
A BILL FOR AN ACT

RELATING TO COMMUNICATIONS FRAUD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. This Act updates existing statutes relating to
2 cable television and telecommunications service fraud to address
3 an expanding array of technology services offered by
4 communication companies that include cable television and
5 telecommunications, Internet-based, or wireless distribution
6 networks.

7 SECTION 2. Chapter 440G, Hawaii Revised Statutes, is
8 amended by adding a new part to be appropriately designated to
9 read as follows:

10 **PART . Civil Remedies; Communication Services**

11 **§440G- Definitions.** As used in this part, unless the
12 context clearly requires otherwise:

13 "Communication device" means:

14 (1) Any type of instrument, device, machine, mechanism, or
15 equipment that is capable of transmitting, acquiring,
16 decrypting, or receiving any telephonic, electronic,
17 data, Internet access, audio, video, microwave, or
18 radio transmissions, signals, communications, or



1 services, including the receipt, acquisition,
2 transmission, or decryption of all the communications,
3 transmissions, signals, or services provided by or
4 through any cable television, fiber optic, telephone,
5 satellite, microwave, radio, Internet-based, data
6 transmission, or wireless distribution network,
7 system, or facility; or

- 8 (2) Any part, accessory, or component thereof, including
9 any computer circuit, security module, smart card,
10 software, computer chip, electronic mechanism,
11 electronic serial number, mobile identification
12 number, personal identification number, switches, or
13 other component, accessory, or part of any
14 communication device that is capable of facilitating
15 the transmission, decryption, acquisition, or
16 reception of all such communications, transmissions,
17 signals, or services.

18 "Communication service" means:

- 19 (1) Any service lawfully provided for a charge or
20 compensation to facilitate the origination,
21 transmission, emission, or reception of signs,
22 signals, data, writings, images, and sounds or



1 intelligence of any nature by telephone, including but
2 not limited to cellular telephones or wire, wireless,
3 radio, electromagnetic, photo-electronic, or photo-
4 optical systems; or

5 (2) Any service lawfully provided for a charge or
6 compensation by any radio, telephone, cable
7 television, fiber optic, satellite, microwave,
8 Internet-based or wireless distribution network,
9 system, facility, or technology, including but not
10 limited to any and all electronic, data, video, audio,
11 Internet access, telephonic, microwave, and radio
12 communications, transmissions, signals, and services,
13 and any such communications, transmissions, signals,
14 and services provided directly or indirectly by or
15 through any of those networks, systems, facilities, or
16 technologies.

17 "Communication service provider" means:

18 (1) Any person or entity owning or operating any cable
19 television, fiber optic, satellite, telephone,
20 wireless, microwave, radio, data transmission, or
21 Internet-based distribution network, system, or
22 facility for the provision of communications services;



1 (2) Any person or entity providing a communication service
2 directly or indirectly as a reseller, including a
3 cellular, paging, or other wireless communications
4 company or other person or entity that, for a fee,
5 supplies the facility, cell site, mobile telephone
6 switching office, or other equipment or communication
7 service; or

8 (3) Any person or entity providing any communication
9 service directly or indirectly by or through any
10 distribution system, network, or facility.

11 "Unlawful communication device" means:

12 (1) Any communication device, electronic serial number,
13 mobile identification number, or personal
14 identification number that is capable of acquiring or
15 facilitating the acquisition of a communication
16 service without payment of lawful charges due to the
17 communication service provider or that has been
18 altered, modified, programmed, or reprogrammed, alone
19 or in conjunction with another communication device or
20 other equipment, to so acquire or facilitate the
21 acquisition of a communication service without payment



1 of lawful charges due to the communication service
2 provider;

3 (2) Any phone altered to obtain service without payment of
4 lawful charges due to the communication service
5 provider, tumbler phone, counterfeit or clone phone,
6 tumbler microchip, counterfeit or clone microchip, or
7 other instrument capable of gaining access to a
8 communication system, network, or facility operated by
9 a communication service provider without payment of
10 lawful charges due to the communication service
11 provider; or

12 (3) Any communication device that is capable of, or has
13 been altered, designed, modified, programmed, or
14 reprogrammed, alone or in conjunction with another
15 communication device or devices, so as to be capable
16 of facilitating the unauthorized disruption, or the
17 decryption, acquisition, receipt, or transmission, of
18 a communication service without payment of lawful
19 charges due to the communication service provider,
20 including any device, technology, product, service,
21 equipment, computer software, or component or part
22 thereof, primarily distributed, sold, designed,



1 assembled, manufactured, modified, programmed, or
2 reprogrammed or used for the purpose of providing the
3 decryption, acquisition, receipt, or transmission of
4 or access to any communication service provided by a
5 communication service provider without payment of
6 lawful charges due to it.

7 "Manufacture or assembly of an unlawful communication
8 device" means to make, produce, or assemble an unlawful
9 communication device or to modify, alter, program, or reprogram
10 a communication device to be capable of acquiring, receiving, or
11 transmitting communication services without payment of lawful
12 charges due to the communication service provider, or disrupting
13 or decrypting the services, or facilitating the acquisition,
14 receipt, or transmission of the services without payment of
15 lawful charges due to the communication service provider, or
16 decryption or disruption of the services, or to knowingly assist
17 others in those activities.

18 "Unlawful access device" means any:

19 (1) Type of instrument, device, machine, equipment,
20 technology, or software that is primarily possessed,
21 used, designed, assembled, manufactured, sold,
22 distributed, offered, promoted, or advertised for the



1 purpose of defeating or circumventing any technology,
2 device, or software, or any component or part thereof,
3 used by the provider, owner, or licensee of any
4 communication service or of any data, audio, or video
5 programs or transmissions to protect any
6 communication, audio, or video services, programs, or
7 transmissions from unauthorized access, acquisition,
8 receipt, decryption, disclosure, communication,
9 transmission, or re-transmission; or

- 10 (2) Number or code of an existing, canceled, revoked, or
11 nonexistent telephone number, telephone calling card
12 number, credit card number, account number, personal
13 identification number, or other credit device or
14 method of numbering or coding that is employed in the
15 issuance of telephone numbers, credit numbers, or
16 other credit devices that can be used to obtain
17 communication service.

18 "Manufacture or assembly of an unlawful access device"

19 means to make, produce, or assemble an unlawful access device or
20 to modify, alter, program, or reprogram any instrument, device,
21 machine, equipment, or software so that it is capable of
22 defeating or circumventing any technology, device, or software



1 used by the provider, owner, or licensee of a communication
2 service or of any data, audio, or video services, programs, or
3 transmissions to protect any communication, data, audio, or
4 video services, programs, or transmissions from unauthorized
5 access, acquisition, disclosure, receipt, decryption,
6 communication, transmission, or re-transmission.

7 **§440G- Civil remedies.** (a) Any communication service
8 provider aggrieved by a violation of chapter 708, part ,
9 (communication service fraud) may bring a civil action to obtain
10 the following relief:

11 (1) Preliminary or final injunctions to prevent or
12 restrain violations, to prevent destruction of
13 evidence, or to prevent dissipation of profits
14 properly recoverable by an aggrieved communication
15 service provider pursuant to subsection (b) (1);

16 (2) Monetary damages as set forth in subsection (b) (2);
17 and

18 (3) Reasonable attorneys' fees and investigation costs.

19 (b) Damages awarded by a court under this section shall be
20 computed as provided in this subsection, with a communication
21 service provider having the right to elect to recover under
22 either paragraph (1) or (2) at any time prior to final judgment:



- 1 (1) The actual damages suffered by the communication
2 service provider as a result of the violation and any
3 profits of the violator that are attributable to the
4 violation that are not taken into account in computing
5 the actual damages. In determining the violator's
6 profits, the complaining party shall be required to
7 prove only the violator's gross revenue, and the
8 violator shall be required to prove its deductible
9 expenses and the elements of profit attributable to
10 factors other than the violation. In calculating
11 actual damages for violations of section 708-A(1)(c)
12 or section 708-B(1)(c), there shall be a rebuttable
13 presumption that they equal the difference between the
14 value of services paid for by the violator and the
15 value of services to which the violator gained access
16 as a result of the violation; or
- 17 (2) Statutory damages, to be awarded by the court and not
18 a jury, in an amount between \$5,000 and \$10,000 for
19 each violation of section 708-A(1)(a) to (c), and in
20 an amount between \$1,000 and \$10,000 for each
21 violation of section 708-B(1)(a) to (d), as the court
22 considers just.



1 (c) In any case in which it is found that any violation
2 was committed wilfully and for purposes of commercial advantage
3 or private financial gain, the court in its discretion may
4 increase the award of either actual or statutory damages by an
5 amount not more than \$50,000.

6 (d) For purposes of all civil remedies established for
7 violations, the prohibited activity shall be deemed a separate
8 violation with respect to each device, plan, or set of
9 instructions involved in the action. For purposes of acts that
10 involve public display of a communication service, each separate
11 instance of public display shall be deemed a separate
12 violation."

13 SECTION 3. Chapter 708, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 "PART . COMMUNICATION SERVICE FRAUD

17 §708-A Communication service fraud in the first degree.

18 (1) A person commits communication service fraud in the first
19 degree if the person knowingly and with the intent to defraud a
20 communication service provider:

21 (a) Publishes plans or instructions for making,
22 assembling, or using an unlawful communication device



1 or unlawful access device or sells, offers to sell,
2 distributes, transfers, or otherwise makes available
3 written instructions, plans, or materials, including
4 hardware, cables, tools, data, computer software, or
5 other information or equipment, to make or assemble an
6 unlawful communication device or unlawful access
7 device and knows that the written plans, instructions,
8 or materials are intended to be used to make or
9 assemble a device to obtain communication service
10 without payment of applicable charges. For the
11 purpose of this paragraph, "publish" means the
12 communication or dissemination of information to any
13 one or more persons, either orally, in person, or by
14 telephone, radio, television, or computer, or in a
15 writing of any kind, including without limitation a
16 letter, memorandum, circular, handbill, newspaper,
17 magazine article, or book;

- 18 (b) Possesses with the intent to distribute, imports into
19 this state, makes, assembles, sells, offers to sell,
20 promotes, advertises, distributes, leases, transports,
21 transfers, or otherwise makes available an unlawful
22 communication device or unlawful access device and



1 knows that the device is intended to be used to obtain
2 communication service without payment of applicable
3 charges; or

4 (c) Whether by use of an unlawful communication device or
5 unlawful access device, by a connection or attachment
6 to a communication service provider's system, or by
7 trick, artifice, deception, false pretenses, or
8 identification, or by other fraudulent means, uses,
9 obtains, or attempts to obtain a communication service
10 without payment of applicable charges, the value of
11 which exceeds \$1,000 in any six-month period;

12 (2) Communication service fraud in the first degree is a
13 class C felony; provided that if the defendant has previously
14 been convicted of an offense under:

15 (a) This part; or

16 (b) Part XII in the form in which it read prior to its
17 repeal on the effective date of this Act,

18 communication service fraud in the first degree is a class B
19 felony.

20 **§708-B Communication service fraud in the second degree.**

21 (1) A person commits the offense of communication service fraud



1 in the second degree if the person knowingly and with intent to
2 defraud a communication service provider:

3 (a) Possesses an unlawful communication device with intent
4 to obtain communication service without payment of
5 applicable charges;

6 (b) Possesses written instructions or plans to make or
7 assemble an unlawful communication device with the
8 intent to use the written plans or instructions to
9 make or assemble a device to obtain communication
10 service without payment of applicable charges;

11 (c) Whether by use of an unlawful communication device or
12 unlawful access device, by a connection or attachment
13 to a communication service provider's system or by
14 trick, artifice, deception, false pretenses, or
15 identification, or by other fraudulent means, uses,
16 obtains, or attempts to obtain a communication service
17 without payment of applicable charges, the value of
18 which does not exceed \$1,000 in any six-month period;
19 or

20 (d) Modifies, alters, programs, or reprograms a
21 communication device or access device for the purpose

1 of obtaining communication service without payment of
2 applicable charges.

3 (2) Communication service fraud in the second degree is a
4 misdemeanor; provided that if the defendant has previously been
5 convicted of an offense under:

6 (a) This part; or

7 (b) Part XII in the form in which it read prior to its
8 repeal on the effective date of this Act,

9 communication service fraud in the second degree is a class C
10 felony.

11 **§708-C Forfeiture of unlawful communication or access**
12 **device.** Any unlawful communication or access device, or
13 instructions or plans therefor, or any materials for making or
14 assembling an unlawful communication or access device possessed
15 or used in violation of this part may be ordered forfeited to
16 the State for destruction by the State or, at the State's
17 direction, by an aggrieved communication service provider or
18 other disposition, subject to the requirements of chapter 712A.

19 **§708-D Possession of devices as evidence of intent;**
20 **rebuttable presumption.** In a prosecution for a violation of
21 this part, the existence on the property and in the possession
22 of the defendant of:



1 (a) Any communication or unlawful access device that is
2 connected in a manner as would permit the receipt of a
3 communication service without payment of lawful
4 charges to the communication service provider; or

5 (b) Any device designed in whole or in part to facilitate
6 the performance of any illegal acts set forth in this
7 part, where the totality of the circumstances,
8 including the quantity of devices, surrounding the
9 defendant's arrest indicates possession for resale,
10 shall give rise to a rebuttable presumption that the defendant
11 intended to violate the provisions of this part."

12 SECTION 4. Section 708-800, Hawaii Revised Statutes, is
13 amended by adding seven new definitions to be appropriately
14 inserted and to read as follows:

15 "Communication device" means:

16 (1) Any type of instrument, device, machine, mechanism, or
17 equipment that is capable of transmitting, acquiring,
18 decrypting, or receiving any telephonic, electronic,
19 data, Internet access, audio, video, microwave, or
20 radio transmissions, signals, communications, or
21 services, including the receipt, acquisition,
22 transmission, or decryption of all the communications,



1 transmissions, signals, or services provided by or
 2 through any cable television, fiber optic, telephone,
 3 satellite, microwave, radio, Internet-based, data
 4 transmission, or wireless distribution network,
 5 system, or facility; or

6 (2) Any part, accessory, or component thereof, including
 7 any computer circuit, security module, smart card,
 8 software, computer chip, electronic mechanism,
 9 electronic serial number, mobile identification
 10 number, personal identification number, switches, or
 11 other component, accessory, or part of any
 12 communication device that is capable of facilitating
 13 the transmission, decryption, acquisition, or
 14 reception of all such communications, transmissions,
 15 signals, or services.

16 "Communication service" means:

17 (1) Any service lawfully provided for a charge or
 18 compensation to facilitate the origination,
 19 transmission, emission, or reception of signs,
 20 signals, data, writings, images, and sounds or
 21 intelligence of any nature by telephone, including but
 22 not limited to cellular telephones or wire, wireless,



1 radio, electromagnetic, photo-electronic, or photo-
2 optical systems; or

3 (2) Any service lawfully provided for a charge or
4 compensation by any radio, telephone, cable
5 television, fiber optic, satellite, microwave,
6 Internet-based or wireless distribution network,
7 system, facility, or technology, including but not
8 limited to any and all electronic, data, video, audio,
9 Internet access, telephonic, microwave, and radio
10 communications, transmissions, signals, and services,
11 and any such communications, transmissions, signals,
12 and services provided directly or indirectly by or
13 through any of those networks, systems, facilities, or
14 technologies.

15 "Communication service provider" means:

16 (2) Any person or entity owning or operating any cable
17 television, fiber optic, satellite, telephone,
18 wireless, microwave, radio, data transmission, or
19 Internet-based distribution network, system, or
20 facility for the provision of communications services;
21 (2) Any person or entity providing a communication service
22 directly or indirectly as a reseller, including a



1 cellular, paging, or other wireless communications
2 company or other person or entity that, for a fee,
3 supplies the facility, cell site, mobile telephone
4 switching office, or other equipment or communication
5 service; or

- 6 (4) Any person or entity providing any communication
7 service directly or indirectly by or through any
8 distribution system, network, or facility.

9 "Unlawful communication device" means:

- 10 (1) Any communication device, electronic serial number,
11 mobile identification number, or personal
12 identification number that is capable of acquiring or
13 facilitating the acquisition of a communication
14 service without payment of lawful charges due to the
15 communication service provider or that has been
16 altered, modified, programmed, or reprogrammed, alone
17 or in conjunction with another communication device or
18 other equipment, to so acquire or facilitate the
19 acquisition of a communication service without payment
20 of lawful charges due to the communication service
21 provider;



- 1 (2) Any phone altered to obtain service without payment of
2 lawful charges due to the communication service
3 provider, tumbler phone, counterfeit or clone phone,
4 tumbler microchip, counterfeit or clone microchip, or
5 other instrument capable of gaining access to a
6 communication system, network, or facility operated by
7 a communication service provider without payment of
8 lawful charges due to the communication service
9 provider; or
- 10 (3) Any communication device that is capable of, or has
11 been altered, designed, modified, programmed, or
12 reprogrammed, alone or in conjunction with another
13 communication device or devices, so as to be capable
14 of facilitating the unauthorized disruption, or the
15 decryption, acquisition, receipt, or transmission, of
16 a communication service without payment of lawful
17 charges due to the communication service provider,
18 including any device, technology, product, service,
19 equipment, computer software, or component or part
20 thereof, primarily distributed, sold, designed,
21 assembled, manufactured, modified, programmed, or
22 reprogrammed or used for the purpose of providing the



1 decryption, acquisition, receipt, or transmission of
2 or access to any communication service provided by a
3 communication service provider without payment of
4 lawful charges due to it.

5 "Manufacture or assembly of an unlawful communication
6 device" means to make, produce, or assemble an unlawful
7 communication device or to modify, alter, program, or reprogram
8 a communication device to be capable of acquiring, receiving, or
9 transmitting communication services without payment of lawful
10 charges due to the communication service provider, or disrupting
11 or decrypting the services, or facilitating the acquisition,
12 receipt, or transmission of the services without payment of
13 lawful charges due to the communication service provider, or
14 decryption or disruption of the services, or to knowingly assist
15 others in those activities.

16 "Unlawful access device" means any:

17 (1) Type of instrument, device, machine, equipment,
18 technology, or software that is primarily possessed,
19 used, designed, assembled, manufactured, sold,
20 distributed, offered, promoted, or advertised for the
21 purpose of defeating or circumventing any technology,
22 device, or software, or any component or part thereof,



1 used by the provider, owner, or licensee of any
2 communication service or of any data, audio, or video
3 programs or transmissions to protect any
4 communication, audio, or video services, programs, or
5 transmissions from unauthorized access, acquisition,
6 receipt, decryption, disclosure, communication,
7 transmission, or re-transmission; or

8 (2) Number or code of an existing, canceled, revoked, or
9 nonexistent telephone number, telephone calling card
10 number, credit card number, account number, personal
11 identification number, or other credit device or
12 method of numbering or coding that is employed in the
13 issuance of telephone numbers, credit numbers, or
14 other credit devices that can be used to obtain
15 communication service.

16 "Manufacture or assembly of an unlawful access device"

17 means to make, produce, or assemble an unlawful access device or
18 to modify, alter, program, or reprogram any instrument, device,
19 machine, equipment, or software so that it is capable of
20 defeating or circumventing any technology, device, or software
21 used by the provider, owner, or licensee of a communication
22 service or of any data, audio, or video services, programs, or



1 transmissions to protect any communication, data, audio, or
2 video services, programs, or transmissions from unauthorized
3 access, acquisition, disclosure, receipt, decryption,
4 communication, transmission, or re-transmission."

5 SECTION 5. Chapter 440G, Hawaii Revised Statutes, is
6 amended:

7 1. By amending its title to read:

8 " ~~[CABLE TELEVISION SYSTEMS]~~ COMMUNICATION SERVICES"

9 2. By designating sections 440G-1 to 440G-17 as part I and
10 inserting a title before section 440G-1 to read as follows:

11 "PART I. CABLE TELEVISION SYSTEMS"

12 3. By amending section 440G-1 to read:

13 "**§440G-1 Short title.** This ~~[chapter]~~ part shall be known
14 as the Hawaii Cable Communications Systems Law"

15 4. By amending section 440G-3 to read:

16 "**§440G-3 Definitions.** As used in this ~~[chapter,]~~ part,
17 unless the context clearly requires otherwise:

18 "Access organization" means any nonprofit organization
19 designated by the director to oversee the development,
20 operation, supervision, management, production, or broadcasting
21 of programs for any channels obtained under section 440G-8, and
22 any officers, agents, and employees of such an organization with



1 respect to matters within the course and scope of their
2 employment by the access organization.

3 "Applicant" means a person who initiates an application or
4 proposal.

5 "Application" means an unsolicited filing.

6 "Basic cable service" means any service tier which includes
7 the retransmission of local television broadcast signals.

8 "Cable franchise" means a nonexclusive initial
9 authorization or renewal thereof issued pursuant to this
10 chapter, whether the authorization is designated as a franchise,
11 permit, order, contract, agreement, or otherwise, which
12 authorizes the construction or operation of a cable system.

13 "Cable operator" means any person or group of persons:

14 (1) [~~who~~] Who provides cable service over a cable system
15 and directly or through one or more affiliates owns a
16 significant interest in the cable system; or

17 (2) [~~who~~] Who otherwise controls or is responsible for,
18 through any arrangement, the management and operation
19 of a cable system.

20 "Cable service" means:

21 (1) [~~the~~] The one-way transmission to subscribers of video
22 programming or other programming service; and



1 (2) [~~subscriber~~] Subscriber interaction, if any, which is
2 required for the selection of video programming or
3 other programming service.

4 "Cable system" means any facility within this [~~State~~] state
5 consisting of a set of closed transmission paths and associated
6 signal generation, reception, and control equipment that is
7 designed to provide cable service which includes video
8 programming and which is provided to multiple subscribers within
9 a community, but does not include:

10 (1) [a] A facility that serves only to retransmit the
11 television signals of one or more television broadcast
12 stations;

13 (2) [a] A facility that serves only subscribers in one or
14 more multiple unit dwellings under common ownership,
15 control, or management, unless that facility or
16 facilities uses any public right-of-way; or

17 (3) [a] A facility of a public utility subject in whole or
18 in part to the provisions of chapter 269, except to
19 the extent that those facilities provide video
20 programming directly to subscribers.

21 "Department" means the department of commerce and consumer
22 affairs.



1 "Director" means the director of commerce and consumer
2 affairs.

3 "Facility" includes all real property, antenna, poles,
4 supporting structures, wires, cables, conduits, amplifiers,
5 instruments, appliances, fixtures, and other personal property
6 used by a cable operator in providing service to its
7 subscribers.

8 "Institution of higher education" means an academic college
9 or university accredited by the Western Association of Schools
10 and Colleges.

11 "Other programming service" means information that a cable
12 operator makes available to all subscribers generally.

13 "Person" means an individual, partnership, association,
14 joint stock company, trust, corporation, or governmental agency.

15 "Proposal" means a filing solicited by the director.

16 "Public, educational, or governmental access facilities"
17 means:

18 (1) [~~channel~~] Channel capacity designated for public,
19 educational, or governmental uses; and

20 (2) [~~facilities~~] Facilities and equipment for the use of
21 that channel capacity.



1 "Public place" includes any property, building, structure,
2 or water to which the public has a right of access and use.

3 "Public utilities commission" means the public utilities
4 commission of this State.

5 "School" means an academic and noncollege type regular or
6 special education institution of learning established and
7 maintained by the department of education or licensed and
8 supervised by that department.

9 "Service area" means the geographic area for which a cable
10 operator has been issued a cable franchise.

11 "Video programming" means programming provided by, or
12 generally considered comparable to programming provided by, a
13 television broadcast station."

14 SECTION 6. Chapter 708, part XII, Hawaii Revised Statutes,
15 is repealed.

16 SECTION 7. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun, before its effective date.

19 SECTION 8. In codifying the new sections added by section
20 3 of this Act, the revisor of statutes shall substitute
21 appropriate section numbers for the letters used in designating
22 the new sections in this Act.



1 SECTION 9. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 10. This Act shall take effect on January 1, 2046.



Report Title:

Communication Service; Fraud

Description:

Establishes the offense of communication service fraud in the first and second degrees. Provides civil remedies. Authorizes forfeiture. Establishes evidentiary presumption. Adds definitions. (HB1751 HD1)

