

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Criminal Code of 1961 is amended by adding
5 Sections 16-18, 16-19, 16-20, and 16-21 as follows:

6 (720 ILCS 5/ 16-18 new)

7 Sec. 16-18. Unlawful communication and access devices;
8 definitions. As used in Sections 16-19, 16-20, and 16-21,
9 unless the context otherwise indicates:

10 "Communication device" means any type of instrument,
11 device, machine, or equipment which is capable of
12 transmitting, acquiring, decrypting, or receiving any
13 telephonic, electronic, data, Internet access, audio, video,
14 microwave, or radio transmissions, signals, communications,
15 or services, including the receipt, acquisition,
16 transmission, or decryption of all such communications,
17 transmissions, signals, or services provided by or through
18 any cable television, fiber optic, telephone, satellite,
19 microwave, radio, Internet-based, data transmission, or
20 wireless distribution network, system or facility; or any
21 part, accessory, or component thereof, including any computer
22 circuit, security module, smart card, software, computer
23 chip, electronic mechanism or other component, accessory or
24 part of any communication device which is capable of
25 facilitating the transmission, decryption, acquisition or
26 reception of all such communications, transmissions, signals,
27 or services.

28 "Communication service" means any service lawfully
29 provided for a charge or compensation to facilitate the
30 lawful origination, transmission, emission, or reception of
31 signs, signals, data, writings, images, and sounds or

1 intelligence of any nature by telephone, including cellular
2 telephones or a wire, wireless, radio, electromagnetic,
3 photo-electronic or photo-optical system; and also any
4 service lawfully provided by any radio, telephone, cable
5 television, fiber optic, satellite, microwave, Internet-based
6 or wireless distribution network, system, facility or
7 technology, including, but not limited to, any and all
8 electronic, data, video, audio, Internet access, telephonic,
9 microwave and radio communications, transmissions, signals
10 and services, and any such communications, transmissions,
11 signals and services lawfully provided directly or indirectly
12 by or through any of those networks, systems, facilities or
13 technologies.

14 "Communication service provider" means: (1) any person or
15 entity providing any communication service, whether directly
16 or indirectly, as a reseller, including, but not limited to,
17 a cellular, paging or other wireless communications company
18 or other person or entity which, for a fee, supplies the
19 facility, cell site, mobile telephone switching office or
20 other equipment or communication service; (2) any person or
21 entity owning or operating any cable television, fiber optic,
22 satellite, telephone, wireless, microwave, radio, data
23 transmission or Internet-based distribution network, system
24 or facility; and (3) any person or entity providing any
25 communication service directly or indirectly by or through
26 any such distribution system, network or facility.

27 "Unlawful communication device" means any electronic
28 serial number, mobile identification number, personal
29 identification number or any communication device that is
30 capable of acquiring or facilitating the acquisition of a
31 communication service without the express consent or express
32 authorization of the communication service provider, or that
33 has been altered, modified, programmed or reprogrammed, alone
34 or in conjunction with another communication device or other

1 equipment, to so acquire or facilitate the unauthorized
2 acquisition of a communication service. "Unlawful
3 communication device" also means:

4 (1) any phone altered to obtain service without the
5 express consent or express authorization of the
6 communication service provider, tumbler phone,
7 counterfeit or clone phone, tumbler microchip,
8 counterfeit or clone microchip or other instrument
9 capable of disguising its identity or location or of
10 gaining unauthorized access to a communications system
11 operated by a communication service provider; and

12 (2) any communication device which is capable of,
13 or has been altered, designed, modified, programmed or
14 reprogrammed, alone or in conjunction with another
15 communication device or devices, so as to be capable of,
16 facilitating the disruption, acquisition, receipt,
17 transmission or decryption of a communication service
18 without the express consent or express authorization of
19 the communication service provider, including, but not
20 limited to, any device, technology, product, service,
21 equipment, computer software or component or part
22 thereof, primarily distributed, sold, designed,
23 assembled, manufactured, modified, programmed,
24 reprogrammed or used for the purpose of providing the
25 unauthorized receipt of, transmission of, disruption of,
26 decryption of, access to or acquisition of any
27 communication service provided by any communication
28 service provider.

29 "Manufacture or assembly of an unlawful communication
30 device" means to make, produce or assemble an unlawful
31 communication device or to modify, alter, program or
32 reprogram a communication device to be capable of acquiring,
33 disrupting, receiving, transmitting, or decrypting, or
34 facilitating the acquisition, disruption, receipt,

1 transmission or decryption of, a communication service
2 without the express consent or express authorization of the
3 communication service provider, or to knowingly assist others
4 in those activities.

5 "Unlawful access device" means any type of instrument,
6 device, machine, equipment, technology, or software which is
7 primarily possessed, used, designed, assembled, manufactured,
8 sold, distributed or offered, promoted or advertised for sale
9 for the purpose of defeating or circumventing any technology,
10 device or software, or any component or part thereof, used by
11 the provider, owner or licensee of any communication service
12 or of any data, audio or video programs or transmissions to
13 any such communication, audio or video services, programs or
14 transmissions from unauthorized access, acquisition, receipt,
15 decryption, disclosure, communication, transmission or
16 re-transmission.

17 "Manufacture or assembly of an unlawful access device"
18 means to make, produce or assemble an unlawful access device
19 or to modify, alter, program or re-program any instrument,
20 device, machine, equipment or software so that it is capable
21 of defeating or circumventing any technology, device or
22 software used by the provider, owner or licensee of a
23 communication service or of any data, audio or video programs
24 or transmissions to protect any such communication, data,
25 audio or video services, programs or transmissions from
26 unauthorized access, acquisition, disclosure, receipt,
27 decryption, communication, transmission or re-transmission.

28 (720 ILCS 5/16-19 new)

29 Sec. 16-19. Prohibited acts. A person commits an offense
30 if he or she knowingly:

31 (1) obtains or uses a communication service without the
32 authorization of, or compensation paid to, the communication
33 service provider, or assists or instructs any other person in

1 doing so with intent to defraud the communication service
2 provider;

3 (2) possesses, uses, manufactures, assembles,
4 distributes, leases, transfers, or sells, or offers, promotes
5 or advertises for sale, an unlawful communication device:

6 (A) for the commission of a theft of a
7 communication service or to receive, disrupt, transmit,
8 decrypt, or acquire, or facilitate the receipt,
9 disruption, transmission, decryption or acquisition, of
10 any communication service without the express consent or
11 express authorization of the communication service
12 provider; or

13 (B) to conceal or to assist another to conceal from
14 any communication service provider or from any lawful
15 authority the existence or place of origin or destination
16 of any communication;

17 (3) modifies, alters, programs or reprograms a
18 communication device for the purposes described in
19 subdivision (2)(A) or (2)(B);

20 (4) possesses, uses, manufactures, assembles, leases,
21 distributes, sells, or transfers, or offers, promotes or
22 advertises for sale, use or distribution, any unlawful access
23 device; or

24 (5) possesses, uses, prepares, distributes, gives or
25 otherwise transfers to another or offers, promotes, or
26 advertises for sale, use or distribution any:

27 (A) plans or instructions for making or assembling
28 an unlawful communication or access device, under
29 circumstances evidencing an intent to use or employ the
30 unlawful communication or access device, or to allow the
31 same to be used or employed, for a purpose prohibited by
32 this Section, or knowing or having reason to believe that
33 the plans or instructions are intended to be used for
34 manufacturing or assembling the unlawful communication or

1 access device for a purpose prohibited by this Section;
2 or

3 (B) material, including hardware, cables, tools,
4 data, computer software or other information or
5 equipment, knowing that the purchaser or a third person
6 intends to use the material in the manufacture or
7 assembly of an unlawful communication or access device
8 for a purpose prohibited by this Section.

9 (720 ILCS 5/16-20 new)

10 Sec. 16-20. Criminal penalties.

11 (a) Except for violations of Section 16-19 as provided
12 for in subsection (b) or (c) of this Section, a person who
13 violates Section 16-19 is guilty of a Class A misdemeanor.

14 (b) An offense under Section 16-19 is a Class 4 felony
15 if:

16 (1) the defendant has been convicted previously
17 under Section 16-19 or convicted of any similar crime in
18 this or any federal or other state jurisdiction; or

19 (2) the violation of Section 16-19 involves at
20 least 10, but not more than 50, unlawful communication or
21 access devices.

22 (c) An offense under Section 16-19 is a Class 3 felony
23 if:

24 (1) the defendant has been convicted previously on
25 2 or more occasions for offenses under Section 16-19 or
26 for any similar crime in this or any federal or other
27 state jurisdiction; or

28 (2) the violation of Section 16-19 involves more
29 than 50 unlawful communication or access devices.

30 (d) For purposes of grading an offense based upon a
31 prior conviction under Section 16-19 or for any similar crime
32 under subdivisions (b)(1) and (c)(1) of this Section, a prior
33 conviction shall consist of convictions upon separate

1 indictments or criminal complaints for offenses under Section
2 16-19 or any similar crime in this or any federal or other
3 state jurisdiction.

4 (e) As provided for in subdivisions (b)(1) and (c)(1) of
5 this Section, in grading an offense under Section 16-19 based
6 upon a prior conviction, the term "any similar crime" shall
7 include, but not be limited to, offenses involving theft of
8 service or fraud, including violations of the Cable
9 Communications Policy Act of 1984 (Public Law 98-549, 98
10 Stat. 2779).

11 (f) Separate offenses. For purposes of all criminal
12 penalties or fines established for violations of Section
13 16-19, the prohibited activity established in Section 16-19
14 as it applies to each unlawful communication or access device
15 shall be deemed a separate offense.

16 (g) Fines. For purposes of imposing fines upon
17 conviction of a defendant for an offense under Section 16-19,
18 all fines shall be imposed in accordance with Article 9 of
19 Chapter V of the Unified Code of Corrections.

20 (h) Restitution. The court shall, in addition to any
21 other sentence authorized by law, sentence a person convicted
22 of violating Section 16-19 to make restitution in the manner
23 provided in Article 5 of Chapter V of the Unified Code of
24 Corrections.

25 (i) Forfeiture of unlawful communication or access
26 devices. Upon conviction of a defendant under Section 16-19,
27 the court may, in addition to any other sentence authorized
28 by law, direct that the defendant forfeit any unlawful
29 communication or access devices in the defendant's possession
30 or control which were involved in the violation for which the
31 defendant was convicted.

32 (j) Venue. An offense under Section 16-19 may be deemed
33 to have been committed at either the place where the
34 defendant manufactured or assembled an unlawful communication

1 or access device, or assisted others in doing so, or the
2 place where the unlawful communication or access device was
3 sold or delivered to a purchaser. It is not a defense to a
4 violation of Section 16-19 that some of the acts constituting
5 the offense occurred outside of the State of Illinois.

6 (720 ILCS 5/16-21 new)

7 Sec. 16-21. Civil actions.

8 (a) Any person aggrieved by a violation of Section 16-19
9 may bring a civil action in any court of competent
10 jurisdiction.

11 (b) The court may:

12 (1) grant preliminary and final injunctions to
13 prevent or restrain violations of Section 16-19 without a
14 showing by the plaintiff of special damages, irreparable
15 harm or inadequacy of other legal remedies;

16 (2) at any time while an action is pending, order
17 the impounding, on such terms as it deems reasonable, of
18 any unlawful communication or access device that is in
19 the custody or control of the violator and that the court
20 has reasonable cause to believe was involved in the
21 alleged violation of Section 16-19;

22 (3) award damages as described in subsection (c);

23 (4) in its discretion, award reasonable attorney's
24 fees and costs, including, but not limited to, costs for
25 investigation, testing and expert witness fees, to an
26 aggrieved party who prevails; and

27 (5) as part of a final judgment or decree finding a
28 violation of Section 16-19, order the remedial
29 modification or destruction of any unlawful communication
30 or access device involved in the violation that is in the
31 custody or control of the violator or has been impounded
32 under subdivision (2) of this subsection (b).

33 (c) Types of damages recoverable. Damages awarded by a

1 court under this Section shall be computed as either of the
2 following:

3 (1) Upon his or her election of such damages at any
4 time before final judgment is entered, the complaining
5 party may recover the actual damages suffered by him or
6 her as a result of the violation of Section 16-19 and any
7 profits of the violator that are attributable to the
8 violation and are not taken into account in computing the
9 actual damages. In determining the violator's profits,
10 the complaining party shall be required to prove only the
11 violator's gross revenue, and the violator shall be
12 required to prove his or her deductible expenses and the
13 elements of profit attributable to factors other than the
14 violation; or

15 (2) Upon election by the complaining party at any
16 time before final judgment is entered, that party may
17 recover in lieu of actual damages an award of statutory
18 damages of not less than \$250 and not more than \$10,000
19 for each unlawful communication or access device involved
20 in the action, with the amount of statutory damages to be
21 determined by the court, not the jury, as the court
22 considers just. In any case, if the court finds that any
23 of the violations of Section 16-19 were committed
24 willfully and for purposes of commercial advantage or
25 private financial gain, the court in its discretion may
26 increase the award of statutory damages by an amount of
27 not more than \$50,000 for each unlawful communication or
28 access device involved in the action.

29 (d) For purposes of all civil remedies established for
30 violations of Section 16-19, the prohibited activity
31 established in this Section applies to each unlawful
32 communication or access device and shall be deemed a separate
33 violation.

- 1 (720 ILCS 5/16-10 rep.)
- 2 (720 ILCS 5/16-11 rep.)
- 3 (720 ILCS 5/16-12 rep.)
- 4 (720 ILCS 5/16-13 rep.)

5 Section 10. The Criminal Code of 1961 is amended by
6 repealing Sections 16-10, 16-11, 16-12, and 16-13.