WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

Committee Substitute for

SENATE BILL NO. 509

(By Senator Chafee)

PASSED March 7, 1992

In Effect 90 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 cable system, or extend an existing cable system outside its designated service area, without first obtaining a cable franchise from a franchising authority as provided in this article.

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

22 (c) The board shall, upon receipt of such information, determine the appropriate franchising authority or authorities for the purposes of the consideration of the issuance of a franchise to such cable operator or operators and shall notify the appropriate franchising authority or authorities and any such cable system
operator of the franchise application procedures to be followed by the respective parties. Any such cable operator shall, within sixty days of receipt of such notice from the board, make formal application to the appropriate franchise authority or authorities for a franchise in accordance with the provisions of this article.

(d) The franchising authority shall be the municipality in which a cable system is to be constructed, operated, acquired or extended, or if there be no such municipality or if the municipality so elects not to act as a franchising authority, then the franchising authority shall be the county commission of the county in which such cable system is to be constructed, operated, acquired or extended: Provided, That nothing herein shall prohibit any county commission of a county in which a municipality acting as a franchising authority is located from also acting as a franchising authority for any cable system to be constructed, operated, acquired or extended within the jurisdiction of such county commission, nor prohibit any county commission of a county acquiring the franchise authority from a municipality from electing to transfer such authority to the board.

(e) Any municipality or county commission may elect not to act as a franchising authority, in which event the franchising authority for any cable system to be constructed, operated, acquired or extended within the jurisdiction of such municipality or within the jurisdiction of such county commission shall be the board. A county commission acting as a franchise authority for unincorporated areas of the county may elect separately to transfer to the board any franchise authority acquired from a municipality. If any municipality or county commission so elects, the mayor or president of the county commission shall certify such delegation in writing to the presiding officer of the board. Such election shall be promptly made upon written request of the board or the cable operator.
1 (a) No cable system and no cable franchise, including any system without a franchise and any franchise in existence on the effective date of this article, and including the rights, privileges and obligations thereof, may be assigned, sold, leased or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including a transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval of the appropriate franchising authority or authorities. The form of the application for transfer shall be prescribed by the board.
2 (b) Notice provisions may be prescribed by the board for encumbrances creating potential transfers.
3 (c) The procedure for consideration of any transfer under the provisions of this section shall conform, as nearly as possible, to the procedures prescribed in sections nine and ten of this article for the consideration of issuing cable franchises, including the application fee therefor.

§5-18-20. Office operating requirements; office hours.
1 Each cable operator shall operate a business office in or near its area of operation as approved by the franchise authority or the board that shall be open during normal business hours, and each cable operator shall operate sufficient telephone lines, including a toll-free number or any other free calling option, as approved by the board, staffed by a company customer service representative during normal business hours.

§5-18-25. Complaints; violations; penalties.
1 (a) Subscriber complaints regarding the operation of a cable system must be made in writing and filed with the board. The board shall take up such complaints with the cable operator complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.
2 (b) The board shall resolve all complaints, if possible,
informally. No form of informal complaint is prescribed, but the writing must contain the essential elements of a complaint, including the name and address of the complainant, the correct name of the cable operator against which the complaint is made, a clear and concise statement of the facts involved and a request for affirmative relief.

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

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

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

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

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

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

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

(h) No cable operator may raise rates or retreat and charge subscribers without providing to his or her subscribers sufficient advance written notice and opportunity to discontinue service.
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3D. THEFT OF CABLE TELEVISION SERVICES.

§61-3D-1. Definitions.

As used in this article:

1. “Cable system” means any facility within this state consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within a community, and does not include: (A) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless that facility or facilities uses any public right-of-way; or (C) a facility of a public utility subject, in whole or in part, to the provisions of chapter twenty-four of this code, except to the extent that those facilities provide video programming directly to subscribers.

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

3. “Cable service” means: (A) The one-way transmission to subscribers of video programming or other programming service; and (B) subscriber interaction, if any, which is required for the selection of video programming or other programming service.

4. “Subscriber” means any person who receives cable television services.

5. “Unauthorized” means that payment of full compensation for cable television services has been avoided, or has been sought to be avoided, without the consent of the supplier of the service.
§61-3D-2. Acquisition of cable television services.

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

(1) Making or maintaining any unauthorized connection, whether physically, electrically or inductively, to a distribution or transmission line;

(2) Attaching or maintaining the attachment of any unauthorized device to any cable, wire or other component of a cable system or to a television receiving set connected to a cable system;

(3) Making or maintaining any unauthorized modification or alteration to any device installed by a cable system operator; or

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

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

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

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

(2) Upon a second conviction under this section, the 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
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
imprisoned in the county jail not less than sixty days, nor more than one year.


(a) Evidence that: (1) The defendant had possession of or access to the location of distribution or transmission lines or other facilities of a cable system which have been tapped, altered or tampered with or to which any unauthorized connection has been made or to which any unauthorized device has been attached; or (2) the defendant had possession of or access to any device installed by a cable system operator to which an unauthorized modification or alteration has been made, may be used, but shall not be required, to establish that a person violated this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

\[\text{Somer Clark} \]
Chairman Senate Committee

\[\text{Ernest E. Moore} \]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

\[\text{Clerk of the Senate} \]

\[\text{Donald H. Kerr} \]
Clerk of the House of Delegates

\[\text{President of the Senate} \]

\[\text{Speaker House of Delegates} \]

The within was approved this the 30th day of 

\[\text{March} \]

\[\text{1992} \]

\[\text{Winston Capron} \]
Governor