

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1726 Session of
1989

INTRODUCED BY GAMBLE, BILLOW, HERMAN, LANGTRY, FOX, BOYES,
GIGLIOTTI, VEON, MICHLOVIC, VROON, LAUGHLIN, PISTELLA,
MORRIS, MRKONIC, LEH, BARLEY, KASUNIC, SERAFINI, GEIST,
PESCI, E. Z. TAYLOR, PETRARCA, DeLUCA, LEVDANSKY, STABACK,
FARGO, RITTER AND OLASZ, JUNE 20, 1989

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 20, 1989

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further restricting the sale of
3 certain intercepting devices.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Sections 5705 and 5725 of Title 18 of the
7 Pennsylvania Consolidated Statutes, amended October 21, 1988
8 (P.L.1000, No.115), are amended to read:

9 § 5705. Possession, sale, distribution, manufacture or
10 advertisement of electronic, mechanical or other
11 devices.

12 Except as otherwise specifically provided in section 5706
13 (relating to exceptions to prohibitions in possession, sale,
14 distribution, manufacture or advertisement of electronic,
15 mechanical or other devices), a person is guilty of a felony of
16 the third degree if he does any of the following:

17 (1) Intentionally possesses an electronic, mechanical or

1 other device, knowing or having reason to know that the
2 design of such device renders it primarily useful for the
3 purpose of the surreptitious interception of a wire,
4 electronic or oral communication.

5 (2) Intentionally sells, transfers or distributes an
6 electronic, mechanical or other device, knowing or having
7 reason to know that the design of such device renders it
8 primarily useful for the purpose of the surreptitious
9 interception of a wire, electronic or oral communication.

10 (3) Intentionally manufactures or assembles an
11 electronic, mechanical or other device, knowing or having
12 reason to know that the design of such device renders it
13 primarily useful for the purpose of the surreptitious
14 interception of a wire, electronic or oral communication.

15 (4) Intentionally places in any newspaper, magazine,
16 handbill, or other publication any advertisement of an
17 electronic, mechanical or other device, knowing or having
18 reason to know that the design of such device renders it
19 primarily useful for the purpose of the surreptitious
20 interception of a wire, electronic or oral communication or
21 of an electronic, mechanical or other device where such
22 advertisement promotes the use of such device for the purpose
23 of the surreptitious interception of a wire, electronic or
24 oral communication.

25 (5) Manufactures, sells, advertises or transfers any
26 voice-activated electronic, mechanical or other recording
27 device to any person other than a law enforcement agency
28 without a warning label indicating that it is illegal to tape
29 another's conversation without his knowledge and indicating
30 the penalty and without a mechanism which would beep

1 continuously throughout the recording.

2 § 5725. Civil action for unlawful interception, disclosure or
3 use of wire, electronic or oral communication.

4 (a) Cause of action.--Any person whose wire, electronic or
5 oral communication is intercepted, disclosed or used in
6 violation of this chapter shall have a civil cause of action
7 against any person who intercepts, discloses or uses or procures
8 any other person to intercept, disclose or use, such
9 communication or who manufactures, sells, advertises or
10 transfers any voice-activated recording device in violation of
11 this chapter; and shall be entitled to recover from any such
12 person:

13 (1) Actual damages, but not less than liquidated damages
14 computed at the rate of \$100 a day for each day of violation,
15 or \$1,000, whichever is higher.

16 (2) Punitive damages.

17 (3) A reasonable attorney's fee and other litigation
18 costs reasonably incurred.

19 (b) Waiver of sovereign immunity.--To the extent that the
20 Commonwealth and any of its officers, officials or employees
21 would be shielded from liability under this section by the
22 doctrine of sovereign immunity, such immunity is hereby waived
23 for the purposes of this section.

24 (c) Defense.--It is a defense to an action brought pursuant
25 to subsection (a) that the actor acted in good faith reliance on
26 a court order or the provisions of this chapter.

27 Section 2. This act shall take effect in 60 days.