

House Bill 521 (AS PASSED HOUSE AND SENATE)

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 provide that the Public Service Commission shall have the exclusive power and authority to
5 prescribe rules and regulations for the operation, maintenance, location, and deployment of
6 public pay telephones within the state; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

13 "46-5-2.

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

23 (b)(1) Except as otherwise provided in paragraph (2) of this subsection, any person who
24 violates this Code section shall be guilty of a misdemeanor; provided, however, that upon
25 conviction of a second or subsequent such offense under this Code section, the defendant

1 commits a felony and shall be punished by a fine of not more than \$5,000.00 or
2 imprisoned for not less than one nor more than five years, or both.

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

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

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

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

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

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

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

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

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, including public pay telephones, or cable television service (CATV),
7 including cellular or other wireless telephones, wire, radio, electromagnetic,
8 photoelectronic, or photo-optical system.

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

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

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

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

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

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

1 (2) Sell, give, transport, or otherwise transfer to another, or offer or advertise for sale,
2 any unlawful telecommunication device, or plans or instructions for making or
3 assembling the same, under circumstances evincing an intent to use or employ such
4 unlawful telecommunication device; or to allow such unlawful telecommunication device
5 to be used or employed for a purpose described in paragraph (1) of this subsection or
6 knowing or having reason to believe that the same is intended to be so used or that the
7 aforesaid plans or instructions are intended to be used for making or assembling such
8 unlawful telecommunication device; or

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

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

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

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

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

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

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

35 (C) In any case where the court finds that any of the violations of this Code section
36 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; or
4 (D) Nothing in paragraph (4) of this subsection shall prohibit the recovery of other
5 types of damages otherwise authorized under paragraph (3) of this subsection."

6 **SECTION 3.**

7 Said article is further amended by adding at the end thereof a new Code Section 46-5-6 to
8 read as follows:

9 "46-5-6.

10 The Public Service Commission shall have the exclusive power and authority to prescribe
11 rules and regulations for the operation, maintenance, location, and deployment of public
12 pay telephones within this state."

13 **SECTION 4.**

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