

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 72
Judiciary

(Delegate Pendergrass, *et al.*)

Criminal Law - Telecommunication Service Providers - Decryption

This bill adds the element of acting for a fraudulent or unlawful purpose to prohibitions relating to the decryption or facilitation of decryption of an unlawful telecommunication device, access device, or access code to commit theft of telecommunication service.

Fiscal Summary

State Effect: None. The bill's provisions are not expected to substantively change State activities or operations.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: This bill narrows the prohibition against an unlawful telecommunication device, access device, or access code by providing that a person may not knowingly decrypt a telecommunication service for a fraudulent or unlawful purpose; or facilitate the decryption of a telecommunication service for a fraudulent or unlawful purpose.

The bill also broadens the class of persons who are exempt from the bill's provisions to include persons who manufacture, distribute, sell, possess, or use a telecommunication device or access code for the purpose of decrypting any type of communication, signal, transmission, or service, if the device or access code does not allow a user to defraud a telecommunication service provider or otherwise commit an unlawful act. The bill

conforms the definitions of “manufacture,” “unlawful access device,” and “unlawful telecommunication device or access code” to require a decryption or facilitation of decryption for a fraudulent or unlawful purpose.

Current Law: A person may not knowingly possess, use, manufacture, distribute, transfer, sell, offer, promote, or advertise an unlawful telecommunication device or access code to: (1) commit theft of a telecommunication service or to receive, transmit, disrupt, or decrypt a telecommunication service without the express consent or authorization of the service provider; (2) possess, use, manufacture, distribute, transfer, sell, offer, promote, or advertise an unlawful access device; or (3) possess, use, prepare, distribute, sell, give, transfer, offer, promote, or advertise equipment, hardware, tools, cables, data, software, or other components, knowing that the purchaser or a third person intends to use them to manufacture an unlawful telecommunication device or access code for a prohibited purpose.

The provisions do not apply to law enforcement officers in the course of an official law enforcement investigation, telecommunication service providers lawfully acting in that capacity, and authorized manufacturers and distributors of telecommunication devices, access devices, and access codes.

In general, a person who commits a violation is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years, a fine of \$2,500, or both. If the violation involves more than 100 unlawful telecommunication devices or access devices, the violation is a felony subject to maximum penalties of imprisonment for 10 years, a fine of \$10,000, or both. Restitution is authorized in accordance with the Criminal Procedure Article, and a court may require a convicted defendant to forfeit any unlawful telecommunication device or access device involved in the violation. A crime may be treated as occurring in the place of manufacture or assembly of an unlawful telecommunication device or access device, or at the place of sale or delivery.

In addition to criminal sanctions, a person who has suffered a specific and direct injury may bring a civil action; seek an injunction, confiscation and destruction of equipment, and damages. The court may assess actual damages suffered by the complaining party, plus profits of the violator that are not otherwise included in the actual damages. In proving the violator’s profits, the complaining party need only prove the violator’s gross revenues. The burden is on the violator to prove deductible expenses and profits attributable to another enterprise.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services,
Department of Legislative Services

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Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510