

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1263 Session of
2008

INTRODUCED BY RAFFERTY, TARTAGLIONE, ERICKSON, PUNT, COSTA,
O'PAKE, PIPPY, PICCOLA, BOSCOLA, EICHELBERGER, WAUGH, BAKER
AND STACK, MARCH 18, 2008

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
OCTOBER 7, 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; further providing for EXCEPTIONS <—
5 TO PROHIBITION OF INTERCEPTION AND DISCLOSURE OF
6 COMMUNICATIONS, FOR INVESTIGATIVE DISCLOSURE OR USE OF
7 CONTENTS OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS OR
8 DERIVATIVE EVIDENCE, FOR DISCLOSURE OF CONTENTS, FOR
9 REQUIREMENTS FOR GOVERNMENTAL ACCESS, FOR MOBILE TRACKING
10 DEVICES, FOR ISSUANCE AND FOR expiration of chapter; AND <—
11 MAKING AN EDITORIAL CHANGE.

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

14 ~~Section 1. Section 5781 of Title 18 of the Pennsylvania~~ <—
15 ~~Consolidated Statutes is amended to read:~~

16 SECTION 1. TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED <—

17 STATUTES IS AMENDED BY ADDING A SECTION TO READ:

18 § 5702.1. APPLICABILITY TO PROVIDERS OUTSIDE THIS COMMONWEALTH.

19 THIS CHAPTER SHALL APPLY TO PROVIDERS OF AN ELECTRONIC OR

20 WIRE COMMUNICATION SERVICE LOCATED OUTSIDE THIS COMMONWEALTH IF

21 THEY ARE ENGAGED IN TRANSACTING ANY BUSINESS IN THIS

1 COMMONWEALTH AS DETERMINED UNDER 42 PA.C.S. § 5322(A)(1)
2 (RELATING TO BASES OF PERSONAL JURISDICTION OVER PERSONS OUTSIDE
3 THIS COMMONWEALTH).

4 SECTION 2. SECTION 5704 OF TITLE 18 IS AMENDED BY ADDING A
5 PARAGRAPH TO READ:

6 § 5704. EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND
7 DISCLOSURE OF COMMUNICATIONS.

8 IT SHALL NOT BE UNLAWFUL AND NO PRIOR COURT APPROVAL SHALL BE
9 REQUIRED UNDER THIS CHAPTER FOR:

10 * * *

11 (17) A PERSON TO INTERCEPT ORAL COMMUNICATIONS FOR
12 DISCIPLINARY OR SECURITY PURPOSES ON A SCHOOL BUS OR SCHOOL
13 VEHICLE, AS THOSE TERMS ARE DEFINED IN 75 PA.C.S. § 102
14 (RELATING TO DEFINITIONS), IF ALL OF THE FOLLOWING CONDITIONS
15 ARE MET:

16 (I) THE SCHOOL BOARD HAS ADOPTED A POLICY THAT
17 AUTHORIZES AUDIO INTERCEPTION ON SCHOOL BUSES OR SCHOOL
18 VEHICLES FOR DISCIPLINARY OR SECURITY PURPOSES.

19 (II) EACH SCHOOL YEAR, THE SCHOOL BOARD NOTIFIES
20 STUDENTS AND THEIR PARENTS OR GUARDIANS OF THE POLICY, BY
21 LETTER MAILED TO THE STUDENTS' HOME ADDRESSES.

22 (III) THE SCHOOL BOARD POSTS A NOTICE THAT STUDENTS
23 MAY BE AUDIOTAPED, WHICH NOTICE IS CLEARLY VISIBLE ON
24 EACH SCHOOL BUS OR SCHOOL VEHICLE THAT IS FURNISHED WITH
25 AUDIO-RECORDING EQUIPMENT.

26 THIS PARAGRAPH SHALL NOT APPLY WHEN A SCHOOL BUS OR SCHOOL
27 VEHICLE IS USED FOR A PURPOSE THAT IS NOT SCHOOL RELATED.

28 SECTION 3. SECTION 5717 OF TITLE 18 IS AMENDED BY ADDING A
29 SUBSECTION TO READ:

30 § 5717. INVESTIGATIVE DISCLOSURE OR USE OF CONTENTS OF WIRE,

1 ELECTRONIC OR ORAL COMMUNICATIONS OR DERIVATIVE
2 EVIDENCE.

3 * * *

4 (C) OTHERWISE AUTHORIZED PERSONNEL.--ANY INVESTIGATIVE OR
5 LAW ENFORCEMENT OFFICER WHO, BY ANY MEANS AUTHORIZED BY THE LAWS
6 OF ANOTHER STATE OR THE FEDERAL GOVERNMENT, HAS OBTAINED
7 KNOWLEDGE OF THE CONTENTS OF ANY WIRE, ELECTRONIC OR ORAL
8 COMMUNICATION, OR EVIDENCE DERIVED THEREFROM, MAY DISCLOSE THE
9 CONTENTS OR EVIDENCE TO AN INVESTIGATIVE OR LAW ENFORCEMENT
10 OFFICER AND MAY DISCLOSE THE CONTENTS OR EVIDENCE WHERE
11 OTHERWISE ADMISSIBLE WHILE GIVING TESTIMONY UNDER OATH OR
12 AFFIRMATION IN ANY PROCEEDING IN ANY COURT OF THIS COMMONWEALTH.
13 HOWEVER, THE CONTENTS OF A NONCONSENSUAL INTERCEPTION AUTHORIZED
14 BY THE LAWS OF ANOTHER STATE OR THE FEDERAL GOVERNMENT SHALL NOT
15 BE ADMISSIBLE UNLESS THE INTERCEPTION WAS AUTHORIZED BY A COURT
16 UPON A FINDING OF PROBABLE CAUSE THAT THE TARGET OF THE
17 SURVEILLANCE IS ENGAGED OR WILL ENGAGE IN A VIOLATION OF THE
18 CRIMINAL LAWS OF ANY STATE OR THE FEDERAL GOVERNMENT.

19 SECTION 4. SECTION 5742 HEADING AND (A) INTRODUCTORY
20 PARAGRAPH OF TITLE 18 ARE AMENDED, SUBSECTION (A) IS AMENDED BY
21 ADDING A PARAGRAPH AND THE SECTION IS AMENDED BY ADDING
22 SUBSECTIONS TO READ:

23 § 5742. DISCLOSURE OF CONTENTS AND RECORDS.

24 (A) PROHIBITIONS.--EXCEPT AS PROVIDED IN SUBSECTION (B) AND
25 (C):

26 * * *

27 (3) A PERSON OR ENTITY PROVIDING AN ELECTRONIC
28 COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE TO THE
29 PUBLIC SHALL NOT KNOWINGLY DIVULGE A RECORD OR OTHER
30 INFORMATION PERTAINING TO A SUBSCRIBER TO, OR CUSTOMER OF,

1 THE SERVICE.

2 * * *

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

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

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

12 (I) AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICIAL AS
13 AUTHORIZED IN SECTION 5743.

14 (II) THE SUBSCRIBER OR CUSTOMER UPON REQUEST.

15 (III) A THIRD PARTY, UPON RECEIPT FROM THE REQUESTER
16 OF ADEQUATE PROOF OF LAWFUL CONSENT FROM THE SUBSCRIBER
17 TO, OR CUSTOMER OF, THE SERVICE TO RELEASE THE
18 INFORMATION TO THE THIRD PARTY.

19 (IV) A PARTY TO A LEGAL PROCEEDING, UPON RECEIPT
20 FROM THE PARTY OF A COURT ORDER ENTERED UNDER SUBSECTION
21 (C.1). THIS SUBPARAGRAPH DOES NOT APPLY TO AN
22 INVESTIGATIVE OR LAW ENFORCEMENT OFFICIAL AUTHORIZED
23 UNDER SECTION 5743.

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

28 (4) SUBJECT TO PARAGRAPH (2), A RECORD OR OTHER
29 INFORMATION MAY BE DIVULGED AS AUTHORIZED BY FEDERAL LAW OR
30 AS AUTHORIZED BY A FEDERAL REGULATORY AGENCY HAVING OVERSIGHT

1 OVER THE PERSON OR ENTITY.

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

3 (1) AN ORDER TO DIVULGE A RECORD OR OTHER INFORMATION
4 PERTAINING TO A SUBSCRIBER OR CUSTOMER UNDER SUBSECTION
5 (C)(2)(IV) MUST BE APPROVED BY A COURT PRESIDING OVER THE
6 PROCEEDING IN WHICH A PARTY SEEKS THE RECORD OR OTHER
7 INFORMATION.

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

11 (3) THE COURT MAY ISSUE A PRELIMINARY ORDER DIRECTING
12 THE PROVIDER TO FURNISH THE COURT WITH THE IDENTITY OF OR
13 CONTACT INFORMATION FOR THE SUBSCRIBER OR CUSTOMER IF THE
14 PARTY DOES NOT POSSESS THIS INFORMATION.

15 (4) AN ORDER FOR DISCLOSURE OF A RECORD OR OTHER
16 INFORMATION SHALL BE ISSUED ONLY IF THE PARTY SEEKING
17 DISCLOSURE DEMONSTRATES SPECIFIC AND ARTICULABLE FACTS TO
18 SHOW THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE
19 RECORD OR OTHER INFORMATION SOUGHT IS RELEVANT AND MATERIAL
20 TO THE PROCEEDING. IN MAKING ITS DETERMINATION, THE COURT
21 SHALL CONSIDER THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING
22 INPUT OF THE SUBSCRIBER OR CUSTOMER, IF ANY, AND THE LIKELY
23 IMPACT OF THE PROVIDER.

24 SECTION 5. SECTIONS 5743(C)(1) AND (D), 5746(A), 5761(B),
25 5773(C) AND 5781 OF TITLE 18 ARE AMENDED TO READ:

26 § 5743. REQUIREMENTS FOR GOVERNMENTAL ACCESS.

27 * * *

28 (C) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR
29 REMOTE COMPUTING SERVICE.--

30 [(1) EXCEPT AS PROVIDED IN PARAGRAPH (2), A PROVIDER OF

1 ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE
2 MAY DISCLOSE A RECORD OR OTHER INFORMATION PERTAINING TO A
3 SUBSCRIBER TO OR CUSTOMER OF THE SERVICE, NOT INCLUDING THE
4 CONTENTS OF COMMUNICATION COVERED BY SUBSECTION (A) OR (B),
5 TO ANY PERSON OTHER THAN AN INVESTIGATIVE OR LAW ENFORCEMENT
6 OFFICER.]

7 * * *

8 (D) REQUIREMENTS FOR COURT ORDER.--A COURT ORDER FOR
9 DISCLOSURE UNDER SUBSECTION (B) OR (C) SHALL BE ISSUED ONLY IF
10 THE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER SHOWS THAT THERE
11 ARE SPECIFIC AND ARTICULABLE FACTS SHOWING THAT THERE ARE
12 REASONABLE GROUNDS TO BELIEVE THAT THE CONTENTS OF A WIRE OR
13 ELECTRONIC COMMUNICATION, OR THE RECORDS OR OTHER INFORMATION
14 SOUGHT, ARE RELEVANT AND MATERIAL TO AN ONGOING CRIMINAL
15 INVESTIGATION. A COURT ISSUING AN ORDER PURSUANT TO THIS
16 SECTION, ON A MOTION MADE PROMPTLY BY THE SERVICE PROVIDER, MAY
17 QUASH OR MODIFY THE ORDER IF THE INFORMATION OR RECORDS
18 REQUESTED ARE UNUSUALLY VOLUMINOUS IN NATURE OR COMPLIANCE WITH
19 THE ORDER WOULD OTHERWISE CAUSE AN UNDUE BURDEN ON THE PROVIDER.
20 AN ORDER ISSUED UNDER THIS SUBSECTION SHALL BE SEALED UNTIL
21 OTHERWISE ORDERED BY THE COURT.

22 * * *

23 § 5746. COST REIMBURSEMENT.

24 (A) PAYMENT.--EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
25 (C), AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER OBTAINING THE
26 CONTENTS OF COMMUNICATIONS, RECORDS OR OTHER INFORMATION UNDER
27 SECTION 5742 (RELATING TO DISCLOSURE OF CONTENTS AND RECORDS),
28 5743 (RELATING TO REQUIREMENTS FOR GOVERNMENTAL ACCESS) OR 5744
29 (RELATING TO BACKUP PRESERVATION) SHALL REIMBURSE THE PERSON OR
30 ENTITY ASSEMBLING OR PROVIDING THE INFORMATION FOR SUCH COSTS AS

1 ARE REASONABLY NECESSARY AND WHICH HAVE BEEN DIRECTLY INCURRED
2 IN SEARCHING FOR, ASSEMBLING, REPRODUCING AND OTHERWISE
3 PROVIDING THE INFORMATION. REIMBURSABLE COSTS SHALL INCLUDE ANY
4 COSTS DUE TO NECESSARY DISRUPTION OF NORMAL OPERATIONS OF ANY
5 ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE IN
6 WHICH THE INFORMATION MAY BE STORED.

7 * * *

8 § 5761. MOBILE TRACKING DEVICES.

9 * * *

10 (B) JURISDICTION.--ORDERS PERMITTED BY THIS SECTION MAY
11 AUTHORIZE THE USE OF MOBILE TRACKING DEVICES WITHIN THE
12 JURISDICTION OF THE COURT OF COMMON PLEAS, AND OUTSIDE THAT
13 JURISDICTION [BUT WITHIN THIS COMMONWEALTH], IF THE DEVICE IS
14 INSTALLED WITHIN THE JURISDICTION OF THE COURT OF COMMON PLEAS.

15 * * *

16 § 5773. ISSUANCE OF AN ORDER FOR USE OF CERTAIN DEVICES.

17 * * *

18 (C) TIME PERIOD AND EXTENSIONS.--

19 (1) AN ORDER ISSUED UNDER THIS SECTION SHALL AUTHORIZE
20 THE INSTALLATION AND USE OF A PEN REGISTER, TRAP AND TRACE
21 DEVICE OR A TELECOMMUNICATION IDENTIFICATION INTERCEPTION
22 DEVICE FOR A PERIOD NOT TO EXCEED [30] 60 DAYS.

23 (2) EXTENSIONS OF SUCH AN ORDER MAY BE GRANTED BUT ONLY
24 UPON AN APPLICATION FOR AN ORDER UNDER SECTION 5772 AND UPON
25 THE JUDICIAL FINDING REQUIRED BY SUBSECTION (A). THE PERIOD
26 OF EACH EXTENSION SHALL BE FOR A PERIOD NOT TO EXCEED [30] 60
27 DAYS.

28 * * *

29 § 5781. Expiration of chapter.

30 This chapter expires December 31, [2008] 2013, unless

1 extended by statute.

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

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