

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2081 Session of
2001

INTRODUCED BY MCGEEHAN, M. BAKER, ROBINSON, BROWNE, CAPPELLI,
CASORIO, CORRIGAN, CRUZ, DALEY, DeLUCA, FAIRCHILD, GEIST,
GODSHALL, HARHAI, HERMAN, HORSEY, JOSEPHS, KIRKLAND, LEDERER,
LUCYK, MANN, MELIO, PETRONE, RAYMOND, ROONEY, RUBLEY,
SAINATO, SCHRODER, SOLOBAY, STABACK, STEELMAN, R. STEVENSON,
SURRA, TANGRETTI, E. Z. TAYLOR, J. TAYLOR, TIGUE, TRELLO,
TRICH, WILT, WOGAN, WOJNAROSKI, YOUNGBLOOD, DONATUCCI,
OLIVER, RIEGER, WASHINGTON AND CURRY, OCTOBER 24, 2001

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, OCTOBER 24, 2001

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for identity theft
3 and for requirements for governmental access to certain
4 electronic communications.

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

7 Section 1. Section 4120 of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended by adding subsections to read:

9 § 4120. Identity theft.

10 * * *

11 (e.1) Sentencing.--In sentencing a defendant convicted of an
12 offense under this section, the court shall, in addition to any
13 other penalties provided by law, order that the defendant make
14 restitution for economic loss sustained by a victim as a result
15 of such offense. In addition to the victim's out-of-pocket
16 costs, such restitution shall include payment of any other

costs, including attorney fees incurred by the victim in clearing the victim's credit history or credit rating, and any costs incurred in connection with any civil or administrative proceeding to satisfy any debt, lien or other obligation of the victim arising as a result of the actions of the defendant. If a person ordered to make restitution pursuant to this section is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person's financial ability.

(e.2) Findings of fact and related court orders.--The sentencing court shall issue written findings of fact and may issue orders as are necessary to correct a public record that contains false information as a result of the theft of identity. In any case in which the defendant has used the identity of another person to commit a crime, and is convicted of that additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

(e.3) Initiation of investigation.--A person who has learned or reasonably suspects that the person's identifying information has been used by another in a manner that appears to violate this section may initiate a law enforcement investigation by contacting the police department that has jurisdiction over the person's actual residence or, if there is none, then the Pennsylvania State Police, which shall take a police report of the matter, provide the complainant with a copy of that report and begin an investigation of the facts or, if the suspected crime was committed in a different jurisdiction, refer the matter to the law enforcement agency where the suspected crime was committed for an investigation of the facts.

1 (e.4) Factual innocence determination.--A person who
2 reasonably believes that the person is the victim of identity
3 theft under this section may petition the court of common pleas
4 for an expedited judicial determination of the person's factual
5 innocence, where the perpetrator of the identity theft has
6 committed a crime or is committing crimes under the victim's
7 identity, or where the victim's identity has been mistakenly
8 associated with a record of criminal conviction. Any judicial
9 determination of factual innocence made pursuant to this section
10 may be heard and determined upon declarations, affidavits,
11 police reports or other material, relevant and reliable
12 information submitted by the parties. If the court determines
13 that the petition is meritorious and there is no reasonable
14 cause to believe that the petitioner committed the offense or
15 offenses in question, the court shall find the petitioner
16 factually innocent of that offense or offenses. If the
17 petitioner is found factually innocent, the court shall issue an
18 order certifying this determination. A court issuing a
19 determination of factual innocence pursuant to this section may
20 at any time vacate that determination if the petition, or any
21 information submitted in support of the petition, is found to
22 contain any material misrepresentation or fraud.

23 * * *

24 Section 2. Section 5743(d) of Title 18 is amended to read:
25 § 5743. Requirements for governmental access.

26 * * *

27 (d) Requirements for court order.--A court order for
28 disclosure under subsection (b) or (c) shall be issued only if
29 the investigative or law enforcement officer shows that there
30 are specific and articulable facts showing that there are

1 reasonable grounds to believe that the contents of a wire or
2 electronic communication, or the records or other information
3 sought, are relevant and material to an ongoing criminal
4 investigation. A court issuing an order pursuant to this
5 section, on a motion made promptly by the service provider, may
6 quash or modify the order if the information or records
7 requested are unusually voluminous in nature or compliance with
8 the order would otherwise cause an undue burden on the provider.
9 A provider of electronic communication service doing business in
10 this Commonwealth must appoint and maintain an agent to accept
11 and comply with orders issued pursuant to this section and must
12 register the agent's name and street address with the Secretary
13 of the Commonwealth.

14 * * *

15 Section 3. This act shall take effect in 60 days.