
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 telecommunication service fraud to address
3 an expanding array of technology services offered by
4 communication companies that include cable television and
5 telecommunication, internet-based, or wireless distribution
6 networks.

7 SECTION 2. Chapter 708, Hawaii Revised Statutes, is
8 amended by adding a new part to be appropriately designated and
9 to read as follows:

10 **"PART . COMMUNICATION SERVICE FRAUD**

11 **§708-A Communication service fraud in the first degree.**

12 (1) A person commits communication service fraud in the first
13 degree if the person knowingly and with the intent to defraud a
14 communication service provider:

15 (a) Publishes plans or instructions for making,
16 assembling, or using an unlawful communication device
17 or unlawful access device or sells, offers to sell,
18 distributes, transfers, or otherwise makes available

1 written instructions, plans, or materials, including
2 hardware, cables, tools, data, computer software, or
3 other information or equipment, to make or assemble an
4 unlawful communication device or unlawful access
5 device, with knowledge that the written plans,
6 instructions, or materials are intended to be used to
7 make or assemble a device to obtain communication
8 service without payment of applicable charges;

9 (b) Possesses with the intent to distribute, imports into
10 this State, or makes, assembles, sells, offers to
11 sell, promotes, advertises, distributes, leases,
12 transports, transfers, or otherwise makes available an
13 unlawful communication device or unlawful access
14 device, with knowledge that the device is intended to
15 be used to obtain communication service without
16 payment of applicable charges; or

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

1 without payment of applicable charges, the value of
2 which exceeds \$1,000 in any six-month period;

3 (2) For the purpose of this section, "publish" means the
4 communication or dissemination of information to any one or more
5 persons, either orally, in person, or by telephone, radio,
6 television, or computer, or in a writing of any kind, including
7 without limitation, a letter, memorandum, circular, handbill,
8 newspaper, magazine article, or book.

9 (3) Communication service fraud in the first degree is a
10 class C felony; provided that if the defendant has previously
11 been convicted of an offense under:

12 (a) This part;

13 (b) Part XII prior to its repeal; or

14 (c) 17 United States Code section 1201 or 47 United States
15 Code sections 553 or 605,

16 communication service fraud in the first degree is a class B
17 felony.

18 **§708-B Communication service fraud in the second degree.**

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

- 1 (a) Possesses an unlawful communication device with intent
2 to obtain communication service without payment of
3 applicable charges;
- 4 (b) Possesses written instructions or plans to make or
5 assemble an unlawful communication device with the
6 intent to use the written plans or instructions to
7 make or assemble a device to obtain communication
8 service without payment of applicable charges;
- 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, 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 does not exceed \$1,000 in any six-month period;
17 or
- 18 (d) Modifies, alters, programs, or reprograms a
19 communication device or access device for the purpose
20 of obtaining communication service without payment of
21 applicable charges.

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

4 (a) This part;

5 (b) Part XII prior to its repeal; or

6 (c) 17 United States Code section 1201 or 47 United States
7 sections 553 or 605,

8 communication service fraud in the first degree is a class C
9 felony.

10 **§708-C Civil remedies.** (1) Any communication service
11 provider aggrieved by a violation of this part may bring a civil
12 action to obtain the following relief:

13 (a) Preliminary or final injunctions to prevent or
14 restrain violations, to prevent destruction of
15 evidence, or to prevent dissipation of profits
16 properly recoverable by an aggrieved communication
17 service provider pursuant to subsection (2) (a);

18 (b) Monetary damages as set forth in subsection (2) (b);
19 and

20 (c) Reasonable attorneys' fees and investigation costs.

21 (2) Damages awarded by a court under this section shall be
22 computed as provided in this subsection, with a communication

1 service provider having the right to elect to recover under
2 either paragraph (a) or (b) at any time prior to final judgment:

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

19 (b) Statutory damages, to be awarded by the court and not
20 a jury, in an amount between \$5,000 and \$10,000 for
21 each violation of subsection 708-A(1)(a) to (c), and
22 in an amount between \$1,000 and \$10,000 for each

1 violation of subsection 708-B(1) (a) to (d), as the
2 court considers just.

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

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

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

1 **§708-E Possession of devices as evidence of intent;**
2 **rebuttable presumption.** In a prosecution for a violation of
3 this part, the existence on the property and in the possession
4 of the defendant of:

5 (a) Any communication or unlawful access device that is
6 connected in a manner as would permit the receipt of a
7 communication service without payment of lawful
8 charges to the communication service provider; or

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

16 SECTION 3. Section 708-800, Hawaii Revised Statutes, is
17 amended by adding seven new definitions to be appropriately
18 inserted and to read as follows:

19 "Communication device" means:

20 (1) Any type of instrument, device, machine, mechanism, or
21 equipment that is capable of transmitting, acquiring,
22 decrypting, or receiving any telephonic, electronic,

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

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

20 "Communication service" means:

21 (1) Any service lawfully provided for a charge or
22 compensation to facilitate the origination,

1 transmission, emission, or reception of signs,
2 signals, data, writings, images, and sounds or
3 intelligence of any nature by telephone, including but
4 not limited to cellular telephones or wire, wireless,
5 radio, electromagnetic, photo-electronic, or photo-
6 optical systems; and

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

19 "Communication service provider" means:

20 (1) Any person or entity owning or operating any cable
21 television, fiber optic, satellite, telephone,
22 wireless, microwave, radio, data transmission, or

1 internet-based distribution network, system, or
2 facility for the provision of communications services;

3 (2) Any person or entity providing a communication service
4 directly or indirectly as a reseller, including but
5 not limited to a cellular, paging, or other wireless
6 communications company or other person or entity that,
7 for a fee, supplies the facility, cell site, mobile
8 telephone switching office, or other equipment or
9 communication service; and

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

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

1 access, acquisition, disclosure, receipt, decryption,
2 communication, transmission, or re-transmission.

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

14 "Unlawful access device" means any:

15 (1) Type of instrument, device, machine, equipment,
16 technology, or software that is primarily possessed,
17 used, designed, assembled, manufactured, sold,
18 distributed, offered, promoted, or advertised for the
19 purpose of defeating or circumventing any technology,
20 device, or software, or any component or part thereof,
21 used by the provider, owner, or licensee of any
22 communication service or of any data, audio, or video

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

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

14 "Unlawful communication device" means:

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

1 other equipment, to so acquire or facilitate the
2 acquisition of a communication service without payment
3 of lawful charges due to the communication service
4 provider;

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

14 (3) Any communication device that is capable of, or has
15 been altered, designed, modified, programmed, or
16 reprogrammed, alone or in conjunction with another
17 communication device or devices, so as to be capable
18 of facilitating the unauthorized disruption, or the
19 decryption, acquisition, receipt, or transmission, of
20 a communication service without payment of lawful
21 charges due to the communication service provider,
22 including but not limited to any device, technology,

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

9 SECTION 4. Part XII, chapter 708, Hawaii Revised Statutes,
10 is repealed.

11 SECTION 5. In codifying the new sections added by section
12 2 of this Act, the revisor of statutes shall substitute
13 appropriate section numbers for the letters used in designating
14 the new sections in this Act.

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

18 SECTION 7. New statutory material is underscored.

19 SECTION 8. This Act shall take effect upon its approval.

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. (SD1)