

RECEIVED

1992 MAR 30 PM 4:43

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

---

## ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 569

(By Senator Chofen)

---

PASSED March 7, 1992

In Effect 90 days from Passage

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 569**

(SENATOR CHAFIN, *original sponsor*)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact sections four, nine, fifteen, twenty and twenty-five, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter sixty-one of said code by adding thereto a new article, designated article three-d, all relating to cable television system regulation; concerning the ability of counties to become the cable franchising authorities; waiving certain fees and costs; designating the location of cable company business offices; providing civil penalties for violations of the cable act; requiring prior notice of price increases or retiering of services; defining terms; defining the crime of theft of cable services and providing criminal penalties therefor; defining the crime of selling or transferring products used to acquire unauthorized cable service; and stating the evidentiary requirements of the theft of cable service.

*Be it enacted by the Legislature of West Virginia:*

That sections four, nine, fifteen, twenty and twenty-five,

article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that chapter sixty-one of said code be amended by adding thereto a new article, designated article three-d, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE  
AND ATTORNEY GENERAL; BOARD OF  
PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 18. WEST VIRGINIA CABLE TELEVISION SYSTEMS ACT.**

**§5-18-4. Cable franchise required; franchising authority.**

1 (a) No person may construct, operate or acquire a  
2 cable system, or extend an existing cable system  
3 outside its designated service area, without first  
4 obtaining a cable franchise from a franchising author-  
5 ity as provided in this article.

6 (b) Any person operating a cable system on the  
7 effective date of this article without a franchise shall,  
8 within sixty days of the effective date of this article,  
9 notify the board in writing setting forth: (1) The name,  
10 business address and telephone number of the cable  
11 operator; (2) the principals and ultimate beneficial  
12 owners of the cable system or systems; (3) the geo-  
13 graphic location and service area of any cable system  
14 operated by such person; and (4) the number of  
15 subscribers within the cable system or systems. If the  
16 board shall not have been appointed and organized  
17 within sixty days of the effective date of this article,  
18 then such filing shall be made with the public service  
19 commission where such documents shall be retained  
20 for delivery to the board following the appointment  
21 and organization of its members.

22 (c) The board shall, upon receipt of such informa-  
23 tion, determine the appropriate franchising authority  
24 or authorities for the purposes of the consideration of  
25 the issuance of a franchise to such cable operator or  
26 operators and shall notify the appropriate franchising  
27 authority or authorities and any such cable system

28 operator of the franchise application procedures to be  
29 followed by the respective parties. Any such cable  
30 operator shall, within sixty days of receipt of such  
31 notice from the board, make formal application to the  
32 appropriate franchise authority or authorities for a  
33 franchise in accordance with the provisions of this  
34 article.

35 (d) The franchising authority shall be the municipal-  
36 ity in which a cable system is to be constructed,  
37 operated, acquired or extended, or if there be no such  
38 municipality or if the municipality so elects not to act  
39 as a franchising authority, then the franchising  
40 authority shall be the county commission of the  
41 county in which such cable system is to be con-  
42 structed, operated, acquired or extended: *Provided*,  
43 That nothing herein shall prohibit any county commis-  
44 sion of a county in which a municipality acting as a  
45 franchising authority is located from also acting as a  
46 franchising authority for any cable system to be  
47 constructed, operated, acquired or extended within the  
48 jurisdiction of such county commission, nor prohibit  
49 any county commission of a county acquiring the  
50 franchise authority from a municipality from electing  
51 to transfer such authority to the board.

52 (e) Any municipality or county commission may  
53 elect not to act as a franchising authority, in which  
54 event the franchising authority for any cable system to  
55 be constructed, operated, acquired or extended within  
56 the jurisdiction of such municipality or within the  
57 jurisdiction of such county commission shall be the  
58 board. A county commission acting as a franchise  
59 authority for unincorporated areas of the county may  
60 elect separately to transfer to the board any franchise  
61 authority acquired from a municipality. If any munic-  
62 ipality or county commission so elects, the mayor or  
63 president of the county commission shall certify such  
64 delegation in writing to the presiding officer of the  
65 board. Such election shall be promptly made upon  
66 written request of the board or the cable operator.

**§5-18-15. Transfer of cable franchise.**

1 (a) No cable system and no cable franchise, including  
2 any system without a franchise and any franchise in  
3 existence on the effective date of this article, and  
4 including the rights, privileges and obligations thereof,  
5 may be assigned, sold, leased or otherwise transferred,  
6 voluntarily or involuntarily, directly or indirectly,  
7 including a transfer of control of any cable system,  
8 whether by change in ownership or otherwise, except  
9 upon written application to and approval of the  
10 appropriate franchising authority or authorities. The  
11 form of the application for transfer shall be prescribed  
12 by the board.

13 (b) Notice provisions may be prescribed by the board  
14 for encumbrances creating potential transfers.

15 (c) The procedure for consideration of any transfer  
16 under the provisions of this section shall conform, as  
17 nearly as possible, to the procedures prescribed in  
18 sections nine and ten of this article for the consider-  
19 ation of issuing cable franchises, including the applica-  
20 tion fee therefor.

**§5-18-20. Office operating requirements; office hours.**

1 Each cable operator shall operate a business office in  
2 or near its area of operation as approved by the  
3 franchise authority or the board that shall be open  
4 during normal business hours, and each cable operator  
5 shall operate sufficient telephone lines, including a  
6 toll-free number or any other free calling option, as  
7 approved by the board, staffed by a company customer  
8 service representative during normal business hours.

**§5-18-25. Complaints; violations; penalties.**

1 (a) Subscriber complaints regarding the operation of  
2 a cable system must be made in writing and filed with  
3 the board. The board shall take up such complaints  
4 with the cable operator complained against in an  
5 endeavor to bring about satisfaction of the complaint  
6 without formal hearing.

7 (b) The board shall resolve all complaints, if possible,

8 informally. No form of informal complaint is pre-  
9 scribed, but the writing must contain the essential  
10 elements of a complaint, including the name and  
11 address of the complainant, the correct name of the  
12 cable operator against which the complaint is made, a  
13 clear and concise statement of the facts involved and  
14 a request for affirmative relief.

15 (c) In the event that the board cannot resolve the  
16 complaint to the satisfaction of all parties, the com-  
17 plainant may file a formal request to the board and he  
18 or she is entitled to a hearing before the board, which  
19 hearing shall be conducted in accordance with chapter  
20 twenty-nine-a of the code, and the complainant and  
21 cable operator shall be afforded all rights including the  
22 right of appeal as set forth in said chapter.

23 (d) A cable operator may be subject to a fine or civil  
24 penalty in accordance with subsection (e) hereof, upon  
25 a determination by the board or court that the cable  
26 operator has violated any of the following:

27 (1) The material terms of its cable franchise; or

28 (2) Substantial compliance with this article or rules  
29 or orders prescribed by the board.

30 (e) The board may fine or obtain civil penalties  
31 against a cable operator for each violation of subsec-  
32 tion (d) of this section in an amount not less than fifty  
33 dollars nor more than five hundred dollars for each  
34 violation. Any penalty assessed under this section is in  
35 addition to any other costs, expenses or payments for  
36 which the cable operator is responsible under other  
37 provisions of this section.

38 (f) The board may permit, in lieu of a full hearing  
39 before the board, one of its hearing examiners to  
40 conduct hearings and report its findings to the board.

41 (g) No cable operator shall charge for more than one  
42 outlet per household.

43 (h) No cable operator may raise rates or retier and  
44 charge subscribers without providing to his or her  
45 subscribers sufficient advance written notice and  
46 opportunity to discontinue service.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 3D. THEFT OF CABLE TELEVISION SERVICES.**

#### **§61-3D-1. Definitions.**

1 As used in this article:

2 (1) "Cable system" means any facility within this  
3 state consisting of a set of closed transmission paths  
4 and associated signal generation, reception and control  
5 equipment that is designed to provide cable television  
6 service which includes video programming and which  
7 is provided to multiple subscribers within a commu-  
8 nity, and does not include: (A) A facility that serves  
9 only to retransmit the television signals of one or more  
10 television broadcast stations; (B) a facility that serves  
11 only subscribers in one or more multiple unit dwel-  
12 lings under common ownership, control or manage-  
13 ment, unless that facility or facilities uses any public  
14 right-of-way; or (C) a facility of a public utility subject,  
15 in whole or in part, to the provisions of chapter  
16 twenty-four of this code, except to the extent that  
17 those facilities provide video programming directly to  
18 subscribers.

19 (2) "Cable operator" means any person or group of  
20 persons: (A) Who provides cable service over a cable  
21 system and directly or through one or more affiliates  
22 owns a significant interest in the cable system; or (B)  
23 who otherwise controls or is responsible for, through  
24 any arrangement, the management and operation of a  
25 cable system.

26 (3) "Cable service" means: (A) The one-way trans-  
27 mission to subscribers of video programming or other  
28 programming service; and (B) subscriber interaction,  
29 if any, which is required for the selection of video  
30 programming or other programming service.

31 (4) "Subscriber" means any person who receives  
32 cable television services.

33 (5) "Unauthorized" means that payment of full  
34 compensation for cable television services has been  
35 avoided, or has been sought to be avoided, without the  
36 consent of the supplier of the service.

**§61-3D-2. Acquisition of cable television services.**

1 (a) A person who acquires cable television services  
2 for himself or another, whether through his own  
3 efforts or with the assistance of another, or both, by:

4 (1) Making or maintaining any unauthorized connec-  
5 tion, whether physically, electrically or inductively, to  
6 a distribution or transmission line;

7 (2) Attaching or maintaining the attachment of any  
8 unauthorized device to any cable, wire or other  
9 component of a cable system or to a television receiv-  
10 ing set connected to a cable system;

11 (3) Making or maintaining any unauthorized modifi-  
12 cation or alteration to any device installed by a cable  
13 system operator; or

14 (4) Knowingly permits another person to enter upon  
15 his or her property for the purpose of securing cable  
16 service in an unauthorized manner as described in  
17 subdivision (1), (2) or (3) of this subsection shall be  
18 guilty of a misdemeanor and, upon conviction, shall be  
19 punished in accordance with subsection (c) of this  
20 section.

21 (b) A person who subscribes to and receives cable  
22 television services through an authorized connection  
23 of a television receiving set at his dwelling and, within  
24 his dwelling, makes an authorized or an unauthorized  
25 connection of an additional television receiving set or  
26 sets or audio system which receives cable television  
27 service through such authorized connection, shall not  
28 be guilty of a misdemeanor under subsection (a) of  
29 this section.

30 (c) Any person convicted of a misdemeanor under  
31 subsection (a) of this section shall be subject to the  
32 following penalties:

33 (1) Upon a first conviction under this section, the  
34 defendant shall be fined not less than one hundred  
35 dollars, nor more than two hundred fifty dollars.

36 (2) Upon a second conviction under this section, the  
37 defendant shall be fined not less than two hundred



38 fifty dollars, nor more than five hundred dollars, or  
39 imprisoned in the county jail not more than thirty  
40 days, or both fined and imprisoned.

41 (3) Upon any subsequent conviction in excess of a  
42 second conviction under this section, the defendant  
43 shall be fined not less than five hundred dollars, nor  
44 more than one thousand dollars, or imprisoned in the  
45 county jail not less than thirty days nor more than  
46 sixty days, or both fined and imprisoned.

47 Notwithstanding the provisions of section four,  
48 article eleven-a of this chapter or section two-a, article  
49 three, chapter fifty of this code, the magistrate or  
50 court may order restitution not to exceed the value of  
51 unauthorized cable services received.

**§61-3D-3. Sale or transfer of the device or plan intended for  
acquisition or diversion.**

1 (a) A person who sells, gives or otherwise transfers  
2 to another or offers, advertises or exposes for sale to  
3 another any device, mechanism, tool or printed circuit,  
4 or any kit, plan or instructional procedure for the  
5 making of such device, mechanism, tool or printed  
6 circuit, with the knowledge that another will acquire  
7 cable television services in violation of this article,  
8 shall be guilty of a misdemeanor and shall be punish-  
9 able in accordance with subsection (b) of this section.

10 (b) A person convicted of a misdemeanor under this  
11 section shall be punished as follows:

12 (1) Upon a first conviction under this section, the  
13 defendant shall be fined not less than two hundred  
14 fifty dollars, nor more than five hundred dollars.

15 (2) Upon a second conviction under this section, the  
16 defendant shall be fined not less than five hundred  
17 dollars, nor more than one thousand dollars, or  
18 imprisoned in the county jail not more than thirty  
19 days, or both fined and imprisoned.

20 (3) Upon a third conviction under this section, the  
21 defendant shall be fined not less than five hundred  
22 dollars, nor more than one thousand dollars, or

23 imprisoned in the county jail not less than sixty days,  
24 nor more than one year.

**§61-3D-4. Evidence.**

1 (a) Evidence that: (1) The defendant had possession  
2 of or access to the location of distribution or transmis-  
3 sion lines or other facilities of a cable system which  
4 have been tapped, altered or tampered with or to  
5 which any unauthorized connection has been made or  
6 to which any unauthorized device has been attached;  
7 or (2) the defendant had possession of or access to any  
8 device installed by a cable system operator to which  
9 an unauthorized modification or alteration has been  
10 made, may be used, but shall not be required, to  
11 establish that a person violated this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Homer Leck*  
.....  
Chairman Senate Committee

*Ernest C. Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Harold E. Elden*  
.....  
Clerk of the Senate

*Donald G. Kopf*  
.....  
Clerk of the House of Delegates

*Paul Prudette*  
.....  
President of the Senate  
*W. A. C. C.*  
.....  
Speaker House of Delegates

The within *is approved* this the *30<sup>th</sup>*  
day of *March* ....., 1992.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 5:00pm