

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, TRUE, HARPER, VULAKOVICH, FLECK AND WOJNAROSKI, MARCH 10, 2008

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, SEPTEMBER 22, 2008

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, IN WIRETAPPING AND ELECTRONIC <—
3 SURVEILLANCE, providing for applicability to providers
4 outside this Commonwealth; and further providing for <—
5 exceptions, for investigative disclosure or use of contents
6 of wire, electronic or oral communications or derivative
7 evidence, FOR DISCLOSURE OF CONTENTS, for requirements of <—
8 governmental access, FOR COST REIMBURSEMENT, for mobile <—
9 tracking devices AND for issuance and for expiration; AND <—
10 MAKING AN EDITORIAL CHANGE.

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

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

15 § 5702.1. Applicability to providers outside this Commonwealth.

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

1 (relating to bases of personal jurisdiction over persons outside
2 this Commonwealth).

3 ~~Section 2. Section 5704(2)(iv) of Title 18 is amended to~~ <—
4 ~~read:~~

5 ~~§ 5704. Exceptions to prohibition of interception and~~
6 ~~disclosure of communications.~~

7 ~~It shall not be unlawful and no prior court approval shall be~~
8 ~~required under this chapter for:~~

9 ~~* * *~~

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

17 ~~* * *~~

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

1 ~~paragraph, an oral interception shall be deemed to take~~
2 ~~place in the home of a nonconsenting party only if both~~
3 ~~the consenting and nonconsenting parties are physically~~
4 ~~present in the home at the time of the interception.~~

5 * * *

6 Section 3 2. Section 5717 of Title 18 is amended by adding a <—
7 subsection to read:

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

11 * * *

12 (c) Otherwise authorized personnel.--Any person <—
13 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER who, by any means <—
14 authorized by the laws of another state or the Federal
15 Government, has obtained knowledge of the contents of any wire,
16 electronic or oral communication, or evidence derived therefrom,
17 may disclose the contents or evidence to an investigative or law
18 enforcement officer and may disclose the contents or evidence
19 where otherwise admissible while giving testimony under oath or
20 affirmation in any proceeding in any court of this Commonwealth.
21 HOWEVER, THE CONTENTS OF A NONCONSENSUAL INTERCEPTION AUTHORIZED <—
22 BY THE LAWS OF ANOTHER STATE OR THE FEDERAL GOVERNMENT SHALL NOT
23 BE ADMISSIBLE UNLESS THE INTERCEPTION WAS AUTHORIZED BY A COURT
24 UPON A FINDING OF PROBABLE CAUSE THAT THE TARGET OF THE
25 SURVEILLANCE IS ENGAGED OR WILL ENGAGE IN A VIOLATION OF THE
26 CRIMINAL LAWS OF ANY STATE OR THE FEDERAL GOVERNMENT.

27 SECTION 3. SECTION 5742 HEADING AND (A) INTRODUCTORY
28 PARAGRAPH OF TITLE 18 ARE AMENDED, SUBSECTION (A) IS AMENDED BY
29 ADDING A PARAGRAPH AND THE SECTION IS AMENDED BY ADDING
30 SUBSECTIONS TO READ:

1 § 5742. DISCLOSURE OF CONTENTS AND RECORDS.

2 (A) PROHIBITIONS.--EXCEPT AS PROVIDED IN SUBSECTION (B) AND
3 (C):

4 * * *

5 (3) A PERSON OR ENTITY PROVIDING AN ELECTRONIC
6 COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE TO THE
7 PUBLIC SHALL NOT KNOWINGLY DIVULGE A RECORD OR OTHER
8 INFORMATION PERTAINING TO A SUBSCRIBER TO, OR CUSTOMER OF,
9 THE SERVICE.

10 ** *

11 (C) EXCEPTIONS FOR DISCLOSURE OF RECORDS OR OTHER
12 INFORMATION.--A PERSON OR ENTITY MAY DIVULGE A RECORD OR OTHER
13 INFORMATION PERTAINING TO A SUBSCRIBER TO, OR CUSTOMER OF, THE
14 SERVICE IF ANY OF THE FOLLOWING PARAGRAPHS APPLY:

15 (1) A RECORD OR OTHER INFORMATION MAY BE DIVULGED
16 INCIDENT TO ANY SERVICE OR OTHER BUSINESS OPERATION OR TO THE
17 PROTECTION OF THE RIGHTS OR PROPERTY OF THE PROVIDER.

18 (2) A RECORD OR OTHER INFORMATION MAY BE DIVULGED TO ANY
19 OF THE FOLLOWING:

20 (I) AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICIAL AS
21 AUTHORIZED IN SECTION 5743.

22 (II) THE SUBSCRIBER OR CUSTOMER UPON REQUEST.

23 (III) A THIRD PARTY, UPON RECEIPT FROM THE REQUESTER
24 OF ADEQUATE PROOF OF LAWFUL CONSENT FROM THE SUBSCRIBER
25 TO, OR CUSTOMER OF, THE SERVICE TO RELEASE THE
26 INFORMATION TO THE THIRD PARTY.

27 (IV) A PARTY TO A LEGAL PROCEEDING, UPON RECEIPT
28 FROM THE PARTY OF A COURT ORDER ENTERED UNDER SUBSECTION
29 (C.1). THIS SUBPARAGRAPH DOES NOT APPLY TO AN
30 INVESTIGATIVE OR LAW ENFORCEMENT OFFICIAL AUTHORIZED

1 UNDER SECTION 5743.

2 (3) NOTWITHSTANDING PARAGRAPH (2), A RECORD OR OTHER
3 INFORMATION MAY BE DIVULGED AS AUTHORIZED BY A COMMONWEALTH
4 STATUTE OR AS AUTHORIZED BY A COMMONWEALTH REGULATORY AGENCY
5 WITH OVERSIGHT OVER THE PERSON OR ENTITY.

6 (4) SUBJECT TO PARAGRAPH (2), A RECORD OR OTHER
7 INFORMATION MAY BE DIVULGED AS AUTHORIZED BY FEDERAL LAW OR
8 AS AUTHORIZED BY A FEDERAL REGULATORY AGENCY HAVING OVERSIGHT
9 OVER THE PERSON OR ENTITY.

10 (C.1) ORDER FOR RELEASE OF RECORDS.--

11 (1) AN ORDER TO DIVULGE A RECORD OR OTHER INFORMATION
12 PERTAINING TO A SUBSCRIBER OR CUSTOMER UNDER SUBSECTION
13 (C)(2)(IV) MUST BE APPROVED BY A COURT PRESIDING OVER THE
14 PROCEEDING IN WHICH A PARTY SEEKS THE RECORD OR OTHER
15 INFORMATION.

16 (2) THE ORDER MAY BE ISSUED ONLY AFTER THE SUBSCRIBER OR
17 CUSTOMER RECEIVED NOTICE FROM THE PARTY SEEKING THE RECORD
18 INFORMATION AND WAS GIVEN AN OPPORTUNITY TO BE HEARD.

19 (3) THE COURT MAY ISSUE A PRELIMINARY ORDER DIRECTING
20 THE PROVIDER TO FURNISH THE COURT WITH THE IDENTITY OF OR
21 CONTACT INFORMATION FOR THE SUBSCRIBER OR CUSTOMER IF THE
22 PARTY DOES NOT POSSESS THIS INFORMATION.

23 (4) AN ORDER FOR DISCLOSURE OF A RECORD OR OTHER
24 INFORMATION SHALL BE ISSUED ONLY IF THE PARTY SEEKING
25 DISCLOSURE DEMONSTRATES SPECIFIC AND ARTICULABLE FACTS TO
26 SHOW THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE
27 RECORD OR OTHER INFORMATION SOUGHT IS RELEVANT AND MATERIAL
28 TO THE PROCEEDING. IN MAKING ITS DETERMINATION, THE COURT
29 SHALL CONSIDER THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING
30 INPUT OF THE SUBSCRIBER OR CUSTOMER, IF ANY, AND THE LIKELY

1 IMPACT OF THE PROVIDER.

2 Section 4 3.1 Sections ~~5743(d)~~ 5743(C)(1) AND (D), 5746(A), <—
3 5761(b) and 5773(c) of Title 18 are amended to read:

4 § 5743. Requirements for governmental access.

5 * * *

6 (C) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR <—
7 REMOTE COMPUTING SERVICE.--

8 [(1) EXCEPT AS PROVIDED IN PARAGRAPH (2), A PROVIDER OF
9 ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE
10 MAY DISCLOSE A RECORD OR OTHER INFORMATION PERTAINING TO A
11 SUBSCRIBER TO OR CUSTOMER OF THE SERVICE, NOT INCLUDING THE
12 CONTENTS OF COMMUNICATION COVERED BY SUBSECTION (A) OR (B),
13 TO ANY PERSON OTHER THAN AN INVESTIGATIVE OR LAW ENFORCEMENT
14 OFFICER.]

15 * * *

16 (d) Requirements for court order.--A court order for
17 disclosure under subsection (b) or (c) shall be issued only if
18 the investigative or law enforcement officer shows that there
19 are specific and articulable facts showing that there are
20 reasonable grounds to believe that the contents of a wire or
21 electronic communication, or the records or other information
22 sought, are relevant and material to an ongoing criminal
23 investigation. A court issuing an order pursuant to this
24 section, on a motion made promptly by the service provider, may
25 quash or modify the order if the information or records
26 requested are unusually voluminous in nature or compliance with
27 the order would otherwise cause an undue burden on the provider.
28 An order issued under this subsection shall be sealed until
29 otherwise ordered by the court.

30 * * *

1 § 5746. COST REIMBURSEMENT.

2 (A) PAYMENT.--EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
3 (C), AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER OBTAINING THE
4 CONTENTS OF COMMUNICATIONS, RECORDS OR OTHER INFORMATION UNDER
5 SECTION 5742 (RELATING TO DISCLOSURE OF CONTENTS AND RECORDS),
6 5743 (RELATING TO REQUIREMENTS FOR GOVERNMENTAL ACCESS) OR 5744
7 (RELATING TO BACKUP PRESERVATION) SHALL REIMBURSE THE PERSON OR
8 ENTITY ASSEMBLING OR PROVIDING THE INFORMATION FOR SUCH COSTS AS
9 ARE REASONABLY NECESSARY AND WHICH HAVE BEEN DIRECTLY INCURRED
10 IN SEARCHING FOR, ASSEMBLING, REPRODUCING AND OTHERWISE
11 PROVIDING THE INFORMATION. REIMBURSABLE COSTS SHALL INCLUDE ANY
12 COSTS DUE TO NECESSARY DISRUPTION OF NORMAL OPERATIONS OF ANY
13 ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE IN
14 WHICH THE INFORMATION MAY BE STORED.

15 * * *

16 § 5761. Mobile tracking devices.

17 * * *

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

23 * * *

24 § 5773. Issuance of an order for use of certain devices.

25 * * *

26 (c) Time period and extensions.--

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

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

6 * * *

7 ~~Section 5. Section 5781 of Title 18 is repealed.~~ <—

8 ~~[§ 5781. Expiration of chapter.~~

9 ~~This chapter expires December 31, 2008, unless extended by~~
10 ~~statute.]~~

11 Section ~~6~~ 4. This act shall take effect in 60 days. <—