

House Bill 521 (COMMITTEE SUBSTITUTE)

By: Representative Campbell of the 42nd

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.

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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) Compensatory damages awarded by a court in a civil action under this Code section
 13 shall be 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;

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

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

27 (D) Nothing in paragraph (5) of this subsection shall prohibit the recovery of other
 28 types of damages otherwise authorized under paragraph (4) of this subsection."

29 SECTION 2.

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

34 "46-5-3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (A) At any time prior to the entering of a final judgment, the complaining party may
23 elect to recover the actual damages suffered by the complaining party as a result of the
24 violation of this Code section;

25 (B) In any case where a violator commits more than one violation of this Code section,
26 the complaining party, at any time before final judgment is entered, may elect to
27 recover, in lieu of actual damages, an award of statutory damages of not less than
28 \$250.00 nor more than \$10,000.00 for each unlawful telecommunications device
29 involved in the action. The amount of statutory damages shall be determined by the
30 court as the court considers just;

31 (C) In any case where the court finds that any of the violations of this Code section
32 were committed willfully and for the purposes of commercial advantage or financial
33 gain, the court in its discretion may increase the award of statutory damages by an
34 amount of not more than \$50,000.00 for each unlawful telecommunication device
35 involved in the action; or

1 (D) Nothing in paragraph (4) of this subsection shall prohibit the recovery of other
2 types of damages otherwise authorized under paragraph (3) of this subsection."

3 **SECTION 3.**

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