

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1812 Session of  
2009

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JULY 1, 2009

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JULY 1, 2009

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for grading of theft  
3 offenses and for theft of services.

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

6 Section 1. Sections 3903 and 3926 of Title 18 of the  
7 Pennsylvania Consolidated Statutes are amended to read:

8 § 3903. Grading of theft offenses.

9 (a) Felony of the second degree.--Theft constitutes a felony  
10 of the second degree if:

11 (1) The offense is committed during a manmade disaster,  
12 a natural disaster or a war-caused disaster and constitutes a  
13 violation of section 3921 (relating to theft by unlawful  
14 taking or disposition), 3925 (relating to receiving stolen

property), 3928 (relating to unauthorized use of automobiles and other vehicles) or 3929 (relating to retail theft).

(2) The property stolen is a firearm.

(3) In the case of theft by receiving stolen property, the property received, retained or disposed of is a firearm and the receiver is in the business of buying or selling stolen property.

(4) The property stolen is any amount of anhydrous ammonia.

(5) The property stolen is the property of certain service providers involving an amount of \$50 or more and is being used at the time of the offense to provide service as provided in section 3926(d) (relating to inferences).

(a.1) Felony of the third degree.--Except as provided in subsection (a) and in section 3926(d) (relating to inferences), theft constitutes a felony of the third degree if the amount involved exceeds \$2,000, or if the property of certain service providers having a value of \$250 or more is stolen while it is not being used to provide service as set forth in section 3926(d), or if the property stolen is an automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

(b) Other grades.--Theft not within subsection (a) or (a.1) of this section, and theft of services involving an amount of \$250 or more as provided in section 3926(d) (relating to inferences), constitutes a misdemeanor of the first degree, except that other than in theft of such services, if the property was not taken from the person or by threat, or in breach of fiduciary obligation, and:

1           (1) the amount involved was \$50 or more but less than  
2     \$200 the offense constitutes a misdemeanor of the second  
3     degree; or

4           (2) the amount involved was less than \$50 the offense  
5     constitutes a misdemeanor of the third degree.

6     (c) Valuation.--The amount involved in a theft shall be  
7     ascertained as follows:

8           (1) Except as otherwise specified in this section, value  
9     means the market value of the property at the time and place  
10    of the crime, or if such cannot be satisfactorily  
11    ascertained, the cost of replacement of the property within a  
12    reasonable time after the crime.

13          (2) Whether or not they have been issued or delivered,  
14    certain written instruments, not including those having a  
15    readily ascertainable market value such as some public and  
16    corporate bonds and securities, shall be evaluated as  
17    follows:

18           (i) The value of an instrument constituting an  
19    evidence of debt, such as a check, draft or promissory  
20    note, shall be deemed the amount due or collectible  
21    thereon or thereby, such figure ordinarily being the face  
22    amount of the indebtedness less any portion thereof which  
23    has been satisfied.

24           (ii) The value of any other instrument which  
25    creates, releases, discharges or otherwise affects any  
26    valuable legal right, privilege or obligation shall be  
27    deemed the greatest amount of economic loss which the  
28    owner of the instrument might reasonably suffer by virtue  
29    of the loss of the instrument.

30          (3) When the value of property cannot be satisfactorily

ascertained pursuant to the standards set forth in paragraphs (1) and (2) of this subsection its value shall be deemed to be an amount less than \$50. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Manmade disaster." Any industrial, nuclear or transportation accident, explosion, conflagration, power failure, natural resource shortage or other condition, except enemy action, resulting from manmade causes, such as oil spills and other injurious environmental contamination, which threatens or causes substantial damage to property, human suffering, hardship or loss of life.

"Natural disaster." Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion or other catastrophe which results in substantial damage to property, hardship, suffering or possible loss of life.

"War-caused disaster." Any condition following an attack upon the United States resulting in substantial damage to property or injury to persons in the United States caused by use of bombs, missiles, shellfire, nuclear, radiological, chemical or biological means, or other weapons or overt paramilitary actions, or other conditions such as sabotage.

§ 3926. Theft of services and certain service provider property.

(a) Acquisition of services.--

1           (1) A person is guilty of theft if he intentionally  
2 obtains services for himself or for another which he knows  
3 are available only for compensation, by deception or threat,  
4 by altering or tampering with the public utility meter or  
5 measuring device by which such services are delivered or by  
6 causing or permitting such altering or tampering, by making  
7 or maintaining any unauthorized connection, whether  
8 physically, electrically [or], inductively or otherwise, to a  
9 distribution or transmission line, by attaching or  
10 maintaining the attachment of any unauthorized object or  
11 device to any cable, wire or other component of an electric,  
12 [telephone] natural gas, heating oil, kerosene, propane,  
13 telecommunications or cable television system or to a  
14 television receiving set connected to a cable television  
15 system, by making or maintaining any unauthorized  
16 modification or alteration to any device installed by a cable  
17 television system, or by false token or other trick or  
18 artifice to avoid payment for the service.

19           (1.1) A person is guilty of theft if he intentionally  
20 obtains or attempts to obtain telecommunication service by  
21 the use of an unlawful telecommunication device or without  
22 the consent of the telecommunication service provider.

23           (1.2) A person is guilty of theft if he intentionally  
24 obtains or attempts to obtain natural gas or electric service  
25 by the use of a means to divert electricity or natural gas  
26 away from measurement by a natural gas or electric meter or  
27 without the consent of the natural gas, propane or electric  
28 service provider.

29           (3) A person is not guilty of theft of cable television  
30 service under this section who subscribes to and receives

1 service through an authorized connection of a television  
2 receiving set at his dwelling and, within his dwelling, makes  
3 an unauthorized connection of an additional television  
4 receiving set or sets or audio system which receives only  
5 basic cable television service obtained through such  
6 authorized connection.

7 (4) Where compensation for service is ordinarily paid  
8 immediately upon the rendering of such service, as in the  
9 case of hotels and restaurants, refusal to pay or absconding  
10 without payment or offer to pay gives rise to a presumption  
11 that the service was obtained by deception as to intention to  
12 pay.

13 (b) Diversion of services.--A person is guilty of theft if,  
14 having control over the disposition of services of others to  
15 which he is not entitled, he knowingly diverts such services to  
16 his own benefit or to the benefit of another not entitled  
17 thereto.

18 (b.1) Acquisition of property of certain service  
19 providers.--A person is guilty of theft if he unlawfully takes,  
20 or exercises unlawful control over, property of an electric,  
21 natural gas, heating oil, kerosene, propane, telecommunications  
22 or cable television provider, with intent to deprive the owner  
23 thereof.

24 (c) Grading.--

25 (1) An acquisition or diversion of services offense  
26 under this section constitutes a summary offense when the  
27 value of the services obtained or diverted is less than [\$50]  
28 \$250.

29 (2) When the value of the services obtained or diverted  
30 is [\$50] \$250 or more but less than \$1,000, the grading of

1 the offense shall be [as established in section 3903  
2 (relating to grading of theft offenses)] a misdemeanor of the  
3 third degree with a minimum fine of \$2,500.

4 (2.1) When the value of the services obtained or  
5 diverted is \$1,000 or more but less than \$5,000, the grading  
6 of the offense shall be a misdemeanor of the second degree  
7 with a minimum fine of \$5,000.

8 (2.2) When the value of the services obtained or  
9 diverted is \$5,000 or more, the grading of the offense shall  
10 be a misdemeanor of the first degree with a minimum fine of  
11 \$10,000.

12 (2.3) When the value of electric, natural gas, propane,  
13 telecommunications or cable television service provider  
14 property unlawfully taken or controlled is less than \$250,  
15 the offense constitutes a summary offense.

16 (2.4) When the value of electric, natural gas, propane,  
17 telecommunications or cable television service provider  
18 property unlawfully taken or controlled is \$250 or more, and  
19 the offense occurred while the property was being used to  
20 provide service, the offense constitutes a misdemeanor of the  
21 second degree.

22 (2.5) When the value of electric, natural gas, propane,  
23 telecommunications or cable television service provider  
24 property unlawfully taken or controlled is \$250 or more, and  
25 the offense did not occur while the property was being used  
26 to provide service, the offense constitutes a misdemeanor of  
27 the third degree.

28 (3) Amounts involved in theft of services or property  
29 committed pursuant to one scheme or course of conduct,  
30 whether from the same person or several persons, may be

1 aggregated in determining the grade of the offense.

2 (d) Inferences.--

3 (1) Any person having possession of or access to the  
4 location of a public utility meter or service measuring  
5 device which has been avoided or tampered with so as to  
6 inhibit or prevent the accurate measurement of utility  
7 service and who enjoys the use of or receives the benefit  
8 from the public utility service intended to be metered or  
9 measured by the public utility meter or measuring device so  
10 avoided or tampered with may be reasonably inferred to have  
11 acted to avoid or tamper with the public utility meter or  
12 measuring device with the intent to obtain the public utility  
13 service without making full compensation therefor.

14 (2) Any person having possession of or access to the  
15 location of the distribution or transmission lines or other  
16 facilities of a cable television system which have been  
17 tapped, altered or tampered with or to which any unauthorized  
18 connection has been made or to which any unauthorized object  
19 or device has been attached or any person having possession  
20 of or access to any device installed by a cable television  
21 system to which an unauthorized modification or alteration  
22 has been made, the result of which tapping, altering,  
23 tampering, connection, attachment or modification is to avoid  
24 payment for all or any part of the cable television service  
25 for which payment is normally required, and who enjoys the  
26 use of or receives the benefit from the cable television  
27 service, may be reasonably inferred to have acted to have  
28 tapped, altered, tampered with, connected or attached to or  
29 modified cable television facilities with the intent to  
30 obtain cable television service without making full



1 compensation therefor. This inference shall not apply to the  
2 act of a subscriber to cable television service, who receives  
3 service through an authorized connection of a television  
4 receiving set at his dwelling, in making, within his  
5 dwelling, an unauthorized connection of an additional  
6 television receiving set or sets or audio system which  
7 receives only basic cable television service obtained through  
8 such authorized connection.

9 (e) Sale or transfer of device or plan intended for  
10 acquisition or diversion.--A person is guilty of a misdemeanor  
11 of the [third] first degree if he sells, gives or otherwise  
12 transfers to others or offers, advertises or exposes for sale to  
13 others, any device, kit, plan or other instructional procedure  
14 for the making of such device or a printed circuit, under  
15 circumstances indicating his having knowledge or reason to  
16 believe that such device, kit, plan or instructional procedure  
17 is intended for use by such others for the acquisition or  
18 diversion of services as set forth in subsections (a) and (b). A  
19 person is presumed to have the intent to defraud the energy or  
20 telecommunications provider if the person creates, transfers and  
21 includes or sells the device, kit, plan or instructional  
22 procedure for the making of such device or printed circuit as  
23 well as purchasing or installing such device. The minimum fine  
24 for this act shall be \$5,000.

25 (f) Restitution.--The court may, in addition to any other  
26 sentence authorized by law, sentence a person convicted of  
27 violating this section to make restitution under section 1106  
28 (relating to restitution for injuries to person or property) or  
29 42 Pa.C.S. § 9721(c) (relating to sentencing generally). The  
30 court shall sentence all consumers convicted of violating this

1 section to compensate the vendor of service for the full value  
2 of the theft, the investigative costs incurred by the vendor,  
3 the costs of full and safe restoration of service at the  
4 location of the theft and interest charges for the value of  
5 services taken during the period of theft within a 60-day period  
6 following the imposition of sentence. In addition to any  
7 restitution, the court shall impose a fine on the person  
8 convicted of violating this section in the amount of not less  
9 than \$1,000. When emergency personnel are called to the scene of  
10 theft of service, the responding volunteer fire department is  
11 entitled to receive as restitution the full cost of their  
12 response from the person convicted of violating this section.

13 (g) Civil action.--A [telecommunication] telecommunications  
14 service provider, an electric service provider, a natural gas  
15 service provider, propane service provider or heating oil  
16 service provider or a kerosene service provider or a cable  
17 television service provider aggrieved by a violation of this  
18 section may in a civil action in any court of competent  
19 jurisdiction obtain appropriate relief, including preliminary  
20 and other equitable or declaratory relief, compensatory and  
21 punitive damages, reasonable investigation expenses, costs of  
22 suit and attorney fees.

23 (g.1) Statement of purpose.--The General Assembly believes  
24 that it is important to protect the innocent citizens of this  
25 Commonwealth from the personal and public dangers caused by the  
26 theft of energy, telecommunications and cable television  
27 services or property used to provide these services. Theft of  
28 these services and property is a public safety issue that cuts  
29 across classes, individuals and businesses. Safety hazards  
30 include public exposure to serious injury or death and

destruction of public or personal property, which affects  
individuals, neighborhoods, homes, apartments and other  
facilities. The General Assembly seeks to provide additional  
tools that support legal and punitive measures to combat the  
dangerous aspects of this crime. Furthermore, the General  
Assembly recognizes another effect of theft of the foregoing  
service providers' services and property: the adverse impact on  
service provider rates and the increased cost unfairly placed on  
paying customers.

(h) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Cable television provider." A person or entity providing  
for compensation, cable television service.

"Electric service provider." A person or entity providing,  
for compensation, electric distribution, transmission or  
generation service.

"Heating oil service provider." A person or entity  
providing, for compensation, heating oil or heating oil supply  
service.

"Kerosene service provider." A person or entity providing,  
for compensation, kerosene or kerosene service.

"Natural gas service provider." A person or entity  
providing, for compensation, natural gas distribution or supply  
service.

"Propane service provider." A person or entity providing,  
for compensation, propane or propane distribution service.

"Service." Includes, but is not limited to, labor,  
professional service, transportation service, the supplying of  
hotel accommodations, restaurant services, entertainment, cable

1 television service, the supplying of equipment for use and the  
2 supplying of commodities of a public utility nature such as gas,  
3 electricity, steam and water, and [telephone or  
4 telecommunication] telecommunications service. The term  
5 "unauthorized" means that payment of full compensation for  
6 service has been avoided, or has been sought to be avoided,  
7 without the consent of the supplier of the service.

8 "Telecommunications service." Includes, but is not limited  
9 to, any service provided for a charge or compensation to  
10 facilitate the origination, transmission, emission or reception  
11 of signs, signals, data, writings, images and sounds or  
12 intelligence of any nature by telephone, including cellular  
13 telephones, wire, radio, electromagnetic, photoelectronic or  
14 photo-optical system.

15 ["Telecommunication] "Telecommunications service provider."  
16 A person or entity providing [telecommunication]  
17 telecommunications service, including, but not limited to, a  
18 cellular, paging or other wireless communications company or  
19 other person or entity which, for a fee, supplies the facility,  
20 cell site, mobile telephone switching office or other equipment  
21 or [telecommunication] telecommunications service.

22 ["Telephone service" or "telecommunication"]

23 "Unlawful [telecommunication] telecommunications device."  
24 Any electronic serial number, mobile identification number,  
25 personal identification number or any [telecommunication]  
26 telecommunications device that is capable or has been altered,  
27 modified, programmed or reprogrammed alone or in conjunction  
28 with another access device or other equipment so as to be  
29 capable of acquiring or facilitating the acquisition of a  
30 [telecommunication] telecommunications service without the

1 consent of the [telecommunication] telecommunications service  
2 provider. The term includes, but is not limited to, phones  
3 altered to obtain service without the consent of the  
4 [telecommunication] telecommunications service provider, tumbler  
5 phones, counterfeit or clone phones, tumbler microchips,  
6 counterfeit or clone microchips, scanning receivers of wireless  
7 [telecommunication service of a telecommunication]  
8 telecommunications service of a telecommunications service  
9 provider and other instruments capable of disguising their  
10 identity or location or of gaining access to a communications  
11 system operated by a [telecommunication] telecommunications  
12 service provider.

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