

CRIMES CODE (18 PA.C.S.) - THEFT OF LEASED PROPERTY, WIRETAPPING AND
ELECTRONIC SURVEILLANCE, DISCLOSURE OF CONTENTS AND EXPIRATION OF CHAPTER
Act of Oct. 9, 2008, P.L. 1403, No. 111 Cl. 18
Session of 2008
No. 2008-111

HB 1664

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for theft of leased property; and, in wiretapping and electronic surveillance, further providing for disclosure of contents and for expiration of chapter.

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

Section 1. Section 3932(b) and (c)(2) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 3932. Theft of leased property.

* * *

(b) Definition.--As used in this section[, a] :

(1) A person "deals with the property as his own" if he sells, secretes, destroys, converts to his own use or otherwise disposes of the property.

(2) A **"written demand to return the property is delivered"** when it is sent simultaneously by first class mail, evidenced by a certificate of mailing, and by registered or certified mail to the address provided by the lessee.

(c) Presumption.--A person shall be prima facie presumed to have intent if he:

* * *

(2) fails to return the property to its owner within seven days after a written demand to return the property is delivered [by registered or certified mail to the person's last known address].

* * *

Section 2. Section 5742 heading and (a) introductory paragraph of Title 18 are amended, subsection (a) is amended by adding a paragraph and the section is amended by adding subsections to read:

§ 5742. Disclosure of contents **and records** .

(a) Prohibitions.--Except as provided in subsection (b) **and**
(c) :

* * *

(3) A person or entity providing an electronic communication service or remote computing service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to, or customer of, the service.

* * *

(c) Exceptions for disclosure of records or other information.--A person or entity may divulge a record or other information pertaining to a subscriber to, or customer of, the service if any of the following paragraphs apply:

(1) A record or other information may be divulged incident to any service or other business operation or to the protection of the rights or property of the provider.

(2) A record or other information may be divulged to any of the following:

(i) An investigative or law enforcement official as authorized in section 5743.

(ii) The subscriber or customer upon request.

(iii) A third party, upon receipt from the requester of adequate proof of lawful consent from the subscriber to, or customer of, the service to release the information to the third party.

(iv) A party to a legal proceeding, upon receipt from the party of a court order entered under subsection (c.1). This subparagraph does not apply to an investigative or law enforcement official authorized under section 5743.

(3) Notwithstanding paragraph (2), a record or other information may be divulged as authorized by a Commonwealth statute or as authorized by a Commonwealth regulatory agency with oversight over the person or entity.

(4) Subject to paragraph (2), a record or other information may be divulged as authorized by Federal law or as authorized by a Federal regulatory agency having oversight over the person or entity.

(c.1) Order for release of records.--

(1) An order to divulge a record or other information pertaining to a subscriber or customer under subsection (c) (2) (iv) must be approved by a court presiding over the proceeding in which a party seeks the record or other information.

(2) The order may be issued only after the subscriber or customer received notice from the party seeking the record or other information and was given an opportunity to be heard.

(3) The court may issue a preliminary order directing the provider to furnish the court with the identity of or contact information for the subscriber or customer if the party does not possess this information.

(4) An order for disclosure of a record or other information shall be issued only if the party seeking disclosure demonstrates specific and articulable facts to show that there are reasonable grounds to believe that the record or other information sought is relevant and material to the proceeding. In making its determination, the court shall consider the totality of the circumstances, including input of the subscriber or customer, if any, and the likely impact of the provider.

Section 3. Sections 5743(c) (1), 5746(a), 5761(b) and 5781 of Title 18 are amended to read:

§ 5743. Requirements for governmental access.

* * *

(c) Records concerning electronic communication service or remote computing service.--

[(1) Except as provided in paragraph (2), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of the service, not including the contents of communication covered by subsection (a) or (b), to any person other than an investigative or law enforcement officer.]

* * *

§ 5746. Cost reimbursement.

(a) Payment.--Except as otherwise provided in subsection (c), an investigative or law enforcement officer obtaining the contents of communications, records or other information under section 5742 (relating to disclosure of contents **and records**), 5743 (relating to requirements for governmental access) or 5744 (relating to backup preservation) shall reimburse the person or entity assembling or providing the information for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing and otherwise providing the information. Reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which the information may be stored.

* * *

§ 5761. Mobile tracking devices.

* * *

(b) Jurisdiction.--Orders permitted by this section may authorize the use of mobile tracking devices within the jurisdiction of the court of common pleas, and outside that jurisdiction [but within this Commonwealth], if the device is installed within the jurisdiction of the court of common pleas.

* * *

§ 5781. Expiration of chapter.

This chapter expires December 31, [2008] **2013**, unless extended by statute.

Section 4. This act shall take effect as follows:

- (1) This section shall take effect immediately.
- (2) The amendment of 18 Pa.C.S. § 5781 shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED--The 9th day of October, A. D. 2008.

EDWARD G. RENDELL