

**NOTE:** This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws. 2003



HOUSE BILL 03-1303

BY REPRESENTATIVE(S) Crane, Brophy, Cloer, Frangas, Garcia, Hoppe, Miller, Romanoff, and Stafford;  
also SENATOR(S) Lamborn.

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

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

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

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

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

(c) In the intervening six years, a host of new wireless devices as

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

well as an entire new industry, the internet service provider industry, have developed;

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

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

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

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

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

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

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

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

~~(a.8)~~ (d) "Cloning equipment" means any instrument, apparatus, equipment, computer hardware, computer software, operating procedure or code, or device, whether used separately or in combination, that is designed

or adapted and is used, is intended to be used, or is capable of being used:

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

(II) To create cloned cellular phones.

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

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

(A) CLONING EQUIPMENT, TECHNOLOGY, OR SOFTWARE;

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

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

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

WIRELESS, RADIO, ELECTROMAGNETIC, PHOTOELECTRONIC, OR PHOTO-OPTICAL SYSTEMS, NETWORKS, OR FACILITIES; AND ANY SERVICE FOR A CHARGE OR COMPENSATION LAWFULLY PROVIDED BY ANY RADIO, TELEPHONE, FIBER OPTIC, PHOTO-OPTICAL, ELECTROMAGNETIC, PHOTOELECTRIC, CABLE TELEVISION, SATELLITE, MICROWAVE, DATA TRANSMISSION, WIRELESS, OR INTERNET-BASED DISTRIBUTION SYSTEM, NETWORK, OR FACILITY.

(II) "COMMUNICATION SERVICE" INCLUDES, WITHOUT LIMITATION, ANY AND ALL ELECTRONIC, DATA, VIDEO, AUDIO, INTERNET ACCESS, TELEPHONIC, MICROWAVE, AND RADIO COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND SERVICES, AND ANY SUCH COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND SERVICES LAWFULLY PROVIDED FOR A CHARGE OR COMPENSATION DIRECTLY OR INDIRECTLY BY OR THROUGH ANY SUCH SYSTEMS, NETWORKS, OR FACILITIES.

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

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

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

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

~~(b)~~ (h) "Credit card number" means the card number appearing on a credit card ~~which is~~ THAT FUNCTIONS AS an identification card or plate AND THAT IS issued to a person by any supplier of ~~telecommunications~~ COMMUNICATION service ~~which permits the~~ SO AS TO PERMIT SUCH person to ~~whom the card has been issued~~ to obtain ~~telecommunications~~ COMMUNICATION service on credit. ~~The term~~ "CREDIT CARD NUMBER"

includes the number or description of the card or plate even if the card or plate itself is not produced at the time of obtaining ~~telecommunications~~ A COMMUNICATION service.

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

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

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

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

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

(II) KNOWINGLY ASSISTING OTHERS IN SUCH ACTIVITY.

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

(I) MAKING, DEVELOPING, PRODUCING, OR ASSEMBLING AN UNLAWFUL ACCESS DEVICE OR MODIFYING, ALTERING, PROGRAMMING, OR

REPROGRAMMING ANY INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE FOR THE PURPOSE OF DEFEATING OR CIRCUMVENTING ANY EFFECTIVE TECHNOLOGY, DEVICE, OR SOFTWARE USED BY THE PROVIDER, OWNER, OR LICENSEE OF A COMMUNICATION SERVICE OR OF ANY DATA OR AUDIO OR VIDEO PROGRAMS OR TRANSMISSIONS TO PROTECT ANY SUCH COMMUNICATION, DATA, OR AUDIO OR VIDEO PROGRAMS OR TRANSMISSIONS FROM UNAUTHORIZED RECEIPT, INTERCEPTION, ACQUISITION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION, TRANSMISSION, OR RETRANSMISSION; OR

(II) KNOWINGLY ASSISTING OTHERS IN SUCH ACTIVITY.

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

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

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

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

(n) "MULTIPURPOSE DEVICE" MEANS ANY COMMUNICATION DEVICE THAT IS CAPABLE OF MORE THAN ONE FUNCTION, AND INCLUDES ANY COMPONENT THEREOF.

~~(g)~~ (o) "Telephone company" means any telecommunications COMMUNICATION SERVICE provider which THAT provides BASIC local exchange telecommunications service, AS DEFINED IN SECTION 40-15-102

(3), C.R.S.

(p) "UNLAWFUL ACCESS DEVICE" MEANS ANY ACCESS DEVICE OR OTHER INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE THAT IS PRIMARILY DESIGNED, DEVELOPED, ASSEMBLED, MANUFACTURED, SOLD, DISTRIBUTED, POSSESSED, USED, PROMOTED, ADVERTISED, OR OFFERED FOR SALE FOR THE PURPOSE OF DEFEATING OR CIRCUMVENTING ANY EFFECTIVE TECHNOLOGY, DEVICE, OR SOFTWARE, OR ANY COMPONENT OR PART THEREOF, USED BY THE PROVIDER, OWNER, OR LICENSEE OF ANY COMMUNICATION SERVICE OR OF ANY DATA, AUDIO OR VIDEO SERVICE, PROGRAMS, OR TRANSMISSIONS, TO PROTECT ANY SUCH COMMUNICATION, DATA, AUDIO OR VIDEO SERVICE, PROGRAMS, OR TRANSMISSIONS FROM UNAUTHORIZED RECEIPT, ACQUISITION, INTERCEPTION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION, TRANSMISSION, OR RETRANSMISSION.

(2) A person commits a ~~class 3 misdemeanor~~ VIOLATION UNDER THIS SECTION if he or she knowingly AND WITH THE INTENT TO DEFRAUD A COMMUNICATION SERVICE PROVIDER:

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

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

(II) To receive, intercept, disrupt, transmit, retransmit, decrypt, or acquire a communication service without the express consent or express authorization of the communication service provider, AS STATED IN A CONTRACT OR OTHERWISE; OR

(III) TO FACILITATE THE RECEIPT, INTERCEPTION, DISRUPTION, TRANSMISSION, RETRANSMISSION, DECRYPTION, OR ACQUISITION OF ANY COMMUNICATION SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE COMMUNICATION SERVICE PROVIDER, AS STATED IN A CONTRACT OR OTHERWISE; OR

(IV) TO CONCEAL OR TO ASSIST ANOTHER TO CONCEAL FROM ANY

COMMUNICATION SERVICE PROVIDER, OR FROM ANY LAWFUL AUTHORITY, THE EXISTENCE OR PLACE OF ORIGIN OR DESTINATION OF ANY COMMUNICATION THAT UTILIZES A COMMUNICATION DEVICE IF SUCH CONCEALMENT IS FOR THE PURPOSE OF COMMITTING A VIOLATION OF SUBPARAGRAPH (I), (II), OR (III) OF THIS PARAGRAPH (a);

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

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

~~(d) Sells, gives, or furnishes to another or advertises or offers for sale any plans or instructions for making, assembling, or using illegal telecommunications equipment; or~~ POSSESSES, USES, PREPARES, DISTRIBUTES, SELLS, GIVES OR TRANSFERS TO ANOTHER, OR OFFERS, PROMOTES, OR ADVERTISES FOR SALE, USE, OR DISTRIBUTION ANY:

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

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

(e) Sells, rents, lends, gives, publishes, or otherwise transfers or discloses to another or offers or advertises for sale or rental the number or

code of a counterfeited, cancelled, expired, revoked, or nonexistent telephone number or credit card number or method of numbering or coding ~~which~~ THAT is employed in the issuance of telephone numbers, access devices, or credit card numbers or an existing number or code or method of numbering or coding without the authority of the owner or person who has the lawful possession or use thereof.

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

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

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

(b) KNOWINGLY MANUFACTURES, DEVELOPS, ASSEMBLES, DISTRIBUTES, IMPORTS INTO THIS STATE, LICENSES, LEASES, SELLS OR TRANSFERS TO ANOTHER, OR OFFERS, PROMOTES, OR ADVERTISES FOR SALE, USE, OR DISTRIBUTION ANY UNLAWFUL ACCESS DEVICE;

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

(d) KNOWINGLY VIOLATES SUBSECTION (2) (d) OF THIS SECTION.

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

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

knowingly:

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

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

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

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

(II) Create a cloned cellular phone.

~~(b) A person commits a class 4 felony if he or she aids, abets, advises, or encourages one or more persons who engage in the activities described in paragraph (a) of this subsection~~ (4) AN OFFENSE OR VIOLATION UNDER THIS SUBSECTION (7) MAY BE DEEMED TO HAVE BEEN COMMITTED AT EITHER THE PLACE WHERE THE DEFENDANT MANUFACTURES, DEVELOPS, OR ASSEMBLES A COMMUNICATION OR UNLAWFUL ACCESS DEVICE OR ASSISTS OTHERS IN DOING SO, OR THE PLACE WHERE THE COMMUNICATION OR UNLAWFUL ACCESS DEVICE IS SOLD OR DELIVERED TO A PURCHASER OR RECIPIENT. IT SHALL NOT BE A DEFENSE TO A VIOLATION OF THIS SUBSECTION (7) THAT SOME OF THE ACTS CONSTITUTING THE VIOLATION OCCURRED OUTSIDE OF COLORADO.

~~(c)~~ (8) Each violation of this ~~subsection (4)~~, including each instance

~~of intercepting signals or of creating a cloned cellular phone, shall be~~  
SECTION, AND EACH DAY OF A CONTINUING VIOLATION, SHALL CONSTITUTE  
a separate offense.

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

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

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

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

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

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

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

(13) **Saving provisions.** (a) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, A PERSON WHO MANUFACTURES, PRODUCES, ASSEMBLES, DESIGNS, DEVELOPS, SELLS, DISTRIBUTES, OR LICENSES A MULTIPURPOSE DEVICE SHALL NOT BE IN VIOLATION OF THIS

SECTION UNLESS SUCH PERSON ACTS KNOWINGLY AND WITH AN INTENT TO DEFRAUD A COMMUNICATION SERVICE PROVIDER AND THE MULTIPURPOSE DEVICE:

(I) IS MANUFACTURED, DEVELOPED, ASSEMBLED, PRODUCED, DESIGNED, DISTRIBUTED, SOLD, OR LICENSED FOR THE PRIMARY PURPOSE OF COMMITTING A VIOLATION OF THIS SECTION; OR

(II) HAS ONLY LIMITED COMMERCIALY SIGNIFICANT PURPOSE OR USE OTHER THAN AS AN UNLAWFUL ACCESS DEVICE OR FOR THE COMMISSION OF ANY OTHER VIOLATION OF THIS SECTION; OR

(III) IS MARKETED BY THE PERSON, OR BY ANOTHER ACTING IN CONCERT WITH THAT PERSON AND WITH HIS OR HER KNOWLEDGE, FOR USE AS AN UNLAWFUL ACCESS DEVICE OR FOR THE PURPOSE OF COMMITTING ANY OTHER VIOLATION OF THIS SECTION.

(b) NOTHING IN THIS SECTION SHALL REQUIRE THAT THE DESIGN OF, OR THE DESIGN AND SELECTION OF PARTS, SOFTWARE CODE, OR COMPONENTS FOR, A COMMUNICATIONS DEVICE PROVIDE FOR A RESPONSE TO ANY PARTICULAR TECHNOLOGY, DEVICE, OR SOFTWARE, OR ANY COMPONENT OR PART THEREOF, USED BY THE PROVIDER, OWNER, OR LICENSEE OF ANY COMMUNICATION SERVICE OR OF ANY DATA, AUDIO OR VIDEO PROGRAMS, OR TRANSMISSIONS FOR THE PURPOSE OF PROTECTING ANY SUCH COMMUNICATION, DATA, AUDIO OR VIDEO SERVICE, PROGRAMS, OR TRANSMISSIONS FROM UNAUTHORIZED RECEIPT, ACQUISITION, INTERCEPTION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION, TRANSMISSION, OR RETRANSMISSION.

(c) THIS SECTION SHALL NOT IMPOSE ANY CRIMINAL OR CIVIL LIABILITY UPON ANY STATE OR LOCAL LAW ENFORCEMENT AGENCY, ANY STATE OR LOCAL GOVERNMENT AUTHORITY, MUNICIPALITY, OR AGENCY, OR ANY COMMUNICATION SERVICE PROVIDER, LAWFULLY ACTING WITHIN HIS, HER, OR ITS CAPACITY AS SUCH.

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

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

(1) Whenever it appears that any person is engaged in or about to engage in any act ~~which~~ THAT constitutes or will constitute a violation of section

18-9-309, ~~(2) or (3)~~; the attorney general, the district attorney, a representative of a telecommunications COMMUNICATION SERVICE provider, or any person or company harmed by such alleged violation may initiate a civil proceeding in a district court OF COMPETENT JURISDICTION to enjoin such violation and may petition the court to issue an order for the discontinuance of telecommunications ANY COMMUNICATION service used in violation of section 18-9-309. ~~(2) or (3)~~.

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

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

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

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

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

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

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

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

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

~~(6) (4) Upon a finding by the court that the illegal telecommunications equipment~~ COMMUNICATION DEVICE OR UNLAWFUL ACCESS DEVICE is being used or has been used in violation of section 18-9-309, ~~(2) or (3)~~, the court shall issue an order requiring the ~~telephone company which~~ COMMUNICATION SERVICE PROVIDER THAT is rendering service over the device to disconnect such service. Upon receipt of such order, which shall be served upon an officer of the ~~telephone company~~ COMMUNICATION SERVICE PROVIDER by the sheriff of the county in which

the ~~illegal telecommunications equipment~~ COMMUNICATION DEVICE OR UNLAWFUL ACCESS DEVICE is installed or by a duly authorized deputy, the ~~telephone company~~ COMMUNICATION SERVICE PROVIDER shall proceed promptly to disconnect and remove such device and discontinue all ~~telecommunications~~ COMMUNICATION service until further order of the court.

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

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

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

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

(I) THE COMPLAINING PARTY MAY RECOVER ITS ACTUAL DAMAGES SUFFERED AS A RESULT OF THE VIOLATION OF SECTION 18-9-309 AND ANY PROFITS OF THE VIOLATOR THAT ARE ATTRIBUTABLE TO THE VIOLATION AND ARE NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES.

ACTUAL DAMAGES INCLUDE THE RETAIL VALUE OF ANY COMMUNICATION SERVICES ILLEGALLY AVAILABLE TO THOSE PERSONS TO WHOM THE VIOLATOR DIRECTLY OR INDIRECTLY PROVIDED OR DISTRIBUTED ANY COMMUNICATION OR UNLAWFUL ACCESS DEVICES. IN PROVING ACTUAL DAMAGES, THE COMPLAINING PARTY SHALL BE REQUIRED TO PROVE ONLY THAT THE VIOLATOR MANUFACTURED, DISTRIBUTED, OR SOLD ANY COMMUNICATION OR UNLAWFUL ACCESS DEVICES, BUT SHALL NOT BE REQUIRED TO PROVE THAT THOSE DEVICES WERE ACTUALLY USED IN VIOLATION OF SECTION 18-9-309. IN DETERMINING THE VIOLATOR'S PROFITS, THE COMPLAINING PARTY SHALL BE REQUIRED TO PROVE ONLY THE VIOLATOR'S GROSS REVENUE ATTRIBUTABLE TO SUCH VIOLATION, AND THE VIOLATOR SHALL BE REQUIRED TO PROVE ANY DEDUCTIBLE EXPENSES AND THE ELEMENTS OF PROFIT ATTRIBUTABLE TO FACTORS OTHER THAN THE VIOLATION.

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

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

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

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

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Lola Spradley  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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John Andrews  
PRESIDENT OF  
THE SENATE

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Judith Rodrigue  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Mona Heustis  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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Bill Owens  
GOVERNOR OF THE STATE OF COLORADO