

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1716 Session of 2007

INTRODUCED BY SAINATO, SOLOBAY, GERGELY, MARKOSEK, PALLONE, PRESTON, PASHINSKI, MENSCH, SIPTROTH, SAYLOR, BAKER, KORTZ, BRENNAN, MANN, M. O'BRIEN, GRUCELA, HALUSKA, HERSHEY, KOTIK, GOODMAN, GRELL, FAIRCHILD, R. MILLER, YOUNGBLOOD, GEIST, DENLINGER, RUBLEY, KULA, MURT, PETRONE, HARRIS, READSHAW, LONGIETTI, JAMES, MYERS, K. SMITH, BLACKWELL, REICHLLEY, THOMAS, KENNEY, FLECK, TANGRETTI, GODSHALL, SCAVELLO, CLYMER, HORNAMAN AND HELM, JULY 13, 2007

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 16, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for GRADING OF THEFT <—
3 OF OFFENSES AND FOR theft of services AND CERTAIN SERVICE <—
4 PROVIDER PROPERTY.

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

7 ~~Section 1. Section 3926 of Title 18 of the Pennsylvania <—
8 Consolidated Statutes is amended to read:~~

9 SECTION 1. SECTIONS 3903 AND 3926 OF TITLE 18 OF THE <—
10 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

11 § 3903. GRADING OF THEFT OFFENSES.

12 (A) FELONY OF THE SECOND DEGREE.--THEFT CONSTITUTES A FELONY
13 OF THE SECOND DEGREE IF:

14 (1) THE OFFENSE IS COMMITTED DURING A MANMADE DISASTER,
15 A NATURAL DISASTER OR A WAR-CAUSED DISASTER AND CONSTITUTES A

1 VIOLATION OF SECTION 3921 (RELATING TO THEFT BY UNLAWFUL
2 TAKING OR DISPOSITION), 3925 (RELATING TO RECEIVING STOLEN
3 PROPERTY), 3928 (RELATING TO UNAUTHORIZED USE OF AUTOMOBILES
4 AND OTHER VEHICLES) OR 3929 (RELATING TO RETAIL THEFT).

5 (2) THE PROPERTY STOLEN IS A FIREARM.

6 (3) IN THE CASE OF THEFT BY RECEIVING STOLEN PROPERTY,
7 THE PROPERTY RECEIVED, RETAINED OR DISPOSED OF IS A FIREARM
8 AND THE RECEIVER IS IN THE BUSINESS OF BUYING OR SELLING
9 STOLEN PROPERTY.

10 (4) THE PROPERTY STOLEN IS ANY AMOUNT OF ANHYDROUS
11 AMMONIA.

12 (5) THE PROPERTY STOLEN IS THE PROPERTY OF CERTAIN
13 SERVICE PROVIDERS INVOLVING AN AMOUNT OF \$50 OR MORE AND
14 BEING USED AT THE TIME OF THE OFFENSE TO PROVIDE SERVICE AS
15 PROVIDED IN SECTION 3926(D) (RELATING TO THEFT OF SERVICES
16 AND CERTAIN SERVICE PROVIDER PROPERTY).

17 (A.1) FELONY OF THE THIRD DEGREE.--EXCEPT AS PROVIDED IN
18 SUBSECTION (A) AND IN SECTION 3926(D), THEFT CONSTITUTES A
19 FELONY OF THE THIRD DEGREE IF THE AMOUNT INVOLVED EXCEEDS
20 \$2,000, OR IF THE PROPERTY OF CERTAIN SERVICE PROVIDERS HAVING A
21 VALUE OF \$50 OR MORE IS STOLEN WHILE IT IS NOT BEING USED TO
22 PROVIDE SERVICE AS SET FORTH IN SECTION 3926(D), OR IF THE
23 PROPERTY STOLEN IS AN AUTOMOBILE, AIRPLANE, MOTORCYCLE,
24 MOTORBOAT OR OTHER MOTOR-PROPELLED VEHICLE, OR IN THE CASE OF
25 THEFT BY RECEIVING STOLEN PROPERTY, IF THE RECEIVER IS IN THE
26 BUSINESS OF BUYING OR SELLING STOLEN PROPERTY.

27 (B) OTHER GRADES.--THEFT NOT WITHIN SUBSECTION (A) OR (A.1)
28 OF THIS SECTION, AND THEFT OF SERVICES INVOLVING AN AMOUNT OF
29 \$50 OR MORE AS PROVIDED IN SECTION 3926(D), CONSTITUTES A
30 MISDEMEANOR OF THE FIRST DEGREE, EXCEPT THAT OTHER THAN IN THEFT

1 OF SUCH SERVICES, IF THE PROPERTY WAS NOT TAKEN FROM THE PERSON
2 OR BY THREAT, OR IN BREACH OF FIDUCIARY OBLIGATION, AND:

3 (1) THE AMOUNT INVOLVED WAS \$50 OR MORE BUT LESS THAN
4 \$200 THE OFFENSE CONSTITUTES A MISDEMEANOR OF THE SECOND
5 DEGREE; OR

6 (2) THE AMOUNT INVOLVED WAS LESS THAN \$50 THE OFFENSE
7 CONSTITUTES A MISDEMEANOR OF THE THIRD DEGREE.

8 (C) VALUATION.--THE AMOUNT INVOLVED IN A THEFT SHALL BE
9 ASCERTAINED AS FOLLOWS:

10 (1) EXCEPT AS OTHERWISE SPECIFIED IN THIS SECTION, VALUE
11 MEANS THE MARKET VALUE OF THE PROPERTY AT THE TIME AND PLACE
12 OF THE CRIME, OR IF SUCH CANNOT BE SATISFACTORILY
13 ASCERTAINED, THE COST OF REPLACEMENT OF THE PROPERTY WITHIN A
14 REASONABLE TIME AFTER THE CRIME.

15 (2) WHETHER OR NOT THEY HAVE BEEN ISSUED OR DELIVERED,
16 CERTAIN WRITTEN INSTRUMENTS, NOT INCLUDING THOSE HAVING A
17 READILY ASCERTAINABLE MARKET VALUE SUCH AS SOME PUBLIC AND
18 CORPORATE BONDS AND SECURITIES, SHALL BE EVALUATED AS
19 FOLLOWS:

20 (I) THE VALUE OF AN INSTRUMENT CONSTITUTING AN
21 EVIDENCE OF DEBT, SUCH AS A CHECK, DRAFT OR PROMISSORY
22 NOTE, SHALL BE DEEMED THE AMOUNT DUE OR COLLECTIBLE
23 THEREON OR THEREBY, SUCH FIGURE ORDINARILY BEING THE FACE
24 AMOUNT OF THE INDEBTEDNESS LESS ANY PORTION THEREOF WHICH
25 HAS BEEN SATISFIED.

26 (II) THE VALUE OF ANY OTHER INSTRUMENT WHICH
27 CREATES, RELEASES, DISCHARGES OR OTHERWISE AFFECTS ANY
28 VALUABLE LEGAL RIGHT, PRIVILEGE OR OBLIGATION SHALL BE
29 DEEMED THE GREATEST AMOUNT OF ECONOMIC LOSS WHICH THE
30 OWNER OF THE INSTRUMENT MIGHT REASONABLY SUFFER BY VIRTUE

1 OF THE LOSS OF THE INSTRUMENT.

2 (3) WHEN THE VALUE OF PROPERTY CANNOT BE SATISFACTORILY
3 ASCERTAINED PURSUANT TO THE STANDARDS SET FORTH IN PARAGRAPHS
4 (1) AND (2) OF THIS SUBSECTION ITS VALUE SHALL BE DEEMED TO
5 BE AN AMOUNT LESS THAN \$50. AMOUNTS INVOLVED IN THEFTS
6 COMMITTED PURSUANT TO ONE SCHEME OR COURSE OF CONDUCT,
7 WHETHER FROM THE SAME PERSON OR SEVERAL PERSONS, MAY BE
8 AGGREGATED IN DETERMINING THE GRADE OF THE OFFENSE.

9 (D) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
10 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
11 SUBSECTION:

12 "MANMADE DISASTER." ANY INDUSTRIAL, NUCLEAR OR
13 TRANSPORTATION ACCIDENT, EXPLOSION, CONFLAGRATION, POWER
14 FAILURE, NATURAL RESOURCE SHORTAGE OR OTHER CONDITION, EXCEPT
15 ENEMY ACTION, RESULTING FROM MANMADE CAUSES, SUCH AS OIL SPILLS
16 AND OTHER INJURIOUS ENVIRONMENTAL CONTAMINATION, WHICH THREATENS
17 OR CAUSES SUBSTANTIAL DAMAGE TO PROPERTY, HUMAN SUFFERING,
18 HARDSHIP OR LOSS OF LIFE.

19 "NATURAL DISASTER." ANY HURRICANE, TORNADO, STORM, FLOOD,
20 HIGH WATER, WIND-DRIVEN WATER, TIDAL WAVE, EARTHQUAKE,
21 LANDSLIDE, MUDSLIDE, SNOWSTORM, DROUGHT, FIRE, EXPLOSION OR
22 OTHER CATASTROPHE WHICH RESULTS IN SUBSTANTIAL DAMAGE TO
23 PROPERTY, HARDSHIP, SUFFERING OR POSSIBLE LOSS OF LIFE.

24 "WAR-CAUSED DISASTER." ANY CONDITION FOLLOWING AN ATTACK
25 UPON THE UNITED STATES RESULTING IN SUBSTANTIAL DAMAGE TO
26 PROPERTY OR INJURY TO PERSONS IN THE UNITED STATES CAUSED BY USE
27 OF BOMBS, MISSILES, SHELLFIRE, NUCLEAR, RADIOLOGICAL, CHEMICAL
28 OR BIOLOGICAL MEANS, OR OTHER WEAPONS OR OVERT PARAMILITARY
29 ACTIONS, OR OTHER CONDITIONS SUCH AS SABOTAGE.

30 § 3926. Theft of services AND CERTAIN SERVICE PROVIDER

<—

1 PROPERTY.

2 (a) Acquisition of services.--

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

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

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

1 (3) A person is not guilty of theft of cable television
2 service under this section who subscribes to and receives
3 service through an authorized connection of a television
4 receiving set at his dwelling and, within his dwelling, makes
5 an unauthorized connection of an additional television
6 receiving set or sets or audio system which receives only
7 basic cable television service obtained through such
8 authorized connection.

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

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

20 (B.1) ACQUISITION OF PROPERTY OF CERTAIN SERVICE <—
21 PROVIDERS.--A PERSON IS GUILTY OF THEFT IF HE UNLAWFULLY TAKES,
22 OR EXERCISES UNLAWFUL CONTROL OVER, PROPERTY OF AN ELECTRIC,
23 NATURAL GAS, PROPANE, TELECOMMUNICATIONS OR CABLE TELEVISION
24 PROVIDER, WITH INTENT TO DEPRIVE THE OWNER THEREOF.

25 (c) Grading.--

26 (1) An ACQUISITION OR DIVERSION OF SERVICES offense <—
27 under this section constitutes a [summary offense] <—
28 MISDEMEANOR OF THE THIRD DEGREE when the value of the <—
29 services obtained or diverted is less than \$50.

30 (2) When the value of the services obtained or diverted

1 is \$50 or more BUT LESS THAN \$200, [the grading of] the <—
2 offense shall be [as established in section 3903 (relating to
3 grading of theft offenses)] a misdemeanor of the first
4 degree.

5 (2.1) WHEN THE VALUE OF THE SERVICES OBTAINED OR <—
6 DIVERTED IS \$200 OR MORE BUT LESS THAN \$2,000, THE GRADING OF
7 THE OFFENSE SHALL BE A FELONY OF THE THIRD DEGREE.

8 (2.2) WHEN THE VALUE OF THE SERVICES OBTAINED OR
9 DIVERTED IS \$2,000 OR MORE, THE GRADING OF THE OFFENSE SHALL
10 BE A FELONY OF THE SECOND DEGREE.

11 (2.3) WHEN THE VALUE OF ELECTRIC, NATURAL GAS, PROPANE,
12 TELECOMMUNICATIONS OR CABLE TELEVISION SERVICE PROVIDER
13 PROPERTY UNLAWFULLY TAKEN OR CONTROLLED IS LESS THAN \$50, THE
14 OFFENSE CONSTITUTES A SUMMARY OFFENSE.

15 (2.4) WHEN THE VALUE OF ELECTRIC, NATURAL GAS, PROPANE,
16 TELECOMMUNICATIONS OR CABLE TELEVISION SERVICE PROVIDER
17 PROPERTY UNLAWFULLY TAKEN OR CONTROLLED IS \$50 OR MORE, AND
18 THE OFFENSE OCCURRED WHILE THE PROPERTY WAS BEING USED TO
19 PROVIDE SERVICE, THE OFFENSE CONSTITUTES A FELONY OF THE
20 SECOND DEGREE.

21 (2.5) WHEN THE VALUE OF ELECTRIC, NATURAL GAS, PROPANE,
22 TELECOMMUNICATIONS OR CABLE TELEVISION SERVICE PROVIDER
23 PROPERTY UNLAWFULLY TAKEN OR CONTROLLED IS \$50 OR MORE, AND
24 THE OFFENSE DID NOT OCCUR WHILE THE PROPERTY WAS BEING USED
25 TO PROVIDE SERVICE, THE OFFENSE CONSTITUTES A FELONY OF THE
26 THIRD DEGREE.

27 (3) Amounts involved in theft of services OR PROPERTY <—
28 committed pursuant to one scheme or course of conduct,
29 whether from the same person or several persons, may be
30 aggregated in determining the grade of the offense.

1 (d) Inferences.--

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

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

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

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

23 (f) Restitution.--The court may, in addition to any other
24 sentence authorized by law, sentence a person convicted of
25 violating this section to make restitution under section 1106
26 (relating to restitution for injuries to person or property) or
27 42 Pa.C.S. § 9721(c) (relating to sentencing generally). THE ←
28 COURT SHALL SENTENCE ALL NONRESIDENTIAL CONSUMERS CONVICTED OF
29 VIOLATING THIS SECTION TO COMPENSATE THE VENDOR OF SERVICE FOR
30 THE FULL VALUE OF THE THEFT, THE INVESTIGATIVE COSTS INCURRED BY

1 THE VENDOR, THE COSTS OF FULL AND SAFE RESTORATION OF SERVICE AT
2 THE LOCATION OF THE THEFT AND INTEREST CHARGES FOR THE VALUE OF
3 SERVICES TAKEN DURING THE PERIOD OF THEFT WITHIN A 60-DAY PERIOD
4 FOLLOWING THE IMPOSITION OF SENTENCE. In addition to any
5 restitution, the court shall impose a fine on the person
6 convicted of violating this section in the amount of not less
7 than \$1,000. When emergency personnel are called to the scene of
8 theft of service, the responding volunteer fire department is
9 entitled to receive as restitution the full cost of their
10 response from the person convicted of violating this section.

11 (g) Civil action.--A [telecommunication] TELECOMMUNICATIONS <—
12 service provider, an electric service provider, a natural gas
13 service provider ~~or~~, propane service provider OR A CABLE <—
14 TELEVISION SERVICE PROVIDER aggrieved by a violation of this
15 section may in a civil action in any court of competent
16 jurisdiction obtain appropriate relief, including preliminary
17 and other equitable or declaratory relief, compensatory and
18 punitive damages, reasonable investigation expenses, costs of
19 suit and attorney fees.

20 (g.1) Statement of purpose.--The General Assembly believes
21 that it is important to protect the innocent citizens of this
22 Commonwealth from the personal and public dangers caused by
23 energy theft. ~~Energy diversion~~ THE THEFT OF ENERGY, <—
24 TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES OR PROPERTY
25 USED TO PROVIDE THESE SERVICES. THEFT OF THESE SERVICES AND
26 PROPERTY is a public safety issue that cuts across classes,
27 individuals and businesses. Safety hazards include public
28 exposure to serious injury or death and destruction of public or
29 personal property, affecting individuals, neighborhoods, homes,
30 apartments and other facilities. The General Assembly seeks to

1 provide additional tools that support legal and punitive
2 measures to combat the dangerous aspects of this crime.
3 Furthermore, the General Assembly recognizes another aspect of <—
4 ~~energy theft~~ EFFECT OF THEFT OF THE FOREGOING SERVICE PROVIDERS' <—
5 SERVICES AND PROPERTY: the adverse impact on ~~energy~~ SERVICE <—
6 PROVIDER rates and the increased cost unfairly placed on paying
7 customers.

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

11 "CABLE TELEVISION PROVIDER." A PERSON OR ENTITY PROVIDING, <—
12 FOR COMPENSATION, CABLE TELEVISION SERVICE.

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

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

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

21 "Service." Includes, but is not limited to, labor,
22 professional service, transportation service, the supplying of
23 hotel accommodations, restaurant services, entertainment, cable
24 television service, the supplying of equipment for use and the
25 supplying of commodities of a public utility nature such as gas,
26 electricity, steam and water, and [telephone or <—
27 telecommunication] TELECOMMUNICATIONS service. The term <—

28 "unauthorized" means that payment of full compensation for
29 service has been avoided, or has been sought to be avoided,
30 without the consent of the supplier of the service.

1 ["Telecommunication"] TELECOMMUNICATIONS service provider." <—
2 A person or entity providing [telecommunication] <—
3 TELECOMMUNICATIONS service, including, but not limited to, a <—
4 cellular, paging or other wireless communications company or
5 other person or entity which, for a fee, supplies the facility,
6 cell site, mobile telephone switching office or other equipment
7 or [telecommunication] TELECOMMUNICATIONS service. <—
8 ["Telephone service" or "telecommunication"] <—
9 TELECOMMUNICATIONS service." Includes, but is not limited to, <—
10 any service provided for a charge or compensation to facilitate
11 the origination, transmission, emission or reception of signs,
12 signals, data, writings, images and sounds or intelligence of
13 any nature by telephone, including cellular telephones, wire,
14 radio, electromagnetic, photoelectronic or photo-optical system.
15 "Unlawful [telecommunication] TELECOMMUNICATIONS device." <—
16 Any electronic serial number, mobile identification number,
17 personal identification number or any [telecommunication] <—
18 TELECOMMUNICATIONS device that is capable or has been altered, <—
19 modified, programmed or reprogrammed alone or in conjunction
20 with another access device or other equipment so as to be
21 capable of acquiring or facilitating the acquisition of a
22 [telecommunication] TELECOMMUNICATIONS service without the <—
23 consent of the [telecommunication] TELECOMMUNICATIONS service <—
24 provider. The term includes, but is not limited to, phones
25 altered to obtain service without the consent of the
26 [telecommunication] TELECOMMUNICATIONS service provider, tumbler <—
27 phones, counterfeit or clone phones, tumbler microchips,
28 counterfeit or clone microchips, scanning receivers of wireless
29 [telecommunication service of a telecommunication] <—
30 TELECOMMUNICATIONS SERVICE OF A TELECOMMUNICATIONS service <—

1 provider and other instruments capable of disguising their
2 identity or location or of gaining access to a communications
3 system operated by a [telecommunication] TELECOMMUNICATIONS ←
4 service provider.

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