

House Bill 521

By: Representative Campbell of the 42<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated,  
2 relating to general provisions relative to telephone and telegraph service, so as to provide for  
3 the computation of civil damages for theft of telecommunications and cable services; to  
4 repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Article 1 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to  
8 general provisions relative to telephone and telegraph service, is amended by striking Code  
9 Section 46-5-2, relating to avoiding or attempting to avoid charges for use of  
10 telecommunications services, and inserting in lieu thereof the following:

11 "46-5-2.

12 (a) It shall be unlawful for any person to avoid or attempt to avoid or to cause another to  
13 avoid the lawful charges, in whole or in part, for any telecommunication service as defined  
14 in subsection (a) of Code Section 46-5-3 or for the transmission of a message, signal, or  
15 other communication by telephone or telegraph or over telecommunication or telegraph  
16 facilities by the use of any fraudulent scheme, means, or method, or by the use of any  
17 unlawful telecommunication device as defined in subsection (a) of Code Section 46-5-3 or  
18 other mechanical, electric, or electronic device; provided, however, that this Code section  
19 and Code Sections 46-5-3 and 46-5-4 shall not apply to amateur radio repeater operation  
20 involving a dial interconnect.

21 (b)(1) Except as otherwise provided in paragraph (2) of this subsection, any person who  
22 violates this Code section shall be guilty of a misdemeanor; provided, however, that upon  
23 conviction of a second or subsequent such offense under this Code section, the defendant  
24 commits a felony and shall be punished by a fine of not more than \$5,000.00 or  
25 imprisoned for not less than one nor more than five years, or both.

1 (2) Any person who violates this Code section by avoiding or causing another to avoid  
 2 lawful charges for any telecommunication service which lawful charges are in an amount  
 3 in excess of \$10,000.00 commits a felony and shall be punished by a fine of not more  
 4 than \$5,000.00 or imprisoned for not less than one nor more than five years, or both.

5 (3) The court may, in addition to any other sentence authorized by law, order a person  
 6 convicted under this Code section to make restitution for the offense.

7 (4) Any person, corporation, or other entity aggrieved by a violation of this Code section  
 8 may, in a civil action in any court of competent jurisdiction, obtain appropriate relief,  
 9 including preliminary and other equitable or declaratory relief, compensatory and  
 10 punitive damages, reasonable investigation expenses, cost of suit, and reasonable  
 11 attorney's fees.

12 (5) Damages awarded by a court in a civil action under this Code section shall be  
 13 computed as one of the following:

14 (A) At any time prior to the entering of a final judgment, the complaining party may  
 15 elect to recover the actual damages suffered by the complaining party as a result of the  
 16 violation of this Code section and any profits of the violator that are attributable to the  
 17 violation and are not taken into account in computing actual damages. In determining  
 18 the violator's profits, the complaining party shall be required to prove only the  
 19 violator's gross revenues. The violator has the burden for proving any offsetting  
 20 expenses relating to the profit generated by the violation;

21 (B) In any case where a violator commits more than one violation of this Code section,  
 22 the complaining party, at any time before final judgment is entered, may elect to  
 23 recover, in lieu of actual damages, an award of statutory damages for all violations  
 24 involved in the action in a sum not less than \$250.00 nor more than \$10,000.00 per  
 25 violation. The amount of statutory damages shall be determined by the court as the  
 26 court considers just; or

27 (C) In any case where the court finds that any of the violations of this Code section  
 28 were committed willfully and for the purposes of commercial advantage or financial  
 29 gain, the court in its discretion may increase the award of damages, whether actual or  
 30 statutory, by an amount of not more than \$50,000.00."

## 31 SECTION 2.

32 Said article is further amended by striking Code Section 46-5-3, relating to making,  
 33 possessing, selling, allowing use of, or publishing assembly plans for devices, equipment,  
 34 or apparatus for committing theft of telecommunications services or for concealing origin or  
 35 destination of any telecommunication, and inserting in lieu thereof the following:

1 "46-5-3.

2 (a) As used in this Code section the term:

3 (1) 'Telecommunication service' means any service provided for a charge or  
4 compensation to facilitate the origination, transmission, emission, or reception of signs,  
5 signals, data, writings, images, sounds, or intelligence of any nature by telephone or  
6 telephone service or cable television service (CATV), including cellular or other wireless  
7 telephones, wire, radio, electromagnetic, photoelectronic, or photo-optical system.

8 (2) 'Telecommunication service provider' means a person, corporation, or other entity  
9 which provides telecommunication service, including a cellular, paging, or other wireless  
10 communications company or other person, corporation, or entity which, for a fee,  
11 supplies the facility, cell site, mobile telephone switching office, or other equipment or  
12 telecommunication service.

13 (3) 'Unlawful telecommunication device' means any telecommunications device that is  
14 capable, or has been illegally altered, modified, or programmed or reprogrammed alone  
15 or in conjunction with another access device or other equipment so as to be capable, of  
16 acquiring or facilitating the acquisition of any electronic serial number, mobile  
17 identification number, personal identification number, or any telecommunication service  
18 without the consent of the telecommunication service provider or without the consent of  
19 the legally authorized user of the telecommunication device. The term includes  
20 telecommunications devices altered to obtain service without the consent of the  
21 telecommunication service provider, tumbler phones, counterfeit or clone microchips,  
22 scanning receivers of wireless telecommunication service of a telecommunication service  
23 provider, and other instruments capable of disguising their identity or location or of  
24 gaining access to a communications system operated by a telecommunication service  
25 provider. Such term shall not apply to any device operated by a law enforcement agency  
26 or telecommunication service provider in the normal course of its activities.

27 (b) It shall be unlawful for any person knowingly to:

28 (1) Make or possess any unlawful telecommunication device designed, adapted, or used:

29 (A) For commission of a theft of telecommunication service in violation of Code  
30 Section 46-5-2 or to acquire or facilitate the acquisition of telecommunications service  
31 without the consent of the telecommunication service provider; or

32 (B) To conceal, or to assist another to conceal, from any supplier of telecommunication  
33 service or from any lawful authority the existence or place of origin or of destination  
34 of any telecommunication;

35 (2) Sell, give, transport, or otherwise transfer to another, or offer or advertise for sale,  
36 any unlawful telecommunication device, or plans or instructions for making or  
37 assembling the same, under circumstances evincing an intent to use or employ such

1 unlawful telecommunication device; or to allow such unlawful telecommunication device  
 2 to be used or employed for a purpose described in paragraph (1) of this subsection or  
 3 knowing or having reason to believe that the same is intended to be so used or that the  
 4 aforesaid plans or instructions are intended to be used for making or assembling such  
 5 unlawful telecommunication device; or

6 (3) Publish plans or instructions for making or assembling or using any unlawful  
 7 telecommunication device.

8 (c)(1) Any person who violates this Code section shall be guilty of a felony and, upon  
 9 conviction thereof, shall be punished by a fine of not more than \$1,000.00 or by  
 10 imprisonment in the penitentiary for not less than one nor more than five years, or both;  
 11 provided, however, that upon conviction of a second or subsequent such offense under  
 12 this Code section, the defendant shall be punished by a fine of not more than \$5,000.00  
 13 or imprisoned for not less than three nor more than ten years, or both.

14 (2) The court may, in addition to any other sentence authorized by law, order a person  
 15 convicted under this Code section to make restitution for the offense.

16 (3) Any person, corporation, or other entity aggrieved by a violation of this Code section  
 17 may, in a civil action in any court of competent jurisdiction, obtain appropriate relief,  
 18 including preliminary and other equitable or declaratory relief, compensatory and  
 19 punitive damages, reasonable investigation expenses, cost of suit, and reasonable  
 20 attorney's fees.

21 (4) Damages awarded by a court in a civil action under this Code section shall be  
 22 computed as one of the following:

23 (A) At any time prior to the entering of a final judgment, the complaining party may  
 24 elect to recover the actual damages suffered by the complaining party as a result of the  
 25 violation of this Code section and any profits of the violator that are attributable to the  
 26 violation and are not taken into account in computing actual damages. In determining  
 27 the violator's profits, the complaining party shall be required to prove only the  
 28 violator's gross revenues. The violator has the burden for proving any offsetting  
 29 expenses relating to the profit generated by the violation;

30 (B) In any case where a violator commits more than one violation of this Code section,  
 31 the complaining party, at any time before final judgment is entered, may elect to  
 32 recover, in lieu of actual damages, an award of statutory damages of not less than  
 33 \$250.00 nor more than \$10,000.00 for each unlawful telecommunications device  
 34 involved in the action. The amount of statutory damages shall be determined by the  
 35 court as the court considers just; or

36 (C) In any case where the court finds that any of the violations of this Code section  
 37 were committed willfully and for the purposes of commercial advantage or financial

1 gain, the court in its discretion may increase the award of statutory damages by an  
2 amount of not more than \$50,000.00 for each unlawful telecommunication device  
3 involved in the action."

4 **SECTION 3.**

5 All laws and parts of laws in conflict with this Act are repealed.