

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2216 Session of
2008

INTRODUCED BY MARSICO, TURZAI, BOYD, CAPPELLI, CLYMER,
CREIGHTON, DALLY, J. EVANS, GEIST, GINGRICH, GRELL,
HENNESSEY, HESS, KAUFFMAN, M. KELLER, KORTZ, MENSCH,
R. MILLER, MILNE, MOUL, MOYER, NAILOR, PICKETT, PYLE,
REICHLEY, SAYLOR, SCAVELLO, K. SMITH, SONNEY, STERN AND TRUE,
MARCH 10, 2008

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 10, 2008

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for applicability to
3 providers outside this Commonwealth; and further providing
4 for exceptions, for investigative disclosure or use of
5 contents of wire, electronic or oral communications or
6 derivative evidence, for requirements of governmental access,
7 for mobile tracking devices, for issuance and for expiration.

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

10 Section 1. Title 18 of the Pennsylvania Consolidated
11 Statutes is amended by adding a section to read:

12 § 5702.1. Applicability to providers outside this Commonwealth.

13 This chapter shall apply to providers of an electronic or
14 wire communication service located outside this Commonwealth if
15 they are engaged in transacting any business in this
16 Commonwealth as determined under 42 Pa.C.S. § 5322(a)(1)
17 (relating to bases of personal jurisdiction over persons outside
18 this Commonwealth).

1 Section 2. Section 5704(2)(iv) of Title 18 is amended to
2 read:

3 § 5704. Exceptions to prohibition of interception and
4 disclosure of communications.

5 It shall not be unlawful and no prior court approval shall be
6 required under this chapter for:

7 * * *

8 (2) Any investigative or law enforcement officer or any
9 person acting at the direction or request of an investigative
10 or law enforcement officer to intercept a wire, electronic or
11 oral communication involving suspected criminal activities,
12 including, but not limited to, the crimes enumerated in
13 section 5708 (relating to order authorizing interception of
14 wire, electronic or oral communications), where:

15 * * *

16 (iv) the requirements of this subparagraph are met.
17 If an oral interception otherwise authorized under this
18 paragraph will take place in the home of a nonconsenting
19 party, then, in addition to the requirements of
20 subparagraph (ii), the interception shall not be
21 conducted until an order is first obtained from [the
22 president judge, or his designee who shall also be] a
23 judge, of a court of common pleas, authorizing such in-
24 home interception, based upon an affidavit by an
25 investigative or law enforcement officer that establishes
26 probable cause for the issuance of such an order. No such
27 order or affidavit shall be required where probable cause
28 and exigent circumstances exist. For the purposes of this
29 paragraph, an oral interception shall be deemed to take
30 place in the home of a nonconsenting party only if both

1 the consenting and nonconsenting parties are physically
2 present in the home at the time of the interception.

3 * * *

4 Section 3. Section 5717 of Title 18 is amended by adding a
5 subsection to read:

6 § 5717. Investigative disclosure or use of contents of wire,
7 electronic or oral communications or derivative
8 evidence.

9 * * *

10 (c) Otherwise authorized personnel.--Any person who, by any
11 means authorized by the laws of another state or the Federal
12 Government, has obtained knowledge of the contents of any wire,
13 electronic or oral communication, or evidence derived therefrom,
14 may disclose the contents or evidence to an investigative or law
15 enforcement officer and may disclose the contents or evidence
16 where otherwise admissible while giving testimony under oath or
17 affirmation in any proceeding in any court of this Commonwealth.

18 Section 4. Sections 5743(d), 5761(b) and 5773(c) of Title 18
19 are amended to read:

20 § 5743. Requirements for governmental access.

21 * * *

22 (d) Requirements for court order.--A court order for
23 disclosure under subsection (b) or (c) shall be issued only if
24 the investigative or law enforcement officer shows that there
25 are specific and articulable facts showing that there are
26 reasonable grounds to believe that the contents of a wire or
27 electronic communication, or the records or other information
28 sought, are relevant and material to an ongoing criminal
29 investigation. A court issuing an order pursuant to this
30 section, on a motion made promptly by the service provider, may

1 quash or modify the order if the information or records
2 requested are unusually voluminous in nature or compliance with
3 the order would otherwise cause an undue burden on the provider.
4 An order issued under this subsection shall be sealed until
5 otherwise ordered by the court.

6 * * *

7 § 5761. Mobile tracking devices.

8 * * *

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

14 * * *

15 § 5773. Issuance of an order for use of certain devices.

16 * * *

17 (c) Time period and extensions.--

18 (1) An order issued under this section shall authorize
19 the installation and use of a pen register, trap and trace
20 device or a telecommunication identification interception
21 device for a period not to exceed [30] 60 days.

22 (2) Extensions of such an order may be granted but only
23 upon an application for an order under section 5772 and upon
24 the judicial finding required by subsection (a). The period
25 of each extension shall be for a period not to exceed [30] 60
26 days.

27 * * *

28 Section 5. Section 5781 of Title 18 is repealed:

29 [§ 5781. Expiration of chapter.

30 This chapter expires December 31, 2008, unless extended by

1 statute.]

2 Section 6. This act shall take effect in 60 days.