

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 831 Session of 2011

INTRODUCED BY SAINATO, PRESTON, REICHLEY, BOBACK, BRENNAN, CLYMER, D. COSTA, DALEY, DeLUCA, DENLINGER, FLECK, GIBBONS, GOODMAN, GRELL, HALUSKA, HARHART, HENNESSEY, HORNAMAN, JOSEPHS, KORTZ, KULA, LONGIETTI, MANN, MARSHALL, MILLARD, MILLER, MURT, M. O'BRIEN, O'NEILL, PASHINSKI, PETRARCA, READSHAW, SCAVELLO, K. SMITH AND TALLMAN, FEBRUARY 28, 2011

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 28, 2011

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

1 (2) The property stolen is a firearm.

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

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

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

12 (a.1) Felony of the third degree.--Except as provided in
13 subsection (a) and in section 3926(d), theft constitutes a
14 felony of the third degree if the amount involved exceeds
15 \$2,000, or if the property of certain service providers having a
16 value of \$250 or more is stolen while it is not being used to
17 provide service as set forth in section 3926(d), or if the
18 property stolen is an automobile, airplane, motorcycle,
19 motorboat or other motor-propelled vehicle, or in the case of
20 theft by receiving stolen property, if the receiver is in the
21 business of buying or selling stolen property.

22 (b) Other grades.--Theft not within subsection (a) or (a.1)
23 of this section, and theft of services involving an amount of
24 \$250 or more as provided in section 3926(d), constitutes a
25 misdemeanor of the first degree, except that other than in theft
26 of such services, if the property was not taken from the person
27 or by threat, or in breach of fiduciary obligation, and:

28 (1) the amount involved was \$50 or more but less than
29 \$200 the offense constitutes a misdemeanor of the second
30 degree; or

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

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

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

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

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

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

(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) A person is guilty of theft if he intentionally
obtains services for himself or for another which he knows
are available only for compensation, by deception or threat,

1 by altering or tampering with the public utility meter or
2 measuring device by which such services are delivered or by
3 causing or permitting such altering or tampering, by making
4 or maintaining any unauthorized connection, whether
5 physically, electrically [or], inductively or otherwise, to a
6 distribution or transmission line, by attaching or
7 maintaining the attachment of any unauthorized object or
8 device to any cable, wire or other component of an electric,
9 [telephone] natural gas, heating oil, kerosene, propane,
10 telecommunications or cable television system or to a
11 television receiving set connected to a cable television
12 system, by making or maintaining any unauthorized
13 modification or alteration to any device installed by a cable
14 television system, or by false token or other trick or
15 artifice to avoid payment for the service.

16 (1.1) A person is guilty of theft if he intentionally
17 obtains or attempts to obtain telecommunication service by
18 the use of an unlawful telecommunication device or without
19 the consent of the telecommunication service provider.

20 (1.2) A person is guilty of theft if he intentionally
21 obtains or attempts to obtain natural gas or electric service
22 by the use of a means to divert electricity or natural gas
23 away from measurement by a natural gas or electric meter or
24 without the consent of the natural gas, propane or electric
25 service provider.

26 (3) A person is not guilty of theft of cable television
27 service under this section who subscribes to and receives
28 service through an authorized connection of a television
29 receiving set at his dwelling and, within his dwelling, makes
30 an unauthorized connection of an additional television

1 receiving set or sets or audio system which receives only
2 basic cable television service obtained through such
3 authorized connection.

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

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

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

21 (c) Grading.--

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

26 (2) When the value of the services obtained or diverted
27 is [\$50] \$250 or more but less than \$1,000, the grading of
28 the offense shall be [as established in section 3903
29 (relating to grading of theft offenses)] a misdemeanor of the
30 third degree with a minimum fine of \$2,500.

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

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

9 (2.3) When the value of electric, natural gas, propane,
10 telecommunications or cable television service provider
11 property unlawfully taken or controlled is less than \$250,
12 the offense constitutes a summary offense.

13 (2.4) When the value of electric, natural gas, propane,
14 telecommunications or cable television service provider
15 property unlawfully taken or controlled is \$250 or more, and
16 the offense occurred while the property was being used to
17 provide service, the offense constitutes a misdemeanor of the
18 second degree.

19 (2.5) When the value of electric, natural gas, propane,
20 telecommunications or cable television service provider
21 property unlawfully taken or controlled is \$250 or more, and
22 the offense did not occur while the property was being used
23 to provide service, the offense constitutes a misdemeanor of
24 the third degree.

25 (3) Amounts involved in theft of services or property
26 committed pursuant to one scheme or course of conduct,
27 whether from the same person or several persons, may be
28 aggregated in determining the grade of the offense.

29 (d) Inferences.--

30 (1) Any person having possession of or access to the

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

11 (2) Any person having possession of or access to the
12 location of the distribution or transmission lines or other
13 facilities of a cable television system which have been
14 tapped, altered or tampered with or to which any unauthorized
15 connection has been made or to which any unauthorized object
16 or device has been attached or any person having possession
17 of or access to any device installed by a cable television
18 system to which an unauthorized modification or alteration
19 has been made, the result of which tapping, altering,
20 tampering, connection, attachment or modification is to avoid
21 payment for all or any part of the cable television service
22 for which payment is normally required, and who enjoys the
23 use of or receives the benefit from the cable television
24 service, may be reasonably inferred to have acted to have
25 tapped, altered, tampered with, connected or attached to or
26 modified cable television facilities with the intent to
27 obtain cable television service without making full
28 compensation therefor. This inference shall not apply to the
29 act of a subscriber to cable television service, who receives
30 service through an authorized connection of a television

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

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

22 (f) Restitution.--The court may, in addition to any other
23 sentence authorized by law, sentence a person convicted of
24 violating this section to make restitution under section 1106
25 (relating to restitution for injuries to person or property) or
26 42 Pa.C.S. § 9721(c) (relating to sentencing generally). The
27 court shall sentence all consumers convicted of violating this
28 section to compensate the vendor of service for the full value
29 of the theft, the investigative costs incurred by the vendor,
30 the costs of full and safe restoration of service at the

location of the theft and interest charges for the value of
services taken during the period of theft within a 60-day period
following the imposition of sentence. In addition to any
restitution, the court shall impose a fine on the person
convicted of violating this section in the amount of not less
than \$1,000. When emergency personnel are called to the scene of
theft of service, the responding volunteer fire department is
entitled to receive as restitution the full cost of their
response from the person convicted of violating this section.

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

(g.1) Statement of purpose.--The General Assembly believes
that it is important to protect the innocent citizens of this
Commonwealth from the personal and public dangers caused by the
theft of energy, telecommunications and cable television
services or property used to provide these services. Theft of
these services and property is a public safety issue that cuts
across classes, individuals and businesses. Safety hazards
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 television service, the supplying of equipment for use and the supplying of commodities of a public utility nature such as gas, electricity, steam and water, and [telephone or

telecommunication] telecommunications service. The term "unauthorized" means that payment of full compensation for service has been avoided, or has been sought to be avoided, without the consent of the supplier of the service.

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

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

"Telecommunications service provider." A person or entity providing telecommunications service, including, but not limited to, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunications service.

["Telephone service" or "telecommunication service." Includes, but is not limited to, any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, electromagnetic, photoelectronic or photo-optical system.]

1 "Unlawful [telecommunication] telecommunications device."
2 Any electronic serial number, mobile identification number,
3 personal identification number or any [telecommunication]
4 telecommunications device that is capable or has been altered,
5 modified, programmed or reprogrammed alone or in conjunction
6 with another access device or other equipment so as to be
7 capable of acquiring or facilitating the acquisition of a
8 [telecommunication] telecommunications service without the
9 consent of the [telecommunication] telecommunications service
10 provider. The term includes, but is not limited to, phones
11 altered to obtain service without the consent of the
12 [telecommunication] telecommunications service provider, tumbler
13 phones, counterfeit or clone phones, tumbler microchips,
14 counterfeit or clone microchips, scanning receivers of wireless
15 [telecommunication service of a telecommunication]
16 telecommunications service of a telecommunications service
17 provider and other instruments capable of disguising their
18 identity or location or of gaining access to a communications
19 system operated by a [telecommunication] telecommunications
20 service provider.

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