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# 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, and wireless distribution  
6 networks.

7 SECTION 2. The Hawaii Revised Statutes is amended by  
8 adding a new chapter to title 36 to be appropriately designated  
9 and to read as follows:

10 **"CHAPTER**

11 **COMMUNICATION SERVICE FRAUD**

12 § -1 **Civil remedies.** (a) Any communication service  
13 provider aggrieved by a violation of chapter 708, part ,  
14 (communication service fraud) may bring a civil action to obtain  
15 the following relief:

16 (1) Preliminary or final injunctions to prevent or  
17 restrain violations, to prevent destruction of  
18 evidence, or to prevent dissipation of profits

1 properly recoverable by an aggrieved communication  
2 service provider pursuant to subsection (b) (1);  
3 (2) Monetary damages as set forth in subsection (b) (2);  
4 and  
5 (3) Reasonable attorneys' fees and investigation costs.  
6 (b) Damages awarded by a court under this section shall be  
7 computed as provided in this subsection, with a communication  
8 service provider having the right to elect to recover under  
9 either paragraph (1) or (2) at any time prior to final judgment:  
10 (1) The actual damages suffered by the communication  
11 service provider as a result of the violation and any  
12 profits of the violator that are attributable to the  
13 violation that are not taken into account in computing  
14 the actual damages. In determining the violator's  
15 profits, the complaining party shall be required to  
16 prove only the violator's gross revenue, and the  
17 violator shall be required to prove its deductible  
18 expenses and the elements of profit attributable to  
19 factors other than the violation. In calculating  
20 actual damages for violations of section 708-A(1)(c)  
21 or section 708-B(1)(c), there shall be a rebuttable  
22 presumption that the damages equal the difference

1           between the value of services paid for by the violator  
2           and the value of services to which the violator gained  
3           access as a result of the violation; or

4           (2) Statutory damages, to be awarded by the court and not  
5           a jury, in an amount between \$5,000 and \$10,000 for  
6           each violation of section 708-A(1) (a) to (c), and in  
7           an amount between \$1,000 and \$10,000 for each  
8           violation of section 708-B(1) (a) to (d), as the court  
9           considers just.

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

15          (d) For purposes of all civil remedies established for  
16         violations, the prohibited activity shall be deemed a separate  
17         violation with respect to each device, plan, or set of  
18         instructions involved in the action. For purposes of acts that  
19         involve public display of a communication service, each separate  
20         instance of public display shall be deemed a separate violation.

21          (e) For purposes of this section:

22          "Communication service" means:

1           (1) Any service lawfully provided for a charge or  
2           compensation to facilitate the origination,  
3           transmission, emission, or reception of signs,  
4           signals, data, writings, images, and sounds or  
5           intelligence of any nature by telephone, including but  
6           not limited to cellular telephones or wire, wireless,  
7           radio, electromagnetic, photo-electronic, or photo-  
8           optical systems; or

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

21          "Communication service provider" means:

1 (1) Any person or entity owning or operating any cable  
2 television, fiber optic, satellite, telephone,  
3 wireless, microwave, radio, data transmission, or  
4 internet-based distribution network, system, or  
5 facility for the provision of communications services;

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

13 (3) Any person or entity providing any communication  
14 service directly or indirectly by or through any  
15 distribution system, network, or facility."

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

19 **"PART . COMMUNICATION SERVICE FRAUD**

20 **§708-A Communication service fraud in the first degree.**

21 (1) A person commits communication service fraud in the first

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

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

1 (b) Possesses with the intent to distribute, imports into  
2 this state, makes, assembles, sells, offers to sell,  
3 promotes, advertises, distributes, leases, transports,  
4 transfers, or otherwise makes available an unlawful  
5 communication device or unlawful access device and  
6 knows that the device is intended to be used to obtain  
7 communication service without payment of applicable  
8 charges; or

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

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

20 (a) This part; or

1 (b) Part XII in the form in which it read prior to its  
2 repeal on the effective date of Act , Session  
3 Laws of Hawaii 2009,  
4 communication service fraud in the first degree is a class B  
5 felony.

6 **§708-B Communication service fraud in the second degree.**

7 (1) A person commits the offense of communication service fraud  
8 in the second degree if the person knowingly and with intent to  
9 defraud a communication service provider:

10 (a) Possesses an unlawful communication device with intent  
11 to obtain communication service without payment of  
12 applicable charges;

13 (b) Possesses written instructions or plans to make or  
14 assemble an unlawful communication device with the  
15 intent to use the written plans or instructions to  
16 make or assemble a device to obtain communication  
17 service without payment of applicable charges;

18 (c) Whether by use of an unlawful communication device or  
19 unlawful access device, by a connection or attachment  
20 to a communication service provider's system or by  
21 trick, artifice, deception, false pretenses, or  
22 identification, or by other fraudulent means, uses,



1 obtains, or attempts to obtain a communication service  
2 without payment of applicable charges, the value of  
3 which does not exceed \$1,000 in any six-month period;  
4 or

5 (d) Modifies, alters, programs, or reprograms a  
6 communication device or access device for the purpose  
7 of obtaining communication service without payment of  
8 applicable charges.

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

12 (a) This part; or

13 (b) Part XII in the form in which it read prior to its  
14 repeal on the effective date of Act , Session  
15 Laws of Hawaii 2009,

16 communication service fraud in the second degree is a class C  
17 felony.

18 **§708-C Forfeiture of unlawful communication or access**  
19 **device.** Any unlawful communication or access device, or  
20 instructions or plans therefor, or any materials for making or  
21 assembling an unlawful communication or access device possessed  
22 or used in violation of this part may be ordered forfeited to

1 the State for destruction by the State or, at the State's  
2 direction, by an aggrieved communication service provider or  
3 other disposition, subject to the requirements of chapter 712A.

4 **§708-D Possession of devices as evidence of intent;**  
5 **rebuttable presumption.** In a prosecution for a violation of  
6 this part, the existence on the property and in the possession  
7 of the defendant of:

- 8 (a) Any communication or unlawful access device that is  
9 connected in a manner as would permit the receipt of a  
10 communication service without payment of lawful  
11 charges to the communication service provider; or  
12 (b) Any device designed in whole or in part to facilitate  
13 the performance of any illegal acts set forth in this  
14 part, where the totality of the circumstances,  
15 including the quantity of devices, surrounding the  
16 defendant's arrest indicates possession for resale,  
17 shall give rise to a rebuttable presumption that the defendant  
18 intended to violate the provisions of this part."

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

22 "Communication device" means:

- 1        (1) Any type of instrument, device, machine, mechanism, or  
2        equipment that is capable of transmitting, acquiring,  
3        decrypting, or receiving any telephonic, electronic,  
4        data, internet access, audio, video, microwave, or  
5        radio transmissions, signals, communications, or  
6        services, including the receipt, acquisition,  
7        transmission, or decryption of all the communications,  
8        transmissions, signals, or services provided by or  
9        through any cable television, fiber optic, telephone,  
10       satellite, microwave, radio, Internet-based, data  
11       transmission, or wireless distribution network,  
12       system, or facility; or
- 13       (2) Any part, accessory, or component thereof, including  
14       any computer circuit, security module, smart card,  
15       software, computer chip, electronic mechanism,  
16       electronic serial number, mobile identification  
17       number, personal identification number, switches, or  
18       other component, accessory, or part of any  
19       communication device that is capable of facilitating  
20       the transmission, decryption, acquisition, or  
21       reception of all such communications, transmissions,  
22       signals, or services.

1       "Communication service" means:

2       (1) Any service lawfully provided for a charge or  
3       compensation to facilitate the origination,  
4       transmission, emission, or reception of signs,  
5       signals, data, writings, images, and sounds or  
6       intelligence of any nature by telephone, including but  
7       not limited to cellular telephones or wire, wireless,  
8       radio, electromagnetic, photo-electronic, or photo-  
9       optical systems; or

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

22       "Communication service provider" means:

1       (1) Any person or entity owning or operating any cable  
2       television, fiber optic, satellite, telephone,  
3       wireless, microwave, radio, data transmission, or  
4       internet-based distribution network, system, or  
5       facility for the provision of communications services;

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

13       (3) Any person or entity providing any communication  
14       service directly or indirectly by or through any  
15       distribution system, network, or facility.

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 "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 "Unlawful communication device" means:

17 (1) Any communication device, electronic serial number,  
18 mobile identification number, or personal  
19 identification number that is capable of acquiring or  
20 facilitating the acquisition of a communication  
21 service without payment of lawful charges due to the  
22 communication service provider or that has been

1 altered, modified, programmed, or reprogrammed, alone  
2 or in conjunction with another communication device or  
3 other equipment, to so acquire or facilitate the  
4 acquisition of a communication service without payment  
5 of lawful charges due to the communication service  
6 provider;

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

16 (3) Any communication device that is capable of, or has  
17 been altered, designed, modified, programmed, or  
18 reprogrammed, alone or in conjunction with another  
19 communication device or devices, so as to be capable  
20 of facilitating the unauthorized disruption, or the  
21 decryption, acquisition, receipt, or transmission, of  
22 a communication service without payment of lawful



1           charges due to the communication service provider,  
2           including any device, technology, product, service,  
3           equipment, computer software, or component or part  
4           thereof, primarily distributed, sold, designed,  
5           assembled, manufactured, modified, programmed, or  
6           reprogrammed or used for the purpose of providing the  
7           decryption, acquisition, receipt, or transmission of  
8           or access to any communication service provided by a  
9           communication service provider without payment of  
10           lawful charges due to it."

11           SECTION 5. Chapter 708, part XII, Hawaii Revised Statutes,  
12 is repealed.

13           SECTION 6. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun, before its effective date.

16           SECTION 7. In codifying the new sections added by section  
17 3 of this Act, the revisor of statutes shall substitute  
18 appropriate section numbers for the letters used in designating  
19 the new sections in this Act.

20           SECTION 8. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22           SECTION 9. This Act shall take effect on January 1, 2046.

**Report Title:**

Communication Service Fraud; Civil Remedies

**Description:**

Establishes the offense of communication service fraud in the first and second degrees. Provides civil remedies. Authorizes forfeiture. Establishes evidentiary presumption. Adds definitions. (SD1)