

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 03-0904.01 Duane Gall

HOUSE BILL 03-1303

HOUSE SPONSORSHIP

Crane,

SENATE SPONSORSHIP

Lamborn,

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.

HOUSE
Amended 2nd Reading
March 10, 2003

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;

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

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

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

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

26 **18-9-309. Communications crime - definitions.** (1) As used in

1 this section and section 18-9-309.5:

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

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

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

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

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

22 (II) To create cloned cellular phones.

23 (e) (I) "COMMUNICATION DEVICE" MEANS ANY ELECTRONIC OR
24 ELECTROMECHANICAL DEVICE, MECHANISM, INSTRUMENT, MACHINE, OR
25 EQUIPMENT, INCLUDING ANY ASSOCIATED SOFTWARE AND ANY
26 ASSOCIATED TRANSMISSION LINES OR CONNECTIONS AND APPURTENANCES
27 THERETO, THAT IS CAPABLE OF INTERCEPTING, TRANSMITTING,

1 RETRANSMITTING, ACQUIRING, DECRYPTING, OR RECEIVING ANY
2 COMMUNICATION SERVICE OR THE FACILITATION THEREOF.

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

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

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

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

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

1 TRANSMISSION, WIRELESS, OR INTERNET-BASED DISTRIBUTION SYSTEM,
2 NETWORK, OR FACILITY.

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

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

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

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

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

26 (b) (h) "Credit card number" means the card number appearing on
27 a credit card which is THAT FUNCTIONS AS an identification card or plate

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

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

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

24 (c.5) (j) To "intercept signals" means to electronically capture,
25 record, reveal, or otherwise access signals, including data, electronic
26 serial numbers, and mobile identification numbers, that are emitted,
27 transmitted, or received by a telecommunications COMMUNICATION

1 SERVICE provider without consent of the telecommunications
2 COMMUNICATION SERVICE provider or the person receiving or initiating
3 the signal.

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

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

8 (II) KNOWINGLY ASSISTING OTHERS IN SUCH ACTIVITY.

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

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

22 (II) KNOWINGLY ASSISTING OTHERS IN SUCH ACTIVITY.

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

26 ~~(d) "Telecommunications device" means any instrument,~~
27 ~~apparatus, method, system, or equipment which controls, measures,~~

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

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

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

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

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

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

27 (I) FOR THE COMMISSION OF A THEFT OF A COMMUNICATION

1 SERVICE;

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

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

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

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

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

25 (d) ~~Sells, gives, or furnishes to another or advertises or offers for~~
26 ~~sale any plans or instructions for making, assembling, or using illegal~~
27 ~~telecommunications equipment; or~~ POSSESSES, USES, PREPARES,

1 DISTRIBUTES, SELLS, GIVES OR TRANSFERS TO ANOTHER, OR OFFERS,
2 PROMOTES, OR ADVERTISES FOR SALE, USE, OR DISTRIBUTION ANY:

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

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

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

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

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

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

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

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

14 ~~(2.5)~~ (5) A person commits a class 6 felony if, within five years
15 after a previous violation of subsection (2) of this section, the person
16 commits a second or subsequent violation of subsection (2) of this
17 section; except that a second or subsequent violation of subsection (2) of
18 this section involving knowingly using cloning equipment to create a
19 cloned cellular phone ~~as described in paragraph (b) of subsection (2) of~~
20 ~~this section~~, is a class 4 felony.

21 ~~(3)~~ (6) A person commits theft as defined in section 18-4-401 and
22 shall be subject to the penalties as set forth in that section if he OR SHE
23 knowingly:

24 (a) Obtains any ~~telecommunications~~ COMMUNICATION service by
25 charging such service to or causing such service to be charged to an
26 existing telephone number, access device, or credit card number without
27 the authority of the person to whom issued or of the subscriber thereto or

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

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

11 ~~(4)~~ (7) (a) A person commits a class 4 felony if he or she
12 knowingly uses cloning equipment OR ANY OTHER UNLAWFUL ACCESS
13 DEVICE to:

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

19 (II) Create a cloned cellular phone.

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

1 DELIVERED TO A PURCHASER OR RECIPIENT. IT SHALL NOT BE A DEFENSE
2 TO A VIOLATION OF THIS SUBSECTION (7) THAT SOME OF THE ACTS
3 CONSTITUTING THE VIOLATION OCCURRED OUTSIDE OF COLORADO.

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

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

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

16 ~~(5)~~ (11) The provisions of this section do not apply to:

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

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

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

4 ~~(6)~~ (12) Prosecution under this section does not preclude civil
5 liability under any applicable provision of law.

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

8 **18-9-309.5. Civil remedies - injunctions - forfeiture.**

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

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

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

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

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

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

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

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

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

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

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

23 ~~(6) (4) Upon a finding by the court that the illegal~~
24 ~~telecommunications equipment~~ COMMUNICATION DEVICE OR UNLAWFUL
25 ACCESS DEVICE is being used or has been used in violation of section
26 18-9-309, ~~(2) or (3)~~, the court shall issue an order requiring the ~~telephone~~
27 ~~company which~~ COMMUNICATION SERVICE PROVIDER THAT is rendering

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

10 ~~(7)~~ (5) The ~~telecommunications~~ COMMUNICATION SERVICE
11 provider who petitions the court for the removal of any ~~illegal~~
12 ~~telecommunications equipment~~ COMMUNICATION DEVICE OR UNLAWFUL
13 ACCESS DEVICE under this section shall be a necessary party to any CIVIL
14 proceeding or action ~~arising out of or under~~ BASED ON AN ALLEGED
15 VIOLATION OF section 18-9-309. ~~(2) or (3)~~.

16 ~~(8)~~ (6) No ~~telephone company~~ COMMUNICATION SERVICE
17 PROVIDER shall be liable for any damages, penalty, or forfeiture, whether
18 civil or criminal, for any act performed in good faith and in compliance
19 with any order issued by the court.

20 ~~(9)~~ (7) Property seized pursuant to the direction of the court ~~which~~
21 THAT the court has determined to have been used in violation of section
22 18-9-309 ~~(2) or (3)~~ shall be forfeited to the state. Prior to the disposition
23 of the seized property, a petition for the remission or mitigation of
24 forfeiture may be filed. The court may remit or mitigate the forfeiture
25 upon terms and conditions as the court deems reasonable if it finds that
26 such forfeiture was incurred without willful negligence or without any
27 intention on the petitioner to violate the law or finds the existence of such

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

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

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

27 (II) THE COMPLAINING PARTY MAY RECOVER, IN LIEU OF ACTUAL

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

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

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

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