

No. 1995-8

## AN ACT

SB 655

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for manufacture, distribution or possession of devices for theft of telecommunications services.

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

Section 1. Sections 910 and 3926 of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 910. Manufacture, distribution or possession of devices for theft of telecommunications services.

(a) Offense defined.—Any person commits an offense if he:

(1) ***makes or possesses any instrument, apparatus, equipment or makes, distributes, possesses, uses or assembles an unlawful telecommunication device or modifies, alters, programs or reprograms a telecommunication device*** designed, adapted or which can be used:

(i) for commission of a theft of ***[telecommunications] telecommunication service or to acquire or facilitate the acquisition of telecommunication service without the consent of the telecommunication service provider***; or

(ii) to conceal or to assist another to conceal from any ***[supplier of telecommunications] telecommunication service provider*** or from any lawful authority the existence or place of origin or of destination of any telecommunication; or

(2) sells, ***possesses, distributes***, gives or otherwise transfers to another[,], or offers, ***promotes*** or advertises for sale ***[any instrument, apparatus, equipment or device described in paragraph (1) of this subsection,] any***:

(i) ***unlawful telecommunication device***, or plans or instructions for making or assembling the same, under circumstances evidencing an intent to use or employ such ***[instrument, apparatus, equipment or] unlawful telecommunication device***, or to allow the same to be used or employed for a purpose described in paragraph (1) ***[of this subsection]***, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling such ***[instrument, apparatus, equipment or device.] unlawful telecommunication device***; or

(ii) ***material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the***

*purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication device.*

(b) *Grading.*—An offense under this section is a [misdemeanor of the first] *felony of the third* degree if the person convicted of such offense has been previously convicted of any similar crime in this or any other state or Federal jurisdiction. Otherwise it is a misdemeanor of the [second] *first* degree.

(c) *Restitution.*—*The court may, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution under section 1106 (relating to restitution for injuries to person or property) or 42 Pa.C.S. § 9721(c) (relating to sentencing generally).*

(d) *Civil action.*—*A telecommunication service provider aggrieved by a violation of this section may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit and attorney fees.*

(e) *Definitions.*—*As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*

*“Manufacture of an unlawful telecommunication device.” To produce or assemble an unlawful telecommunication device or to modify, alter, program or reprogram a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider.*

*“Telecommunication device.” Any type of instrument, device, machine or equipment which is capable of transmitting or receiving telephonic, electronic or radio communications or any part of such instrument, device, machine or equipment or any computer circuit, computer chip, electronic mechanism or other component which is capable of facilitating the transmission or reception of telephonic, electronic or radio communications.*

*“Telecommunication service.” The meaning given to it in section 3926 (relating to theft of services).*

*“Telecommunication service provider.” The meaning given to it in section 3926 (relating to theft of services).*

*“Unlawful telecommunication device.” The meaning given to it in section 3926 (relating to theft of services).*

§ 3926. Theft of services.

(a) *Acquisition of services.*—

(1) A person is guilty of theft if he intentionally obtains services for himself or for another which he knows are available only for compensation, by deception or threat, by altering or tampering with the public utility meter or measuring device by which such services are delivered or by causing or permitting such altering or tampering, by making or maintaining any unauthorized connection, whether physically,

electrically or inductively, to a distribution or transmission line, by attaching or maintaining the attachment of any unauthorized device to any cable, wire or other component of an electric, telephone or cable television system or to a television receiving set connected to a cable television system, by making or maintaining any unauthorized modification or alteration to any device installed by a cable television system, or by false token or other trick or artifice to avoid payment for the service.

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

**[(2) As used in this section, the word "service" includes, but is not limited to, labor, professional service, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, cable television service, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water, and telephone service. The term "unauthorized" means that payment of full compensation for service has been avoided, or has been sought to be avoided, without the consent of the supplier of the service.]**

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

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

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

(c) Grading.—

(1) An offense under this section constitutes a summary offense when the value of the services obtained or diverted is less than \$50.

(2) When the value of the services obtained or diverted is \$50 or more, the grading of the offense shall be as established in section 3903 (relating to grading of theft offenses).

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

(d) Inferences.—

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

(2) Any person having possession of or access to the location of the distribution or transmission lines or other facilities of a cable television system which have been tapped, altered or tampered with or to which any unauthorized connection has been made or to which any unauthorized device has been attached or any person having possession of or access to any device installed by a cable television system to which an unauthorized modification or alteration has been made, the result of which tapping, altering, tampering, connection, attachment or modification is to avoid payment for all or any part of the cable television service for which payment is normally required, and who enjoys the use of or receives the benefit from the cable television service, may be reasonably inferred to have acted to have tapped, altered, tampered with, connected or attached to or modified cable television facilities with the intent to obtain cable television service without making full compensation therefor. This inference shall not apply to the act of a subscriber to cable television service, who receives service through an authorized connection of a television receiving set at his dwelling, in making, within his dwelling, an unauthorized connection of an additional television receiving set or sets or audio system which receives only basic cable television service obtained through such authorized connection.

(e) Sale or transfer of device or plan intended for acquisition or diversion.—A person is guilty of a misdemeanor of the third degree if he sells, gives or otherwise transfers to others or offers, advertises or exposes for sale to others, any device, kit, plan or other instructional procedure for the making of such device or a printed circuit, under circumstances indicating his having knowledge or reason to believe that such device, kit, plan or instructional procedure is intended for use by such others for the acquisition or diversion of services as set forth in subsections (a) and (b).

(f) *Restitution.*—*The court may, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution under section 1106 (relating to restitution for injuries to person or property) or 42 Pa.C.S. § 9721(c) (relating to sentencing generally).*

(g) *Civil action.*—*A telecommunication service provider aggrieved by a violation of this section may in a civil action in any court of competent jurisdiction obtain appropriate relief, including preliminary and other*

*equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit and attorney fees.*

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

*“Service.” Includes, but is not limited to, labor, professional service, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, cable television service, the supplying of equipment for use and the supplying of commodities of a public utility nature such as gas, electricity, steam and water, and telephone or telecommunication service. The term “unauthorized” means that payment of full compensation for service has been avoided, or has been sought to be avoided, without the consent of the supplier of the service.*

*“Telecommunication service provider.” A person or entity providing telecommunication service, including, but not limited to, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service.*

*“Telephone service” or “telecommunication service.” Includes, but is not limited to, any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, electromagnetic, photoelectronic or photo-optical system.*

*“Unlawful telecommunication device.” Any electronic serial number, mobile identification number, personal identification number or any telecommunication device that is capable or has been altered, modified, programmed or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable of acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. The term includes, but is not limited to, phones altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone phones, tumbler microchips, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider.*

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

APPROVED—The 13th day of June, A.D. 1995.

THOMAS J. RIDGE