

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 976 Session of
2001

INTRODUCED BY HESS, SATHER, FAIRCHILD, FLEAGLE, SAYLOR, LEDERER,
CAPPABIANCA, GEORGE, R. MILLER, STERN, YEWIC, GEIST, WILT,
WOJNAROSKI, HORSEY, SHANER, WANSACZ, HARHAI AND MAHER,
MARCH 14, 2001

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,
OCTOBER 8, 2002

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, ~~further providing for theft of~~ <—
3 ~~services.~~ DEFINING "SUSPECTED CRIMINAL ACTIVITY" FOR PURPOSES <—
4 OF WIRETAPPING AND ELECTRONIC SURVEILLANCE; FURTHER PROVIDING
5 FOR CERTAIN EXCEPTIONS, FOR ORDER AUTHORIZING INTERCEPTION OF
6 WIRE, ELECTRONIC OR ORAL COMMUNICATIONS, FOR APPLICATION FOR
7 ORDER AND FOR EMERGENCY SITUATIONS.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 ~~Section 1. Section 3926 of Title 18 of the Pennsylvania~~ <—
11 ~~Consolidated Statutes is amended by adding a subsection to read:~~
12 ~~§ 3926. Theft of services.~~

13 * * *

14 ~~(f.1) Theft of gasoline. If a person is convicted of retail~~
15 ~~theft of gasoline under this section, the court shall, in~~
16 ~~addition to any other penalty authorized by law, order the~~
17 ~~operating privilege of the person suspended. A copy of the order~~
18 ~~shall be transmitted to the Department of Transportation. The~~

~~duration of the suspension shall be as follows:~~

~~(1) For a first offense, a period of 60 days from the date of suspension.~~

~~(2) For a second offense, a period of 180 days from the date of suspension.~~

~~(3) For a third and subsequent offense, a period of one year from the date of suspension. Reinstatement of operating privilege shall be governed by 75 Pa.C.S. § 1545 (relating to restoration of operating privilege).~~

~~* * *~~

SECTION 1. SECTION 5702 OF TITLE 18 OF THE PENNSYLVANIA
CONSOLIDATED STATUTES IS AMENDED BY ADDING A DEFINITION TO READ:
§ 5702. DEFINITIONS.

AS USED IN THIS CHAPTER, THE FOLLOWING WORDS AND PHRASES
SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
CONTEXT CLEARLY INDICATES OTHERWISE:

* * *

"SUSPECTED CRIMINAL ACTIVITY." A PARTICULAR OFFENSE THAT HAS
BEEN, IS OR IS ABOUT TO OCCUR AS SET FORTH UNDER SECTION
5709(3)(II) (RELATING TO APPLICATION FOR ORDER), ANY
COMMUNICATIONS TO BE INTERCEPTED AS SET FORTH UNDER SECTION
5709(3)(III), OR ANY OF THE CRIMINAL ACTIVITY SET FORTH UNDER
SECTION 5709(3)(IV) ESTABLISHING PROBABLE CAUSE FOR THE ISSUANCE
OF AN ORDER.

* * *

SECTION 2. SECTIONS 5706(B)(2), 5708, 5709 AND 5713(A) OF
TITLE 18 ARE AMENDED TO READ:

§ 5706. EXCEPTIONS TO PROHIBITIONS IN POSSESSION, SALE,
DISTRIBUTION, MANUFACTURE OR ADVERTISEMENT OF
ELECTRONIC, MECHANICAL OR OTHER DEVICES.

1 * * *

2 (B) RESPONSIBILITY.--

3 * * *

4 (2) THE DIVISION OR BUREAU OR SECTION OF THE
5 PENNSYLVANIA STATE POLICE RESPONSIBLE FOR CONDUCTING THE
6 TRAINING IN THE TECHNICAL ASPECTS OF WIRETAPPING AND
7 ELECTRONIC SURVEILLANCE AS REQUIRED BY SECTION 5724 (RELATING
8 TO TRAINING) MAY BUY AND POSSESS ANY ELECTRONIC, MECHANICAL
9 OR OTHER DEVICE WHICH IS TO BE USED BY INVESTIGATIVE OR LAW
10 ENFORCEMENT OFFICERS FOR PURPOSES OF INTERCEPTION AS
11 AUTHORIZED UNDER SECTION 5704(2), (5) AND (12), 5712, 5713 OR
12 5713.1 FOR THE PURPOSE OF TRAINING. HOWEVER, ANY ELECTRONIC,
13 MECHANICAL OR OTHER DEVICE BOUGHT OR POSSESSED UNDER THIS
14 PROVISION MAY BE LOANED TO OR USED BY INVESTIGATIVE OR LAW
15 ENFORCEMENT OFFICERS FOR PURPOSES OF INTERCEPTION AS
16 AUTHORIZED UNDER SECTION 5704(2), (5) AND (12), 5712, 5713 OR
17 5713.1 ONLY UPON WRITTEN APPROVAL BY THE ATTORNEY GENERAL OR
18 A DEPUTY ATTORNEY GENERAL DESIGNATED IN WRITING BY THE
19 ATTORNEY GENERAL OR THE DISTRICT ATTORNEY OR AN ASSISTANT
20 DISTRICT ATTORNEY DESIGNATED IN WRITING BY THE DISTRICT
21 ATTORNEY OF THE COUNTY WHEREIN [THE INTERCEPTION IS TO BE
22 MADE] THE SUSPECTED CRIMINAL ACTIVITY HAS BEEN, IS OR IS
23 ABOUT TO OCCUR.

24 * * *

25 § 5708. ORDER AUTHORIZING INTERCEPTION OF WIRE, ELECTRONIC OR
26 ORAL COMMUNICATIONS.

27 THE ATTORNEY GENERAL, OR, DURING THE ABSENCE OR INCAPACITY OF
28 THE ATTORNEY GENERAL, A DEPUTY ATTORNEY GENERAL DESIGNATED IN
29 WRITING BY THE ATTORNEY GENERAL, OR THE DISTRICT ATTORNEY OR,
30 DURING THE ABSENCE OR INCAPACITY OF THE DISTRICT ATTORNEY, AN

1 ASSISTANT DISTRICT ATTORNEY DESIGNATED IN WRITING BY THE
2 DISTRICT ATTORNEY OF THE COUNTY WHEREIN [THE INTERCEPTION IS TO
3 BE MADE] THE SUSPECTED CRIMINAL ACTIVITY HAS BEEN, IS OR IS
4 ABOUT TO OCCUR, MAY MAKE WRITTEN APPLICATION TO ANY SUPERIOR
5 COURT JUDGE FOR AN ORDER AUTHORIZING THE INTERCEPTION OF A WIRE,
6 ELECTRONIC OR ORAL COMMUNICATION BY THE INVESTIGATIVE OR LAW
7 ENFORCEMENT OFFICERS OR AGENCY HAVING RESPONSIBILITY FOR AN
8 INVESTIGATION INVOLVING SUSPECTED CRIMINAL ACTIVITIES WHEN SUCH
9 INTERCEPTION MAY PROVIDE EVIDENCE OF THE COMMISSION OF ANY OF
10 THE FOLLOWING OFFENSES, OR MAY PROVIDE EVIDENCE AIDING IN THE
11 APPREHENSION OF THE PERPETRATOR OR PERPETRATORS OF ANY OF THE
12 FOLLOWING OFFENSES:

13 (1) UNDER THIS TITLE:

14 SECTION 911 (RELATING TO CORRUPT ORGANIZATIONS)

15 SECTION 2501 (RELATING TO CRIMINAL HOMICIDE)

16 SECTION 2502 (RELATING TO MURDER)

17 SECTION 2503 (RELATING TO VOLUNTARY MANSLAUGHTER)

18 SECTION 2702 (RELATING TO AGGRAVATED ASSAULT)

19 SECTION 2706 (RELATING TO TERRORISTIC THREATS)

20 SECTION 2709(B) (RELATING TO HARASSMENT AND STALKING)

21 SECTION 2716 (RELATING TO WEAPONS OF MASS

22 DESTRUCTION)

23 SECTION 2901 (RELATING TO KIDNAPPING)

24 SECTION 3121 (RELATING TO RAPE)

25 SECTION 3123 (RELATING TO INVOLUNTARY DEVIATE SEXUAL
26 INTERCOURSE)

27 SECTION 3124.1 (RELATING TO SEXUAL ASSAULT)

28 SECTION 3125 (RELATING TO AGGRAVATED INDECENT
29 ASSAULT)

30 SECTION 3301 (RELATING TO ARSON AND RELATED OFFENSES)

1 SECTION 3302 (RELATING TO CAUSING OR RISKING
2 CATASTROPHE)

3 SECTION 3502 (RELATING TO BURGLARY)

4 SECTION 3701 (RELATING TO ROBBERY)

5 SECTION 3921 (RELATING TO THEFT BY UNLAWFUL TAKING OR
6 DISPOSITION)

7 SECTION 3922 (RELATING TO THEFT BY DECEPTION)

8 SECTION 3923 (RELATING TO THEFT BY EXTORTION)

9 SECTION 4701 (RELATING TO BRIBERY IN OFFICIAL AND
10 POLITICAL MATTERS)

11 SECTION 4702 (RELATING TO THREATS AND OTHER IMPROPER
12 INFLUENCE IN OFFICIAL AND POLITICAL MATTERS)

13 SECTION 5512 (RELATING TO LOTTERIES, ETC.)

14 SECTION 5513 (RELATING TO GAMBLING DEVICES, GAMBLING,
15 ETC.)

16 SECTION 5514 (RELATING TO POOL SELLING AND
17 BOOKMAKING)

18 SECTION 5516 (RELATING TO FACSIMILE WEAPONS OF MASS
19 DESTRUCTION)

20 SECTION 6318 (RELATING TO UNLAWFUL CONTACT OR
21 COMMUNICATION WITH MINOR)

22 (2) UNDER THIS TITLE, WHERE SUCH OFFENSE IS DANGEROUS TO
23 LIFE, LIMB OR PROPERTY AND PUNISHABLE BY IMPRISONMENT FOR
24 MORE THAN ONE YEAR:

25 SECTION 910 (RELATING TO MANUFACTURE, DISTRIBUTION OR
26 POSSESSION OF DEVICES FOR THEFT OF TELECOMMUNICATIONS
27 SERVICES)

28 SECTION 3925 (RELATING TO RECEIVING STOLEN PROPERTY)

29 SECTION 3926 (RELATING TO THEFT OF SERVICES)

30 SECTION 3927 (RELATING TO THEFT BY FAILURE TO MAKE

1 REQUIRED DISPOSITION OF FUNDS RECEIVED)

2 SECTION 3933 (RELATING TO UNLAWFUL USE OF COMPUTER)

3 SECTION 4108 (RELATING TO COMMERCIAL BRIBERY AND
4 BREACH OF DUTY TO ACT DISINTERESTEDLY)

5 SECTION 4109 (RELATING TO RIGGING PUBLICLY EXHIBITED
6 CONTEST)

7 SECTION 4117 (RELATING TO INSURANCE FRAUD)

8 SECTION 4305 (RELATING TO DEALING IN INFANT CHILDREN)

9 SECTION 4902 (RELATING TO PERJURY)

10 SECTION 4909 (RELATING TO WITNESS OR INFORMANT TAKING
11 BRIBE)

12 SECTION 4911 (RELATING TO TAMPERING WITH PUBLIC
13 RECORDS OR INFORMATION)

14 SECTION 4952 (RELATING TO INTIMIDATION OF WITNESSES
15 OR VICTIMS)

16 SECTION 4953 (RELATING TO RETALIATION AGAINST WITNESS
17 OR VICTIM)

18 SECTION 5101 (RELATING TO OBSTRUCTING ADMINISTRATION
19 OF LAW OR OTHER GOVERNMENTAL FUNCTION)

20 SECTION 5111 (RELATING TO DEALING IN PROCEEDS OF
21 UNLAWFUL ACTIVITIES)

22 SECTION 5121 (RELATING TO ESCAPE)

23 SECTION 5504 (RELATING TO HARASSMENT BY COMMUNICATION
24 OR ADDRESS)

25 SECTION 5902 (RELATING TO PROSTITUTION AND RELATED
26 OFFENSES)

27 SECTION 5903 (RELATING TO OBSCENE AND OTHER SEXUAL
28 MATERIALS AND PERFORMANCES)

29 SECTION 7313 (RELATING TO BUYING OR EXCHANGING
30 FEDERAL FOOD ORDER COUPONS, STAMPS, AUTHORIZATION CARDS

OR ACCESS DEVICES)

(3) UNDER THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, WHERE SUCH OFFENSE IS DANGEROUS TO LIFE, LIMB OR PROPERTY AND PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR:

SECTION 1272 (RELATING TO SALES OF UNSTAMPED CIGARETTES)

SECTION 1273 (RELATING TO POSSESSION OF UNSTAMPED CIGARETTES)

SECTION 1274 (RELATING TO COUNTERFEITING)

(4) ANY OFFENSE SET FORTH UNDER SECTION 13(A) OF THE ACT OF APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT, NOT INCLUDING THE OFFENSE DESCRIBED IN CLAUSE (31) OF SECTION 13(A).

(5) ANY OFFENSE SET FORTH UNDER THE ACT OF NOVEMBER 15, 1972 (P.L.1227, NO.272).

(6) ANY CONSPIRACY TO COMMIT ANY OF THE OFFENSES SET FORTH IN THIS SECTION.

(7) UNDER THE ACT OF NOVEMBER 24, 1998 (P.L.874, NO.110), KNOWN AS THE MOTOR VEHICLE CHOP SHOP AND ILLEGALLY OBTAINED AND ALTERED PROPERTY ACT.

§ 5709. APPLICATION FOR ORDER.

EACH APPLICATION FOR AN ORDER OF AUTHORIZATION TO INTERCEPT A WIRE, ELECTRONIC OR ORAL COMMUNICATION SHALL BE MADE IN WRITING UPON THE PERSONAL OATH OR AFFIRMATION OF THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY OF THE COUNTY WHEREIN [THE INTERCEPTION IS TO BE MADE] THE SUSPECTED CRIMINAL ACTIVITY HAS BEEN, IS OR IS ABOUT TO OCCUR AND SHALL CONTAIN ALL OF THE FOLLOWING:

(1) A STATEMENT OF THE AUTHORITY OF THE APPLICANT TO MAKE SUCH APPLICATION.

1 (2) A STATEMENT OF THE IDENTITY AND QUALIFICATIONS OF
2 THE INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS OR AGENCY FOR
3 WHOM THE AUTHORITY TO INTERCEPT A WIRE, ELECTRONIC OR ORAL
4 COMMUNICATION IS SOUGHT.

5 (3) A SWORN STATEMENT BY THE INVESTIGATIVE OR LAW
6 ENFORCEMENT OFFICER WHO HAS KNOWLEDGE OF RELEVANT INFORMATION
7 JUSTIFYING THE APPLICATION, WHICH SHALL INCLUDE:

8 (I) THE IDENTITY OF THE PARTICULAR PERSON, IF KNOWN,
9 COMMITTING THE OFFENSE AND WHOSE COMMUNICATIONS ARE TO BE
10 INTERCEPTED.

11 (II) THE DETAILS AS TO THE PARTICULAR OFFENSE THAT
12 HAS BEEN, IS BEING, OR IS ABOUT TO BE COMMITTED.

13 (III) THE PARTICULAR TYPE OF COMMUNICATION TO BE
14 INTERCEPTED.

15 (IV) A SHOWING THAT THERE IS PROBABLE CAUSE TO
16 BELIEVE THAT SUCH COMMUNICATION WILL BE COMMUNICATED ON
17 THE WIRE COMMUNICATION FACILITY INVOLVED OR AT THE
18 PARTICULAR PLACE WHERE THE ORAL COMMUNICATION IS TO BE
19 INTERCEPTED.

20 (V) THE CHARACTER AND LOCATION OF THE PARTICULAR
21 WIRE COMMUNICATION FACILITY INVOLVED OR THE PARTICULAR
22 PLACE WHERE THE ORAL COMMUNICATION IS TO BE INTERCEPTED.

23 (VI) A STATEMENT OF THE PERIOD OF TIME FOR WHICH THE
24 INTERCEPTION IS REQUIRED TO BE MAINTAINED, AND, IF THE
25 CHARACTER OF THE INVESTIGATION IS SUCH THAT THE
26 AUTHORIZATION FOR INTERCEPTION SHOULD NOT AUTOMATICALLY
27 TERMINATE WHEN THE DESCRIBED TYPE OF COMMUNICATION HAS
28 BEEN FIRST OBTAINED, A PARTICULAR STATEMENT OF FACTS
29 ESTABLISHING PROBABLE CAUSE TO BELIEVE THAT ADDITIONAL
30 COMMUNICATIONS OF THE SAME TYPE WILL OCCUR THEREAFTER.

(VII) A PARTICULAR STATEMENT OF FACTS SHOWING THAT OTHER NORMAL INVESTIGATIVE PROCEDURES WITH RESPECT TO THE OFFENSE HAVE BEEN TRIED AND HAVE FAILED, OR REASONABLY APPEAR TO BE UNLIKELY TO SUCCEED IF TRIED OR ARE TOO DANGEROUS TO EMPLOY.

(4) WHERE THE APPLICATION IS FOR THE RENEWAL OR EXTENSION OF AN ORDER, A PARTICULAR STATEMENT OF FACTS SHOWING THE RESULTS THUS FAR OBTAINED FROM THE INTERCEPTION, OR A REASONABLE EXPLANATION OF THE FAILURE TO OBTAIN SUCH RESULTS.

(5) A COMPLETE STATEMENT OF THE FACTS CONCERNING ALL PREVIOUS APPLICATIONS, KNOWN TO THE APPLICANT MADE TO ANY COURT FOR AUTHORIZATION TO INTERCEPT A WIRE, ELECTRONIC OR ORAL COMMUNICATION INVOLVING ANY OF THE SAME FACILITIES OR PLACES SPECIFIED IN THE APPLICATION OR INVOLVING ANY PERSON WHOSE COMMUNICATION IS TO BE INTERCEPTED, AND THE ACTION TAKEN BY THE COURT ON EACH SUCH APPLICATION.

(6) A PROPOSED ORDER OF AUTHORIZATION FOR CONSIDERATION BY THE JUDGE.

(7) SUCH ADDITIONAL TESTIMONY OR DOCUMENTARY EVIDENCE IN SUPPORT OF THE APPLICATION AS THE JUDGE MAY REQUIRE.

§ 5713. EMERGENCY SITUATIONS.

(A) APPLICATION.--WHENEVER, UPON INFORMAL APPLICATION BY THE ATTORNEY GENERAL OR A DESIGNATED DEPUTY ATTORNEY GENERAL AUTHORIZED IN WRITING BY THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY OR AN ASSISTANT DISTRICT ATTORNEY AUTHORIZED IN WRITING BY THE DISTRICT ATTORNEY OF A COUNTY WHEREIN [THE INTERCEPTION IS TO BE MADE] THE SUSPECTED CRIMINAL ACTIVITY HAS BEEN, IS OR IS ABOUT TO OCCUR, A JUDGE DETERMINES THERE ARE GROUNDS UPON WHICH AN ORDER COULD BE ISSUED PURSUANT TO THIS CHAPTER, AND

1 THAT AN EMERGENCY SITUATION EXISTS WITH RESPECT TO THE
2 INVESTIGATION OF AN OFFENSE DESIGNATED IN SECTION 5708 (RELATING
3 TO ORDER AUTHORIZING INTERCEPTION OF WIRE, ELECTRONIC OR ORAL
4 COMMUNICATIONS), AND INVOLVING CONSPIRATORIAL ACTIVITIES
5 CHARACTERISTIC OF ORGANIZED CRIME OR A SUBSTANTIAL DANGER TO
6 LIFE OR LIMB, DICTATING AUTHORIZATION FOR IMMEDIATE INTERCEPTION
7 OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS BEFORE AN APPLICATION
8 FOR AN ORDER COULD WITH DUE DILIGENCE BE SUBMITTED TO HIM AND
9 ACTED UPON, THE JUDGE MAY GRANT ORAL APPROVAL FOR SUCH
10 INTERCEPTION WITHOUT AN ORDER, CONDITIONED UPON THE FILING WITH
11 HIM, WITHIN 48 HOURS THEREAFTER, OF AN APPLICATION FOR AN ORDER
12 WHICH, IF GRANTED, SHALL RECITE THE ORAL APPROVAL AND BE
13 RETROACTIVE TO THE TIME OF SUCH ORAL APPROVAL. SUCH INTERCEPTION
14 SHALL IMMEDIATELY TERMINATE WHEN THE COMMUNICATION SOUGHT IS
15 OBTAINED OR WHEN THE APPLICATION FOR AN ORDER IS DENIED,
16 WHICHEVER IS EARLIER. IN THE EVENT NO APPLICATION FOR AN ORDER
17 IS MADE, THE CONTENT OF ANY WIRE, ELECTRONIC OR ORAL
18 COMMUNICATION INTERCEPTED SHALL BE TREATED AS HAVING BEEN
19 OBTAINED IN VIOLATION OF THIS SUBCHAPTER.

20 * * *

21 Section 2 3. This act shall take effect in 60 days.

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