANSMISSION, EMISSION, OR RECEPTION OF
26 SIGNS, SIGNALS, DATA, WRITINGS, IMAGES, AND SOUNDS OR INTELLIGENCE
27 OF ANY NATURE BY TELEPHONE, INCLUDING CELLULAR OR OTHER

1 WIRELESS TELEPHONES, WIRE, WIRELESS, RADIO, ELECTROMAGNETIC,
2 PHOTOELECTRONIC, OR PHOTO-OPTICAL SYSTEMS, NETWORKS, OR
3 FACILITIES; AND ANY SERVICE LAWFULLY PROVIDED BY ANY RADIO,
4 TELEPHONE, FIBER OPTIC, PHOTO-OPTICAL, ELECTROMAGNETIC,
5 PHOTOELECTRIC, CABLE TELEVISION, SATELLITE, MICROWAVE, DATA
6 TRANSMISSION, WIRELESS, OR INTERNET-BASED DISTRIBUTION SYSTEM,
7 NETWORK, OR FACILITY.

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

15 (g) "COMMUNICATION SERVICE PROVIDER" MEANS ANY PERSON OR
16 ENTITY THAT:

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

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

1 (III) PROVIDES ANY COMMUNICATION SERVICE DIRECTLY OR
2 INDIRECTLY BY OR THROUGH ANY SUCH DISTRIBUTION SYSTEMS,
3 NETWORKS, OR FACILITIES.

4 ~~(b)~~ (h) "Credit card number" means the card number appearing on
5 a credit card ~~which is~~ THAT FUNCTIONS AS an identification card or plate
6 AND THAT IS issued to a person by any supplier of ~~telecommunications~~
7 COMMUNICATION service ~~which permits the~~ SO AS TO PERMIT SUCH person
8 ~~to whom the card has been issued~~ to obtain ~~telecommunications~~
9 COMMUNICATION service on credit. ~~The term~~ "CREDIT CARD NUMBER"
10 includes the number or description of the card or plate even if the card or
11 plate itself is not produced at the time of obtaining ~~telecommunications~~
12 COMMUNICATION service.

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

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

1 ~~(e.5)~~ (j) To "intercept signals" means to electronically capture,
2 record, reveal, or otherwise access signals, including data, electronic
3 serial numbers, and mobile identification numbers, that are emitted,
4 transmitted, or received by a ~~telecommunications~~ COMMUNICATION
5 provider without consent of the ~~telecommunications~~ COMMUNICATION
6 provider or the person receiving or initiating the signal.

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

9 (I) MAKING, PRODUCING, DEVELOPING, OR ASSEMBLING A
10 COMMUNICATION DEVICE; OR

11 (II) KNOWINGLY ASSISTING OTHERS IN SUCH ACTIVITY.

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

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

25 (II) KNOWINGLY ASSISTING OTHERS IN SUCH ACTIVITY.

26 ~~(e.7)~~ (m) "Mobile identification number" means the cellular phone
27 number assigned to a cellular phone by the cellular phone

1 ~~telecommunications~~ COMMUNICATION provider.

2 ~~(d) "Telecommunications device" means any instrument,~~
3 ~~apparatus, method, system, or equipment which controls, measures,~~
4 ~~directs, or facilitates telecommunications service. The term includes, but~~
5 ~~is not limited to, computer hardware, software, programs, electronic mail~~
6 ~~systems, voice mail systems, identification validation systems, and private~~
7 ~~branch exchanges.~~

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

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

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

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

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

1 COMMUNICATION DEVICE:

2 (I) FOR THE COMMISSION OF A THEFT OF A COMMUNICATION
3 SERVICE OR 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 (II) 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 (III) 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 UNDER
6 CIRCUMSTANCES EVIDENCING AN INTENT TO USE OR EMPLOY SUCH
7 COMMUNICATION OR UNLAWFUL ACCESS DEVICE, OR TO ALLOW THE SAME
8 TO BE USED OR EMPLOYED, FOR A PURPOSE PROHIBITED BY THIS SECTION,
9 OR KNOWING OR HAVING REASON TO BELIEVE THAT THE SAME IS INTENDED
10 TO BE SO USED, OR THAT SUCH PLANS OR INSTRUCTIONS ARE INTENDED TO
11 BE USED FOR MANUFACTURING OR ASSEMBLING SUCH COMMUNICATION OR
12 UNLAWFUL ACCESS DEVICE FOR A PURPOSE PROHIBITED BY THIS SECTION;
13 OR

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

21 (e) Sells, rents, lends, gives, publishes, or otherwise transfers or
22 discloses to another or offers or advertises for sale or rental the number
23 or code of a counterfeited, cancelled, expired, revoked, or nonexistent
24 telephone number or credit card number or method of numbering or
25 coding ~~which~~ THAT is employed in the issuance of telephone numbers,
26 access devices, or credit card numbers or an existing number or code or
27 method of numbering or coding without the authority of the owner or

1 person who has the lawful possession or use thereof.

2 (3) A PERSON WHO KNOWINGLY POSSESSES OR USES A
3 COMMUNICATION DEVICE FOR A PURPOSE PROHIBITED BY THIS SECTION, OR
4 POSSESSES OR USES AN UNLAWFUL ACCESS DEVICE, COMMITS A CLASS 3
5 MISDEMEANOR.

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

7 (a) 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 COMMUNICATION DEVICE FOR A PURPOSE
11 PROHIBITED UNDER THIS SECTION;

12 (b) KNOWINGLY MANUFACTURES, DEVELOPS, ASSEMBLES,
13 DISTRIBUTES, IMPORTS INTO THIS STATE, LICENSES, LEASES, SELLS OR
14 TRANSFERS TO ANOTHER, OR OFFERS, PROMOTES, OR ADVERTISES FOR
15 SALE, USE, OR DISTRIBUTION ANY UNLAWFUL ACCESS DEVICE FOR A
16 PURPOSE PROHIBITED UNDER THIS SECTION; OR

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

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

27 ~~(3)~~ (6) A person commits theft as defined in section 18-4-401 and

1 shall be subject to the penalties as set forth in that section if he OR SHE
2 knowingly:

3 (a) Obtains any ~~telecommunications~~ COMMUNICATION service by
4 charging such service to or causing such service to be charged to an
5 existing telephone number, access device, or credit card number without
6 the authority of the person to whom issued or of the subscriber thereto or
7 of the lawful holder thereof or to a nonexistent, counterfeit, expired,
8 revoked, or cancelled credit card number, or by any method of code
9 calling, or by installing, rearranging, or tampering with any equipment,
10 physically or electronically, or by the use of any other fraudulent means,
11 method, trick, ~~or~~ device, or scheme;

12 (b) Obtains ~~telecommunications~~ COMMUNICATION service with
13 fraudulent intent through the use of a false or fictitious name, telephone
14 number, address, or credit information or through the unauthorized use
15 of the name, telephone number, address, or credit information of another.

16 ~~(4)~~ (7) (a) A person commits a class 4 felony if he or she
17 knowingly uses cloning equipment OR ANY OTHER UNLAWFUL ACCESS
18 DEVICE to:

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

24 (II) Create a cloned cellular phone.

25 ~~(b) A person commits a class 4 felony if he or she aids, abets,~~
26 ~~advises, or encourages one or more persons who engage in the activities~~
27 ~~described in paragraph (a) of this subsection (4) AN OFFENSE OR~~

1 VIOLATION UNDER THIS SUBSECTION (7) MAY BE DEEMED TO HAVE BEEN
2 COMMITTED AT EITHER THE PLACE WHERE THE DEFENDANT
3 MANUFACTURES, DEVELOPS, OR ASSEMBLES A COMMUNICATION OR
4 UNLAWFUL ACCESS DEVICE OR ASSISTS OTHERS IN DOING SO, OR THE PLACE
5 WHERE THE COMMUNICATION OR UNLAWFUL ACCESS DEVICE IS SOLD OR
6 DELIVERED TO A PURCHASER OR RECIPIENT. IT SHALL NOT BE A DEFENSE
7 TO A VIOLATION OF THIS SUBSECTION (7) THAT SOME OF THE ACTS
8 CONSTITUTING THE VIOLATION OCCURRED OUTSIDE OF COLORADO.

9 (e) (8) Each violation of this ~~subsection (4)~~ SECTION, including
10 each instance of intercepting signals or of POSSESSING, USING,
11 MANUFACTURING, DEVELOPING, ASSEMBLING, DISTRIBUTING,
12 TRANSFERRING, IMPORTING INTO THIS STATE, LICENSING, LEASING, OR
13 SELLING OR OFFERING, PROMOTING, OR ADVERTISING FOR SALE, USE, OR
14 DISTRIBUTION OF ANY COMMUNICATION DEVICE FOR THE PURPOSE OF
15 creating a cloned cellular phone, shall be a separate offense. EACH DAY
16 OF A CONTINUING VIOLATION SHALL CONSTITUTE A SEPARATE OFFENSE.

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

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

25 (5) (11) The provisions of this section do not apply to:

26 (a) Officers, employees, or agents of ~~telecommunications~~
27 COMMUNICATION SERVICE providers who engage in conduct prohibited by

1 this section for the purpose of constructing, maintaining, or conducting
2 ~~telecommunications~~ COMMUNICATION services ~~or~~ SOLELY for law
3 enforcement purposes;

4 (b) Law enforcement officers and public officials in charge of
5 jails, police premises, sheriffs' offices, department of corrections'
6 institutions, or other penal or correctional institutions or any other person
7 under the color of law who engages in conduct prohibited by this section
8 for the purpose of law enforcement or in the normal course of the officer's
9 or official's employment activities or duties; or

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

13 ~~(6)~~ (12) Prosecution under this section does not preclude civil
14 liability under any applicable provision of law.

15 **SECTION 2.** 18-9-309.5, Colorado Revised Statutes, is amended
16 to read:

17 **18-9-309.5. Civil remedies - injunctions - forfeiture.**

18 (1) Whenever it appears that any person is engaged in or about to engage
19 in any act ~~which~~ THAT constitutes or will constitute a violation of section
20 18-9-309, ~~(2) or (3)~~, the attorney general, the district attorney, a
21 ~~representative of a telecommunications~~ COMMUNICATION SERVICE
22 provider, or any person or company harmed by such alleged violation
23 may initiate a civil proceeding in a ~~district~~ court OF COMPETENT
24 JURISDICTION to enjoin such violation and may petition the court to issue
25 an order for the discontinuance of ~~telecommunications~~ COMMUNICATION
26 service used in violation of section 18-9-309. ~~(2) or (3)~~.

27 (2) An action under this section shall be brought in the county in

1 which the subject matter of the action, or some part thereof, is located or
2 found VIOLATION OCCURRED and shall be commenced by the filing of a
3 complaint, which shall be verified by affidavit.

4 (3) ~~If it is shown to the satisfaction of the court, either by verified~~
5 ~~complaint or affidavit, that a person is engaged in or about to engage in~~
6 ~~any act which constitutes a violation of section 18-9-309 (2) or (3), the~~
7 ~~court shall issue a temporary restraining order to abate and prevent the~~
8 ~~continuance or recurrence of such act. The court shall direct the sheriff~~
9 ~~to seize and retain until further order of the court any device which is~~
10 ~~being used in violation of section 18-9-309 (2) or (3). While the~~
11 ~~temporary restraining order remains in effect, all property seized pursuant~~
12 ~~to the order of the court shall remain in the custody of the court. Within~~
13 ~~ten days following the filing of a motion of any person adversely affected~~
14 ~~by a temporary restraining order, the court shall conduct a hearing and~~
15 ~~determine whether such temporary restraining order shall be continued~~
16 ~~pending final determination of the action. Until such hearing takes place,~~
17 ~~the temporary restraining order shall remain in full force and effect. THE~~
18 COURT MAY:

19 (a) AWARD DECLARATORY RELIEF AND OTHER EQUITABLE
20 REMEDIES, INCLUDING PRELIMINARY AND FINAL INJUNCTIONS TO PREVENT
21 OR RESTRAIN VIOLATIONS OF SECTION 18-9-309, WITHOUT REQUIRING
22 PROOF THAT THE PLAINTIFF HAS SUFFERED, OR WILL SUFFER, ACTUAL
23 DAMAGES OR IRREPARABLE HARM OR LACKS AN ADEQUATE REMEDY AT
24 LAW;

25 (b) AT ANY TIME WHILE AN ACTION IS PENDING, ORDER THE
26 IMPOUNDING, ON SUCH TERMS AS IT DEEMS REASONABLE, OF ANY
27 COMMUNICATION OR UNLAWFUL ACCESS DEVICE THAT IS IN THE CUSTODY

1 OR CONTROL OF THE ALLEGED VIOLATOR AND THAT THE COURT HAS
2 REASONABLE CAUSE TO BELIEVE WAS INVOLVED IN THE ALLEGED
3 VIOLATION OF SECTION 18-9-309;

4 (c) AWARD DAMAGES AS DESCRIBED IN SUBSECTION (8) OF THIS
5 SECTION;

6 (d) IN ITS DISCRETION, AWARD REASONABLE ATTORNEY FEES AND
7 COSTS, INCLUDING, BUT NOT LIMITED TO, COSTS FOR INVESTIGATION,
8 TESTING, AND EXPERT WITNESS FEES, TO AN AGGRIEVED PARTY WHO
9 PREVAILS; AND

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

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

22 (5) If it is shown to the satisfaction of the court, either by verified
23 complaint or affidavit, that a person is engaged in or is about to engage
24 in any act which constitutes a violation of section 18-9-309 (2) or (3), the
25 court may issue an order which shall be promptly served upon the person
26 in whose name the illegal telecommunications equipment is listed,
27 requiring the party, within a reasonable time to be fixed by the court but

1 not exceeding forty-eight hours from the time of service of the petition on
2 said party, to show cause before the judge why telecommunications
3 service should not promptly be discontinued. At the hearing the burden
4 of proof shall be on the complainant.

5 (6) (4) Upon a finding by the court that the illegal
6 telecommunications equipment COMMUNICATION DEVICE OR UNLAWFUL
7 ACCESS DEVICE is being used or has been used in violation of section
8 18-9-309, (2) or (3), the court shall issue an order requiring the telephone
9 company which COMMUNICATION SERVICE PROVIDER THAT is rendering
10 service over the device to disconnect such service. Upon receipt of such
11 order, which shall be served upon an officer of the telephone company
12 COMMUNICATION SERVICE PROVIDER by the sheriff of the county in which
13 the illegal telecommunications equipment COMMUNICATION DEVICE OR
14 UNLAWFUL ACCESS DEVICE is installed or by a duly authorized deputy, the
15 telephone company COMMUNICATION SERVICE PROVIDER shall proceed
16 promptly to disconnect and remove such device and discontinue all
17 telecommunications COMMUNICATION service until further order of the
18 court.

19 (7) (5) The telecommunications COMMUNICATION SERVICE
20 provider who petitions the court for the removal of any illegal
21 telecommunications equipment COMMUNICATION DEVICE OR UNLAWFUL
22 ACCESS DEVICE under this section shall be a necessary party to any
23 proceeding or action arising out of or under section 18-9-309. (2) or (3).

24 (8) (6) No telephone company COMMUNICATION SERVICE
25 PROVIDER shall be liable for any damages, penalty, or forfeiture, whether
26 civil or criminal, for any act performed in good faith and in compliance
27 with any order issued by the court.

1 ~~(9)~~ (7) Property seized pursuant to the direction of the court ~~which~~
2 THAT the court has determined to have been used in violation of section
3 18-9-309 ~~(2) or (3)~~ shall be forfeited to the state. Prior to the disposition
4 of the seized property, a petition for the remission or mitigation of
5 forfeiture may be filed. The court may remit or mitigate the forfeiture
6 upon terms and conditions as the court deems reasonable if it finds that
7 such forfeiture was incurred without willful negligence or without any
8 intention on the petitioner to violate the law or finds the existence of such
9 mitigating circumstances as to justify the remission or the mitigation of
10 the forfeiture. In determining whether to remit or mitigate forfeiture, the
11 court shall consider losses ~~which~~ THAT may have been suffered by
12 victims as the result of the use of the forfeited property.

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

17 (I) THE COMPLAINING PARTY MAY RECOVER ITS ACTUAL DAMAGES
18 SUFFERED AS A RESULT OF THE VIOLATION OF SECTION 18-9-309 AND ANY
19 PROFITS OF THE VIOLATOR THAT ARE ATTRIBUTABLE TO THE VIOLATION
20 AND ARE NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES.
21 ACTUAL DAMAGES INCLUDE THE RETAIL VALUE OF ANY COMMUNICATION
22 SERVICES ILLEGALLY AVAILABLE TO THOSE PERSONS TO WHOM THE
23 VIOLATOR DIRECTLY OR INDIRECTLY PROVIDED OR DISTRIBUTED ANY
24 COMMUNICATION OR UNLAWFUL ACCESS DEVICES. IN PROVING ACTUAL
25 DAMAGES, THE COMPLAINING PARTY SHALL BE REQUIRED TO PROVE ONLY
26 THAT THE VIOLATOR MANUFACTURED, DISTRIBUTED, OR SOLD ANY
27 COMMUNICATION OR UNLAWFUL ACCESS DEVICES, BUT SHALL NOT BE

1 REQUIRED TO PROVE THAT THOSE DEVICES WERE ACTUALLY USED IN
2 VIOLATION OF SECTION 18-9-309. IN DETERMINING THE VIOLATOR'S
3 PROFITS, THE COMPLAINING PARTY SHALL BE REQUIRED TO PROVE ONLY
4 THE VIOLATOR'S GROSS REVENUE ATTRIBUTABLE TO SUCH VIOLATION, AND
5 THE VIOLATOR SHALL BE REQUIRED TO PROVE ANY DEDUCTIBLE EXPENSES
6 AND THE ELEMENTS OF PROFIT ATTRIBUTABLE TO FACTORS OTHER THAN
7 THE VIOLATION.

8 (II) THE COMPLAINING PARTY MAY RECOVER, IN LIEU OF ACTUAL
9 DAMAGES, AN AWARD OF STATUTORY DAMAGES, NOT LESS THAN TWO
10 THOUSAND FIVE HUNDRED DOLLARS AND NOT MORE THAN TEN THOUSAND
11 DOLLARS, FOR EACH COMMUNICATION OR UNLAWFUL ACCESS DEVICE
12 INVOLVED IN THE ACTION. THE AMOUNT OF STATUTORY DAMAGES SHALL
13 BE DETERMINED BY THE COURT, NOT THE JURY, AS THE COURT CONSIDERS
14 JUST.

15 (b) IN ANY CASE WHERE THE COURT FINDS THAT A VIOLATION OF
16 SECTION 18-9-309 WAS COMMITTED WILLFULLY AND FOR PURPOSES OF
17 COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL GAIN, THE COURT IN ITS
18 DISCRETION MAY INCREASE THE TOTAL AWARD BY AN AMOUNT NOT TO
19 EXCEED FIFTY THOUSAND DOLLARS FOR EACH COMMUNICATION OR
20 UNLAWFUL ACCESS DEVICE INVOLVED IN THE ACTION AND FOR EACH DAY
21 THE DEFENDANT WAS IN VIOLATION OF SECTION 18-9-309.

22 **SECTION 3.** Part 1 of article 1 of title 17, Colorado Revised
23 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
24 read:

25 **17-1-146. Appropriation to comply with section 2-2-703 - HB**
26 **03-_____.** (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING
27 STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE

1 NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 03-____, ENACTED
2 AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH GENERAL
3 ASSEMBLY:

4 (a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2003, IN ADDITION
5 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
6 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
7 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
8 SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

9 (b) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2004, IN ADDITION
10 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
11 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
12 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
13 SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

14 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2004, IN ADDITION
15 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
16 DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL
17 FUND NOT OTHERWISE APPROPRIATED, THE SUM OF _____ DOLLARS (\$).

18 (c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2005, IN ADDITION
19 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
20 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
21 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
22 SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

23 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2005, IN ADDITION
24 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
25 DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL
26 FUND NOT OTHERWISE APPROPRIATED, THE SUM OF _____ DOLLARS (\$).

27 (d) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION

1 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
2 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
3 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
4 SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

5 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION
6 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
7 DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL
8 FUND NOT OTHERWISE APPROPRIATED, THE SUM OF _____ DOLLARS (\$).

9 (e) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, IN ADDITION
10 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
11 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
12 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
13 SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

14 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, IN ADDITION
15 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
16 DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL
17 FUND NOT OTHERWISE APPROPRIATED, THE SUM OF _____ DOLLARS (\$).

18 **SECTION 4.** The introductory portion to 24-75-302 (2) and
19 24-75-302 (2) (p), (2) (q), (2) (r), and (2) (s), Colorado Revised Statutes,
20 are amended, and the said 24-75-302 (2) is further amended BY THE
21 ADDITION OF A NEW PARAGRAPH, to read:

22 **24-75-302. Capital construction fund - capital assessment fees**
23 **- calculation.** (2) As of July 1, 1988, and July 1 of each year thereafter
24 through July 1, ~~2006~~ 2007, a sum as specified in this subsection (2) shall
25 accrue to the capital construction fund. The state treasurer and the
26 controller shall transfer such sum out of the general fund and into the
27 capital construction fund as moneys become available in the general fund

1 during the fiscal year beginning on said July 1. Transfers between funds
2 pursuant to this subsection (2) shall not be deemed to be appropriations
3 subject to the limitations of section 24-75-201.1. The amount ~~which~~
4 THAT shall accrue pursuant to this subsection (2) shall be as follows:

5 (p) On July 1, 2003, one hundred million dollars, plus twenty-six
6 thousand six hundred twenty-nine dollars pursuant to H.B. 01-1204,
7 enacted at the first regular session of the sixty-third general assembly;
8 plus one hundred thirty-eight thousand nine hundred thirty-four dollars
9 pursuant to H.B. 01-1242, enacted at the first regular session of the
10 sixty-third general assembly; plus four hundred eighty-six thousand two
11 hundred sixty-nine dollars pursuant to S.B. 02-050, enacted at the second
12 regular session of the sixty-third general assembly; plus five hundred six
13 thousand five hundred thirty dollars pursuant to H.B. 02-1038, enacted
14 at the second regular session of the sixty-third general assembly; PLUS
15 _____ DOLLARS PURSUANT TO H.B. 03-____, ENACTED AT THE FIRST
16 REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY;

17 (q) On July 1, 2004, one hundred million dollars, plus two
18 hundred thirty-three thousand eight hundred seventy-two dollars pursuant
19 to H.B. 00-1201, enacted at the second regular session of the sixty-second
20 general assembly; plus seventy-nine thousand eight hundred eighty-seven
21 dollars pursuant to H.B. 01-1242, enacted at the first regular session of
22 the sixty-third general assembly; plus four hundred eighty-six thousand
23 two hundred sixty-nine dollars pursuant to S.B. 02-050, enacted at the
24 second regular session of the sixty-third general assembly; plus nine
25 hundred seventy-two thousand five hundred thirty-eight dollars pursuant
26 to H.B. 02-1038, enacted at the second regular session of the sixty-third
27 general assembly; plus four thousand twelve dollars pursuant to section

1 3 of H.B. 02S-1006, enacted at the third extraordinary session of the
2 sixty-third general assembly; PLUS _____ DOLLARS PURSUANT TO H.B.
3 03-_____, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH
4 GENERAL ASSEMBLY;

5 (r) On July 1, 2005, one hundred million dollars, plus four
6 hundred forty-nine thousand seven hundred ninety-nine dollars pursuant
7 to S.B. 02-050, enacted at the second regular session of the sixty-third
8 general assembly; PLUS _____ DOLLARS PURSUANT TO H.B. 03-_____,
9 ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH GENERAL
10 ASSEMBLY;

11 (s) On July 1, 2006, twenty-two thousand nine hundred
12 twenty-four dollars pursuant to section 3 of H.B. 02S-1006, enacted at the
13 third extraordinary session of the sixty-third general assembly; PLUS
14 _____ DOLLARS PURSUANT TO H.B. 03-_____, ENACTED AT THE FIRST
15 REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY;

16 (t) ON JULY 1, 2007, _____ DOLLARS PURSUANT TO H.B.
17 03-_____, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH
18 GENERAL ASSEMBLY.

19 **SECTION 5. Effective date - applicability.** This act shall take
20 effect July 1, 2003, and shall apply to offenses committed on or after said
21 date.

22 **SECTION 6. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.