

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL****No. 1401** Session of  
2002

INTRODUCED BY CORMAN, D. WHITE, ERICKSON, BELL, BOSCOLA,  
BRIGHTBILL, DENT, ORIE, HOLL, HUGHES, LAVALLE, LEMMOND,  
MUSTO, LOGAN, O'PAKE, RHOADES, TARTAGLIONE, TOMLINSON, WAUGH,  
C. WILLIAMS AND STACK, APRIL 29, 2002

SENATOR CORMAN, COMMUNICATIONS AND HIGH TECHNOLOGY, AS AMENDED,  
JUNE 4, 2002

## AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for the interception  
3 of wire, electronic or oral communications; and providing for  
4 offenses relating to computers.

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

7 Section 1. Section 3933 of Title 18 of the Pennsylvania  
8 Consolidated Statutes is repealed.

9 Section 2. Section 5708(2) of Title 18 is amended to read:

10 § 5708. Order authorizing interception of wire, electronic or  
11 oral communications.

12 The Attorney General, or, during the absence or incapacity of  
13 the Attorney General, a deputy attorney general designated in  
14 writing by the Attorney General, or the district attorney or,  
15 during the absence or incapacity of the district attorney, an  
16 assistant district attorney designated in writing by the  
17 district attorney of the county wherein the interception is to

1 be made, may make written application to any Superior Court  
2 judge for an order authorizing the interception of a wire,  
3 electronic or oral communication by the investigative or law  
4 enforcement officers or agency having responsibility for an  
5 investigation involving suspected criminal activities when such  
6 interception may provide evidence of the commission of any of  
7 the following offenses, or may provide evidence aiding in the  
8 apprehension of the perpetrator or perpetrators of any of the  
9 following offenses:

10 \* \* \*

11 (2) Under this title, where such offense is dangerous to  
12 life, limb or property and punishable by imprisonment for  
13 more than one year:

14 Section 910 (relating to manufacture, distribution or  
15 possession of devices for theft of telecommunications  
16 services)

17 Section 3925 (relating to receiving stolen property)

18 Section 3926 (relating to theft of services)

19 Section 3927 (relating to theft by failure to make  
20 required disposition of funds received)

21 [Section 3933 (relating to unlawful use of computer)]

22 Section 4108 (relating to commercial bribery and  
23 breach of duty to act disinterestedly)

24 Section 4109 (relating to rigging publicly exhibited  
25 contest)

26 Section 4117 (relating to insurance fraud)

27 Section 4305 (relating to dealing in infant children)

28 Section 4902 (relating to perjury)

29 Section 4909 (relating to witness or informant taking  
30 bribe)



- 1 7605. Computer theft.
- 2 7606. Unlawful duplication.
- 3 7607. Computer trespass.
- 4 7608. Distribution of computer virus.
- 5 7609. Restitution.
- 6 ~~7510. Concurrent jurisdiction.~~
- 7 7610. CONCURRENT JURISDICTION.
- 8 7611. DEFENSE.
- 9 7612. CONSTRUCTION.

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10 § 7601. Definitions.

11 The following words and phrases when used in this chapter  
12 shall have the meanings given to them in this section unless the  
13 context clearly indicates otherwise:

14 "Access." To intercept, instruct, communicate with, store  
15 data in, retrieve data from or otherwise make use of any  
16 resources of a computer, computer system, computer network or  
17 database.

18 "Computer." An electronic, magnetic, optical, hydraulic,  
19 organic or other high speed data processing device or system  
20 which performs logic, arithmetic or memory functions and  
21 includes all input, output, processing, storage, software or  
22 communication facilities which are connected or related to the  
23 device in a system or network.

24 "Computer network." The interconnection of two or more  
25 computers through the usage of satellite, microwave, line or  
26 other communication medium.

27 "Computer program." An ordered set of instructions or  
28 statements and related data that, when automatically executed in  
29 actual or modified form in a computer system, causes it to  
30 perform specified functions.

1 "Computer software." A set of computer programs, procedures  
2 or associated documentation concerned with the operation of a  
3 computer system.

4 "Computer system." A set of related, connected or  
5 unconnected computer equipment, devices and software.

6 "Computer virus." A computer program copied to, created on  
7 or installed to a computer, computer network, computer program,  
8 computer software or computer system without the informed  
9 consent of the owner of the computer, computer network, computer  
10 program, computer software or computer system that may replicate  
11 itself and that causes or can cause unauthorized activities  
12 within or by the computer, computer network, computer program,  
13 computer software or computer system.

14 "Database." A representation of information, knowledge,  
15 facts, concepts or instructions which are being prepared or  
16 processed or have been prepared or processed in a formalized  
17 manner and are intended for use in a computer, computer system  
18 or computer network, including, but not limited to, computer  
19 printouts, magnetic storage media, punched cards or data stored  
20 internally in the memory of the computer.

21 "Financial instrument." Includes, but is not limited to, any  
22 check, draft, warrant, money order, note, certificate of  
23 deposit, letter of credit, bill of exchange, credit or debit  
24 card, transaction authorization mechanism, marketable security  
25 or any computer system representation thereof.

26 "Property." Includes, but is not limited to, financial  
27 instruments, computer software and programs in either machine or  
28 human readable form, and anything of value, tangible or  
29 intangible.

30 "Telecommunication device." Any type of instrument, device,

1 machine or equipment which is capable of transmitting,  
2 acquiring, decrypting or receiving any telephonic, electronic,  
3 data, Internet access, audio, video, microwave or radio  
4 transmissions, signals, communications or services, including  
5 the receipt, acquisition, transmission or decryption of all such  
6 communications, transmissions, signals or services over any  
7 cable television, telephone, satellite, microwave, radio or  
8 wireless distribution system or facility, or any part, accessory  
9 or component thereof, including any computer circuit, security  
10 module, smart card, software, computer chip, electronic  
11 mechanism or other component, accessory or part which is capable  
12 of facilitating the transmission, decryption, acquisition or  
13 reception of all such communications transmissions, signals or  
14 services.

15 "World Wide Web." Includes, but is not limited to, a  
16 computer server-based file archive accessible, over the  
17 Internet, using a hypertext transfer protocol, file transfer  
18 protocol or other similar protocols.

19 § 7602. Jurisdiction.

20 An offense under this chapter may be deemed to have been  
21 committed either at the place where conduct constituting an  
22 element of the offense occurred or at the place where the result  
23 which is an element of the offense occurred within this  
24 Commonwealth, in accordance with section 102 (relating to  
25 territorial applicability). It shall be no defense to a  
26 violation of this chapter that some of the acts constituting the  
27 offense occurred outside of this Commonwealth.

28 § 7603. Unlawful use of computer and other computer crimes.

29 (a) Offense defined.--A person commits the offense of  
30 unlawful use of a computer if he:

1 (1) accesses or exceeds authorization to access, alters,  
2 damages or destroys any computer, computer system, computer  
3 network, computer software, computer program, computer  
4 database, World Wide Web site or telecommunication device or  
5 any part thereof with the intent to interrupt the normal  
6 functioning of an organization or to devise or execute any  
7 scheme or artifice to defraud or deceive or control property  
8 or services by means of false or fraudulent pretenses,  
9 representations or promises;

10 (2) intentionally and without authorization accesses or  
11 exceeds authorization to access, alters, interferes with the  
12 operation of, damages or destroys any computer, computer  
13 system, computer network, computer software, computer  
14 program, computer database, World Wide Web site or  
15 telecommunication device or any part thereof; or

16 (3) intentionally or knowingly and without authorization  
17 gives or publishes a password, identifying code, personal  
18 identification number or other confidential information about  
19 a computer, computer system, computer network, computer  
20 database, World Wide Web site or telecommunication device.

21 (b) Grading.--An offense under subsection (a)(1) shall  
22 constitute a felony of the third degree. An offense under  
23 subsection (a)(2) or (3) shall constitute a misdemeanor of the  
24 first degree.

25 (c) Prosecution not prohibited.--Prosecution for an offense  
26 under this section shall not prohibit prosecution under any  
27 other section of this title.

28 § 7604. Disruption of service.

29 (a) Offense defined.--An individual commits an offense if he  
30 intentionally or knowingly engages in a scheme or artifice,

1 including, but not limited to, a denial of service attack upon  
2 any computer, computer system, computer network, computer  
3 software, computer program, computer server, computer database,  
4 World Wide Web site or telecommunication device or any part  
5 thereof that is designed to block, impede or deny the access of  
6 information or initiation or completion of any sale or  
7 transaction by users of that computer, computer system, computer  
8 network, computer software, computer program, computer server or  
9 database or any part thereof.

10 (b) Grading.--An offense under this section shall constitute  
11 a misdemeanor of the first degree.

12 § 7605. Computer theft.

13 (a) Offense defined.--A person commits an offense if he  
14 unlawfully accesses and without permission takes or makes use  
15 of, in any form, including, but not limited to, any data from a  
16 computer, computer system or computer network or takes or copies  
17 any supporting documentation whether existing or residing  
18 internal or external to a computer, computer system or computer  
19 network of another with the intent to deprive him thereof.

20 (b) Grading.--An offense under this section shall constitute  
21 a misdemeanor of the first degree.

22 § 7606. Unlawful duplication.

23 (a) Offense defined.--An individual commits the offense of  
24 unlawful duplication if he makes or causes to be made an  
25 unauthorized copy, in any form, including, but not limited, to,  
26 any printed or electronic form of computer data, computer  
27 programs or computer software residing in, communicated by or  
28 produced by a computer or computer network.

29 (b) Grading.--An offense under subsection (a) shall be  
30 graded as follows:



1           (1) A first offense shall constitute a misdemeanor of  
2 the first degree. A second or subsequent offense shall  
3 constitute a felony of the third degree.

4           (2) If the economic value of the duplicated material is  
5 greater than \$2,500, the grading of the offense shall be one  
6 grade higher than specified in paragraph (1).

7 § 7607. Computer trespass.

8           (a) Offense defined.--An individual commits the offense of  
9 computer trespass if he knowingly and without authority, or in  
10 excess of given authority, uses a computer or computer network  
11 with the intent to:

12           (1) temporarily or permanently remove computer data,  
13 computer programs or computer software from a computer or  
14 computer network;

15           (2) cause a computer to malfunction, regardless of the  
16 amount of time the malfunction persists;

17           (3) alter or erase any computer data, computer programs  
18 or computer software;

19           (4) effect the creation or alteration of a financial  
20 instrument or of an electronic transfer of funds; or

21           (5) cause physical injury to the property of another.

22           (b) Grading.--A first offense under this section shall  
23 constitute a misdemeanor of the third degree. A second or  
24 subsequent offense under this section shall constitute a  
25 misdemeanor of the first degree.

26 § 7608. Distribution of computer virus.

27           (a) Offense defined.--An individual commits an offense if  
28 the individual intentionally or knowingly sells, gives or  
29 otherwise distributes or possesses with the intent to sell, give  
30 or distribute computer software or a computer program that is

1 designed or has the capability to:

2 (1) prevent, impede, control, delay or disrupt the  
3 normal operation or use of a computer, computer program,  
4 computer software, computer system, computer network,  
5 computer database, World Wide Web site or telecommunication  
6 device; or

7 (2) degrade, disable, damage or destroy the performance  
8 of a computer, computer program, computer software, computer  
9 system, computer network, computer database, World Wide Web  
10 site or telecommunication device or any combination thereof.

11 (b) Grading.--An offense under this section shall constitute  
12 a felony of the third degree.

13 § 7609. Restitution.

14 Upon conviction of an offense under section 7603 (relating to  
15 unlawful use of computer and other computer crimes), 7604  
16 (relating to disruption of service) or 7608 (relating to  
17 distribution of computer virus), the sentence shall include an  
18 order for restitution to the victim for:

19 (1) the cost of repairing or replacing the affected  
20 computer, computer system, computer network, computer  
21 software, computer program, computer database, World Wide Web  
22 site or telecommunication device;

23 (2) lost profits for the period that the computer,  
24 computer system, computer network, computer software,  
25 computer program, computer database, World Wide Web site or  
26 telecommunication device is not useable; or

27 (3) the cost of replacing or restoring the data lost or  
28 damaged as a result of a violation of section 7603, 7604 or  
29 7608.

30 § 7610. Concurrent jurisdiction.

1 The Attorney General shall have concurrent prosecutorial  
2 jurisdiction with the county district attorney for violations of  
3 this section. No person charged with a violation of this section  
4 by the Attorney General shall have standing to challenge the  
5 authority of the Attorney General to prosecute the case, and, if  
6 any such challenge is made, the challenge shall be dismissed and  
7 no relief shall be available in the courts of this Commonwealth  
8 to the person making the challenge.

9 § 7611. DEFENSE. ←

10 IT IS A DEFENSE TO AN ACTION BROUGHT PURSUANT TO THIS CHAPTER  
11 THAT THE ACTOR:

12 (1) WAS ENTITLED BY LAW OR CONTRACT TO ENGAGE IN THE  
13 CONDUCT CONSTITUTING THE OFFENSE; OR

14 (2) REASONABLY BELIEVED THAT HE HAD THE AUTHORIZATION OR  
15 PERMISSION OF THE OWNER, LESSEE, LICENSEE, AUTHORIZED HOLDER,  
16 AUTHORIZED POSSESSOR OR AGENT OF THE COMPUTER, COMPUTER  
17 NETWORK, COMPUTER SOFTWARE, COMPUTER SYSTEM, DATABASE OR  
18 TELECOMMUNICATION DEVICE OR THAT THE OWNER OR AUTHORIZED  
19 HOLDER WOULD HAVE AUTHORIZED OR PROVIDED PERMISSION TO ENGAGE  
20 IN THE CONDUCT CONSTITUTING THE OFFENSE. AS USED IN THIS  
21 SECTION, THE TERM "AUTHORIZATION" INCLUDES EXPRESS OR IMPLIED  
22 CONSENT, INCLUDING BY TRADE USAGE, COURSE OF DEALING, COURSE  
23 OF PERFORMANCE OR COMMERCIAL PROGRAMMING PRACTICES.

24 § 7612. CONSTRUCTION.

25 NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO INTERFERE WITH  
26 OR PROHIBIT TERMS OR CONDITIONS IN A CONTRACT OR LICENSE RELATED  
27 TO A COMPUTER, COMPUTER NETWORK, COMPUTER SOFTWARE, COMPUTER  
28 SYSTEM, DATABASE OR TELECOMMUNICATION DEVICE OR SOFTWARE OR  
29 HARDWARE DESIGNED TO ALLOW A COMPUTER, COMPUTER NETWORK,  
30 COMPUTER SOFTWARE, COMPUTER SYSTEM, DATABASE OR

1 TELECOMMUNICATIONS DEVICE TO OPERATE IN THE ORDINARY COURSE OF A  
2 LAWFUL BUSINESS OR THAT IS DESIGNED TO ALLOW AN OWNER OR  
3 AUTHORIZED HOLDER OF INFORMATION TO PROTECT DATA INFORMATION OR  
4 RIGHTS IN IT.

5 Section 4. This act shall take effect in 60 days.