

1987 Assembly Bill 176

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## 1987 Wisconsin Act 345

AN ACT to amend 814.03 (1); and to create 943.46 and 943.47 of the statutes, relating to cable television service, satellite cable programming and providing penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 814.03 (1) of the statutes is amended to read:

814.03 (1) If the plaintiff is not entitled to costs under s. 814.01 (1) or (3), the defendant shall be allowed costs to be computed on the basis of the demands of the complaint, except as provided in ss. 943.46 (3) (c) and 943.47 (4) (b).

SECTION 2. 943.46 of the statutes is created to read:

**943.46 Theft of cable television service.** (1) DEFINITIONS. In this section:

(a) "Cable television service" means any audio, video or data service provided by a cable television company over its cable system facilities for payment. "Cable television service" does not include signals received by privately owned antennas that are not connected to a cable television system whether or not the same signals are provided by a cable television company.

(b) "Private financial gain" does not include the gain resulting to any individual from the private use in that individual's dwelling unit of any programming for which the individual has not obtained authorization.

(2) PROHIBITIONS. No person may intentionally do any of the following:

(a) Obtain or attempt to obtain cable television service from a company by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the cable television company, the major purpose of which is to permit reception of cable television services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use or if the cable television company cannot demonstrate that it notified the defendant, by mail using the procedure under sub. (3) (b), that he or she was obtaining or attempting to obtain cable television service by means prohibited in this subsection and that at least 20 days thereafter the device was present on the property and in the actual possession of the defendant.

(b) Give technical assistance or instruction to any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing that service. This paragraph does not apply if the defendant demonstrates that the technical assistance or instruction was given or the installation of the connection, descrambler or receiving device was for a legitimate use.

(c) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of distributing cable television service to any other dwelling unit without authority from a cable television company.

(d) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of obtaining cable television service without payment of all lawful compensation to the company providing that service. The intent required for a violation of this paragraph may be inferred from proof that the cable service to the defendant's residence or business was connected under a service agreement with the defendant and has been disconnected by the cable television company, that the cable television company notified the defendant, by mail using the procedure under sub. (3) (b), of the disconnect and that at least 20 days thereafter there exists

in fact a connection to the cable system at the defendant's residence or business.

(e) Make or maintain any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by that company which that person is not authorized by that company to receive. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the cable television company places written warning labels on its converters or decoders explaining that tampering with the device is a violation of law and the converter or decoder is found to have been tampered with, altered or modified so as to allow the reception or interception of programming carried by the cable television company without authority to do so. The trier of fact may also infer that a converter or decoder has been altered or modified from proof that the cable television company, as a matter of standard procedure, seals the converters or decoders with a label or mechanical device, that the seal was shown to the customer upon delivery of the decoder and that the seal has been removed or broken. The inferences under this paragraph are rebutted if the cable television company cannot demonstrate that the intact seal was shown to the customer.

(f) Possess without authority any device or printed circuit board designed to receive from a cable television system any cable television programming or services offered for sale over that cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under pars. (a) to (e) with the intent that that device or printed circuit be used to receive that cable television company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the cable television company has mailed to the defendant, using the procedure under sub. (3) (b), a written demand requesting the return of a company-owned converter, decoder or other device that was in the possession of the defendant at the time of mailing and from proof that the defendant has failed to return or make reasonable arrangements to return the converter, decoder or other device within 20 days after the notice has been mailed to the defendant. Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

(g) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device, printed circuit board or any plan or kit for a device or for a printed circuit designed to receive the cable television programming or services offered for

sale over a cable television system from a cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that that device, printed circuit, plan or kit be used for the reception of that company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, printed circuit board, plan or kit for a device or for a printed circuit board in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain cable television service without charge.

(3) CIVIL ACTIONS. (a) Any person who incurs injury because of conduct described in sub. (2) may bring a civil action under s. 801.02. At least 20 days prior to commencing an action, as specified in s. 801.02, under this subsection, the plaintiff shall notify the defendant, by mail using the procedure under par. (b), of his or her intent to bring the action. The notice shall include an explanation of the provisions of par. (c) and a statement explaining that if the defendant pays the actual damages sought by the plaintiff prior to the commencement of the action, the defendant may not be sued for damages under this subsection.

(b) Notice shall be sent by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last-known address.

(c) If the defendant is entitled to costs under s. 814.03 (1), the defendant shall recover as costs the greater of the following:

1. Costs computed under s. 814.03.

2. All reasonable costs of litigation prior to any appeal.

(4) PENALTIES. The following penalties apply for violations of this section:

(a) Except as provided in pars. (b) to (d), any person who violates sub. (2) (a) to (f) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (2) (a) to (f) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

(c) Except as provided in par. (d), any person who violates sub. (2) (a) to (g) for direct or indirect commercial advantage or private financial gain is guilty of a Class E felony.

(d) Any person who violates sub. (2) (a) to (g) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class D felony.

(5) EXCEPTION. This section does not affect the use by a person of cable television services if the services have been paid for and the use is exclusive to the person's dwelling unit. This subsection does not prohibit a board or council of any city, village or town from

specifying the number and manner of installation of outlets used by any such person for cable television services and does not prohibit a cable television company, in any written contract with a subscriber, from requiring the company's approval for any increase in the number of those outlets used.

SECTION 3. 943.47 of the statutes is created to read:

**943.47 Theft of satellite cable programming.** (1) DEFINITIONS. In this section:

(a) "Encrypt", when used with respect to satellite cable programming, means to transmit that programming in a form whereby the aural or visual characteristics or both are altered to prevent the unauthorized reception of that programming by persons without authorized equipment which is designed to eliminate the effects of that alteration.

(b) "Satellite cable programming" means encrypted video programming which is transmitted via satellite for direct reception by satellite dish owners for a fee.

(2) PROHIBITIONS. No person may decode encrypted satellite cable programming without authority.

(3) CRIMINAL PENALTIES. The following penalties apply for violations of this section:

(a) Except as provided in par. (b), any person who intentionally violates sub. (2) is guilty of a Class B misdemeanor.

(b) Any person who intentionally violates sub. (2) and for direct or indirect commercial advantage or private financial gain is guilty of a Class E felony for a first offense and is guilty of a Class D felony for a 2nd or subsequent offense.

(4) CIVIL ACTIONS. (a) Any person who incurs injury because of conduct described in sub. (2) may bring a civil action under s. 801.02. At least 20 days prior to commencing an action, as specified in s. 801.02, under this subsection, the plaintiff shall notify the defendant, by mail, of his or her intent to bring the action. The notice shall include an explanation of the provisions of par. (b) and a statement explaining that if the defendant pays the actual damages sought by the plaintiff prior to the commencement of the action, the defendant may not be sued for damages under this subsection. Notice shall be sent by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last-known address.

(b) If the defendant is entitled to costs under s. 814.03 (1), the defendant shall recover as costs the greater of the following:

1. Costs computed under s. 814.03.

2. All reasonable costs of litigation prior to any appeal.

(5) EXCEPTION. This section does not affect the use of satellite cable programming if the programming has been paid for and the use is exclusive to the person's dwelling unit.

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