

COMMITTEE REPORT
SENATE

FURTHER:

FINANCE

2/20/84

Date

MARCH 23, 1984

Mr. President

The Committee on JUDICIARY considered SB 504

unauthorized use of computer and telecommunications service.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/~~or~~ adopt CS for SB 504 (FUD)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

[Signature]
[Signature]

Bill Ray
Chairman
DO PASS
Chairman recommendation

Introduced: 2/20/84
Referred: Judiciary and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 504

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the unauthorized use of computers
7 and telecommunications services."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. As 11.46.200(a) is amended by adding a new paragraph to
10 read:

11 (3) the person obtains the use of computer time, a computer
12 system, or a computer network, or any part of a computer system or
13 network, with reckless disregard that the use by that person is un-
14 authorized.

15 * Sec. 2. As 11.46.200 is amended by adding a new subsection to read:

16 (c) In a prosecution for theft based on the theft of cable,
17 microwave, subscription, or pay television or other telecommunications
18 service, it is an affirmative defense that the device used to obtain
19 the service was designed to intercept electromagnetic signals, includ-
20 ing the device commonly referred to as a "home earth station," and
21 that

22 (1) the device was acquired by the person before the effec-
23 tive date of this Act, and that after that date the device was not
24 used for a commercial purpose; or

25 (2) when the person first acquired the device

26 (A) the service was not available to that person
27 through the payment of a lawful fee to a commercial provider of
28 the service; and

29 (B) after the service became available from a

1 commercial provider through the payment of a lawful fee, the
2 person did not use the service for a commercial purpose.

3 * Sec. 3. AS 11.46.482(a) is amended by adding a new paragraph to read:

4 (5) that person sells, leases, trades, or offers for sale,
5 lease, or trade, any device designed to intercept cable, microwave,
6 subscription, or pay television or other telecommunications service
7 with intent to allow a user to avoid the payment of a lawful fee for
8 the service.

9 * Sec. 4. AS 11.46.484(a) is amended by adding a new paragraph to read:

10 (5) that person intentionally accesses a computer, computer
11 system, computer network, or any part of a computer system or network.

12 * Sec. 5. AS 11.46.484 is amended by adding a new subsection to read:

13 (d) As used in this section, "access" means to instruct, commu-
14 nicate with, or otherwise obtain the ability to use the resources of a
15 computer, computer system, computer network, or any part of a computer
16 system or network.

17 * Sec. 6. AS 11.46.990 is amended by adding new paragraphs to read:

18 (8) "computer" means an electronic device that perform:
19 logical, arithmetic, and memory functions by the manipulation of elec-
20 tronic or magnetic impulses;

21 (9) "computer network" means the interconnection of commu-
22 nication lines, including by microwave or other means of electronic
23 communication, between computers or between computers and remote
24 terminals;

25 (10) "computer system" means a set of related computer
26 equipment, devices, and software;

27 * Sec. 7. AS 11.81.900(b)(51) is amended to read:

28 (51) "services" includes labor; [,] professional services;
29 [,] transportation; [,] telephone or other communications service; [,]

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entertainment, including cable, microwave, subscription, or pay television or other telecommunications service; the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere; [,] admission to exhibitions; [,] the use of a computer, computer time, a computer system, a computer network, or any part of a computer system or network; and the supplying of equipment for use;

Offered: 3/26/84
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 504 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the unauthorized use of tele-
7 communications services."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 11.46.200 is amended by adding a new subsection to
10 read:
11 (c) A person may not be prosecuted under this section for theft
12 of cable, microwave, subscription, or pay television or other tele-
13 communications service if the service was obtained through the use of
14 a device designed and used to intercept electromagnetic signals di-
15 rectly from a satellite, including a device commonly referred to as a
16 home earth station.
17 * Sec. 2. AS 11.46.484(a) is amended to read:
18 (a) A person commits the crime of criminal mischief in the third
19 degree if, having no right to do so or any reasonable ground to be-
20 lieve the person has such a right
21 (1) with intent to damage property of another, the person
22 damages property of another in an amount of \$50 or more but less than
23 \$500;
24 (2) the person drives, tows away, or takes the propelled
25 vehicle of another;
26 (3) having custody of a propelled vehicle under a written
27 agreement with the owner of the vehicle that [WHICH] includes an
28 agreement to return the ven^d to the owner at a specified time, the
29 person knowingly retains or withhold^s possession of the vehicle

1 without the consent of the owner for so long a period beyond the time
2 specified as to render the retention or possession of the vehicle an
3 unreasonable deviation from the agreement; [OR]

4 (4) the person tampers with a fire protection device in a
5 building that [WHICH] is a public place; or

6 (5) the person uses a device to descramble an electronic
7 signal that has been scrambled to prevent unauthorized receipt or
8 viewing of the signal, including the unauthorized use of a device
9 commonly referred to as a descrambler.

10 * Sec. 3. AS 11.81.900(b)(51) is amended to read:

11 (51) "services" includes labor, professional services,
12 transportation, telephone or other communications service, entertain-
13 ment, including cable, subscription, or pay television or other tele-
14 communications service, the supplying of food, lodging, or other
15 accommodations in hotels, restaurants, or elsewhere, admission to
16 exhibitions, and the supplying of equipment for use;



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

see 504

February 20, 1984

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that strengthens and clarifies existing law regarding two modern forms of stealing: unauthorized access to computers and theft of telecommunications services. Particularly with regard to computer crime, a subject that has recently received substantial national public attention, existing statutes might be inadequate to assure successful prosecution in some areas.

Existing law provides adequate coverage when a person uses a computer to aid in the commission of a crime, damages or obtains information stored in a computer without proper authorization, or actually steals computer equipment. In cases involving unauthorized access to or unauthorized use of computers, however, existing law is inadequate in its coverage. This bill addresses these inadequacies by specifically including the theft of computer services, including the unauthorized use of computer time, within the definition of "theft" in the Criminal Code. The penalty for this form of theft will be based on the same classification structure applicable to all other theft offenses. The value of the computer services unlawfully obtained will determine the degree of crime that is committed. For example, the theft of computer services having a value of \$500 or more will be a class C felony, punishable by a maximum term of imprisonment of five years and a \$50,000 fine, under sec. 1 of this bill and existing AS 11.46.130.

In some cases, the state may only be able to establish that the person gained unauthorized access to the computer, but did not actually use the computer for personal purposes nor take or damage information stored in the computer. In this case, prosecution may be brought under sec. 4 of the bill which classifies this conduct as a form of criminal mischief in the third degree, a class A misdemeanor punishable by a maximum sentence of 1 year imprisonment and a \$5,000 fine. This penalty would help deter unauthorized entry into a computer system through the breaking of an access code, conduct which is commonly referred to as "hacking."

The second major aspect of the bill is its provisions clarifying the law on the theft of telecommunications services. Under existing law, there is no specific coverage of theft of commercially provided telecommunications services, such as cable television. While it can be argued that some forms of telecommunications theft are already prohibited by existing law, police and prosecutors have been understandably reluctant to proceed in this area in the absence of specific legislative direction.

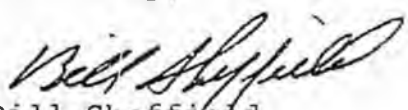
The provisions of this bill pertaining to theft of telecommunications services are aimed primarily at the person who sells a device that is designed to allow the user to defraud the provider of a commercial telecommunication service of the fee that has been established for the service. The person who sells or offers to sell these devices is guilty, under sec. 3 of the bill, of criminal mischief in the second degree, a class C felony. On the other hand, the person who actually uses the device commits "theft of services" by virtue of the inclusion of telecommunications services within the definition of "services" in sec. 7 of the bill. This definition will permit prosecution under the existing theft of services statute, AS 11.46.200(a)(1), which prohibits a person from obtaining, through deception, services that are only offered to the public for a fee. The penalty for this form of theft depends on the value of the services that were obtained. If, for example, the unauthorized device is used for only one month to avoid a monthly fee of \$40, theft in the fourth degree, a class B misdemeanor, has occurred since the value of the service obtained was less than \$50. See AS 11.46.150. On the other hand, if the device is maintained for two years, the crime of theft in the second degree, a class C felony, has occurred, since the value of the service obtained was more than \$500. See AS 11.46.-130.

26 564

Similar telecommunications legislation was considered by the legislature in 1982. That legislation passed the Senate, but failed to receive approval in the House because of the legislator's concern that it would make "criminals" out of Alaskans who had obtained home earth stations to receive television coverage at a time when their area was not served by commercial telecommunications companies. This bill attempts to address that concern in sec. 2, which recognizes an affirmative defense to the crime of theft of services in two situations. The first involves the person who purchased a "home earth station" before the effective date of this legislation, assuming that the use of the device did not violate Alaska law. If the person uses the device only for personal purposes after the effective date of this Act, that person may not be convicted of a crime. The second defense allows a person to acquire a home earth station at any time if commercial telecommunications services are not available to that person through the payment of a fee, so long as the person uses the device only for noncommercial purposes once commercial service becomes available.

The combined effect of both defenses is to provide a person who bought a home earth station or similar device before the effective date of this Act, or before pay TV services were available in his area, and who uses the device solely for personal purposes, may not be convicted of a crime. Some may argue that it is unfair to exclude this conduct from criminal liability through a "grandfather" clause. The proposed defenses, however, may be the only equitable way to treat persons who invested substantial sums of money to purchase an earth station before a specific state law prohibited using the station to receive telecommunications services without the payment of a fee to the provider of the service.

Sincerely,



Bill Sheffield
Governor

FR accompanied
sent into
Commissioner

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 504

Title: "...unauthorized use of computer and telecomm. svcs."

Sponsor: by request of the Gov.

Requestor: OMB - Gov.'s Off.

Date of Request: 2/15/84

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: _____

Admin. of Justice

BRU, Program or Subprogram(s) Affected: _____

Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues Phone: 465-3672
 Division: Administrative Services Division Date: 2-15-84

Approved by Richard I. Pegues Commissioner: Norman C. Gorsuch Date: 2-15-84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis

February 15, 1984

This bill strengthens and clarifies existing law regarding two modern forms of stealing; unauthorized access to computers and theft of telecommunications services. The bill incorporates the theft of computer services, including computer time, within the definition of Theft in the Criminal Code. The bill also includes telecommunications services within the definition of "services" in the Theft of Services statute. Although enactment of the bill will result in additional prosecutions, the Department of Law does not believe that their number will have a fiscal impact, and any new prosecutions can be absorbed using existing prosecution resources.

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: 51504
 Title: "...unauthorized use of computer and telecomm. svcs."
 Sponsor: by request of the Gov.
 Requestor: OMB - Gov.'s Off.
 Date of Request: 2/15/84

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Admin. of Justice
 BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2-15-84
 Approved by Commissioner: Norman C. Gorsuch Date: 2-15-84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Fiscal Note
Analysis

February 15, 1984

This bill strengthens and clarifies existing law regarding two modern forms of stealing; unauthorized access to computers and theft of telecommunications services. The bill incorporates the theft of computer services, including computer time, within the definition of Theft in the Criminal Code. The bill also includes telecommunications services within the definition of "services" in the Theft of Services statute. Although enactment of the bill will result in additional prosecutions, the Department of Law does not believe that their number will have a fiscal impact, and any new prosecutions can be absorbed using existing prosecution resources.