

ACT 222

S.B. NO. 3068

A Bill for an Act Relating to Telecommunication Service Offenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the rapid growth of the telecommunications industry, including, in particular, cellular telephones and related technologies, requires additional legislation targeted at combating the increasingly sophisticated means used to defraud the providers of these services.

SECTION 2. Section 708-800, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Telecommunication service provider” means any person that owns, operates, manages, or controls any facility used to furnish telecommunication services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signalling, or control devices.”

2. By amending the definitions of “telecommunication service” and “telecommunication service device” to read:

““Telecommunication service” means [any service involving (a) the transmission of messages or signals by telephone or telegraph, with the aid of wire, cable, microwave transmissions, fiber optics or other like connections; or (b) the transmission of intelligence by electricity by land, water, or air within the State.] the offering of transmission between or among points specified by a user, of information of the user’s choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium, and does not include cable service as defined in section 440G-3.”

“Telecommunication service device” means any mechanical or electronic instrument, apparatus, equipment, or device which can be used to obtain telecommunication services without payment of applicable charges therefor[.] and shall include any such device that is capable of, or has been altered, modified, programmed, or reprogrammed alone or in conjunction with another device or other equipment so as to be capable of acquiring or facilitating the acquisition of any electronic serial number, mobile identification number, personal identification number, or any telecommunication service without payment of the applicable charges therefor. A “telecommunication service device” includes telecommunication devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider. A “telecommunication service device” does not include any telephone or telegraph instrument, equipment, device, facility, or any component thereof furnished by a provider of telecommunication services in the ordinary course of its business[.] nor any device operated by a law enforcement agency in the normal course of its activities.”

SECTION 3. Section 708-8202, Hawaii Revised Statutes, is amended to read as follows:

“§708-8202 Telecommunication service fraud in the first degree. (1) A person commits the offense of telecommunication service fraud in the first degree if the person:

- (a) Knowingly publishes plans or instructions for making, assembling, or using a telecommunication service device, or sells, offers to sell, distributes, transfers, or otherwise makes available written instructions [or], plans, or materials including hardware, cables, tools, data, computer software, or other information or equipment to make or assemble a telecommunication service device and knows that the written plans [or], instructions, or materials are intended to be used to make or assemble a device to obtain telecommunication service without payment of applicable charges;

- (b) Knowingly makes, assembles, sells, offers to sell, advertises, distributes, transports, transfers, or otherwise makes available a telecommunication service device and knows that the device is intended to be used to obtain telecommunication service without payment of [application] applicable charges; or
- (c) With the intent to defraud another of the lawful charge for any [telephone] telecommunication service that is provided for a charge or compensation:
 - (i) [Sells,] Publishes, sells, offers for sale, or otherwise makes available[,] an access device, without obtaining the consent of the holder of the access device[, an existing, canceled, or revoked access device;] or the telecommunication service provider;
 - (ii) Uses[,] an access device, without obtaining the consent of the holder of the access device[, an existing, canceled, or revoked access device] or the telecommunication service provider, resulting in obtaining services, the value of which exceeds \$300 in any six-month period; [or]
 - (iii) Engages in a scheme constituting a systematic and continuing course of conduct to obtain an [existing, canceled, or revoked] access device from another by false or fraudulent pretenses, representations, or promises and does obtain an [existing, canceled, or revoked] access device from the other person[.]; or
 - (iv)¹ Uses a telecommunication service device for the purpose of obtaining telecommunication services, the value of which exceeds \$300 in any six-month period, without obtaining the consent of the holder of the telecommunication service device or the telecommunication service provider.

(2) For the purpose of this section:

“Access device” means any number or code of an existing, canceled, revoked, or nonexistent telephone number, telephone calling card number, credit card number, account number, [or] personal identification number, or other credit device or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers, or other credit devices that can be used to obtain [telephone] telecommunication service.

“Holder of access device” means a person or organization to which an access device has been issued by a [telephone] telecommunication service [company.] provider.

“Publish” means the communication or dissemination of information to any one or more persons, either orally, in person, or by telephone, radio, television, or computer, or in a writing of any kind, including without limitation a letter, memorandum, circular, handbill, newspaper, magazine article, or book.

(3) Telecommunication service fraud in the first degree is a class C felony.”

SECTION 4. Section 708-8203, Hawaii Revised Statutes, is amended to read as follows:

“§708-8203 Telecommunication service fraud in the second degree. (1)

A person commits the offense of telecommunication service fraud in the second degree if the person:

- (a) Knowingly possesses a telecommunication service device with the intent to obtain telecommunication service without payment of applicable charges;
- (b) Knowingly possesses written instructions or plans to make or assemble a telecommunication service device with the intent to use the written

- plans or instructions to make or assemble a device to obtain telecommunication service without payment of applicable charges; or
- (c) With the intent to defraud another of the lawful charge for any [telephone] telecommunication service, that is provided for a charge or compensation[, and]:
- (i) Uses an access device without obtaining the consent of the holder of the access device[, uses an existing, canceled, or revoked access device] or the telecommunication service provider, resulting in obtaining services, the value of which does not exceed \$300 in any six-month period[.]; or
- (ii) Uses a telecommunication service device for the purpose of obtaining telecommunication services, the value of which does not exceed \$300 in any six-month period, without obtaining the consent of the holder of the telecommunication service device or the telecommunication service provider.

(2) For the purposes of this section:

“Access device” means any number or code of an existing, canceled, revoked, or nonexistent telephone number, telephone calling card number, credit card number, account number, [or] personal identification number, or other credit device or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers, or other credit devices that can be used to obtain [telephone] telecommunication service.

“Holder of access device” means a person or organization to which an access device has been issued by a [telephone] telecommunication service [company.] provider.

(3) Telecommunication service fraud in the second degree is a misdemeanor.”

SECTION 5. Section 708-8204, Hawaii Revised Statutes, is amended to read as follows:

“§708-8204 Forfeiture of telecommunication service device and cable television service device. Any telecommunication service device, cable television service device, or instructions or plans therefor, or any materials for making or assembling a telecommunication service device possessed or used in violation of sections 708-8200 to 708-8203 may be ordered forfeited to the State for destruction or other disposition, subject to the requirements of chapter 712A.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

Note

1. Should be underscored.