

No. 1997-26

AN ACT

SB 135

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for the definition of "caretaker," for theft of trade secrets and for contraband; and providing for drug-free school zones.

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

Section 1. Section 2713(f) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2713. Neglect of care-dependent person.

* * *

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

"Care-dependent person." Any adult who, due to physical or cognitive disability or impairment, requires assistance to meet his needs for food, shelter, clothing, personal care or health care.

"Caretaker." Any person who:

(1) is an owner, operator, manager or employee of a nursing home, personal care home, domiciliary care home, community residential facility, *intermediate care facility for the mentally retarded*, adult daily living center, home health agency or home health service provider whether licensed or unlicensed;

(2) provides care to a care-dependent person in the setting described in paragraph (1); or

(3) has an obligation to care for a care-dependent person for monetary consideration in the settings described in paragraph (1) or in the care-dependent person's home.

"Person." A natural person, corporation, partnership, unincorporated association or other business entity.

Section 2. Section 3930(e) of Title 18, amended October 16, 1996 (P.L.715, No.128), is amended to read:

§ 3930. Theft of trade secrets.

* * *

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

"Article." Any object, material, device or substance or copy thereof, including any writing, record, recording, drawing, description, sample, specimen, prototype, model, photograph, microorganism, blueprint or map.

“Copy.” Any facsimile, replica, photograph or reproduction of, an article, or any note, drawing, sketch, or description made of, or from an article.

“Representing.” Describing, depicting, containing, constituting, reflecting or recording.

“Trade secret.” The whole or any portion or phase of any scientific or technical information, design, process, procedure, formula or improvement [or customer or sales information or any other privileged or confidential information] which is of value and has been specifically identified by the owner as of a confidential character, and which has not been published or otherwise become a matter of general public knowledge. There shall be a rebuttable presumption that scientific or technical information [or customer or sales information or any other privileged or confidential information] has not been published or otherwise become a matter of general public knowledge when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by him to have access thereto for limited purposes.

Section 3. Section 5123(a.2) of Title 18 is amended to read:

§ 5123. Contraband.

* * *

(a.2) Possession of controlled substance contraband by inmate prohibited.—A prisoner or inmate commits a [misdemeanor of the first degree] *felony of the second degree* if he unlawfully has in his possession or under his control any controlled substance in violation of section 13(a)(16) of The Controlled Substance, Drug, Device and Cosmetic Act. For purposes of this subsection, no amount shall be deemed de minimis.

* * *

Section 4. Title 18 is amended by adding a section to read:

§ 6317. *Drug-free school zones.*

(a) *General rule.*—A person 18 years of age or older who is convicted in any court of this Commonwealth of a violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, shall, if the delivery or possession with intent to deliver of the controlled substance occurred within 1,000 feet of the real property on which is located a public, private or parochial school or a college or university or within 250 feet of the real property on which is located a recreation center or playground or on a school bus, be sentenced to a minimum sentence of at least two years of total confinement, notwithstanding any other provision of this title, The Controlled Substance, Drug, Device and Cosmetic Act or other statute to the contrary. The maximum term of imprisonment shall be four years for any offense:

(1) *subject to this section; and*

(2) *for which The Controlled Substance, Drug, Device and Cosmetic Act provides for a maximum term of imprisonment of less than four years.*

If the sentencing court finds that the delivery or possession with intent to deliver was to an individual under 18 years of age, then this section shall not be applicable and the offense shall be subject to section 6314 (relating to sentencing and penalties for trafficking drugs to minors).

(b) Proof at sentencing.—The provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine by a preponderance of the evidence if this section is applicable.

(c) Authority of court in sentencing.—There shall be no authority for a court to impose on a defendant to which this section is applicable a lesser sentence than provided for in subsection (a), to place the defendant on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

(d) Appeal by Commonwealth.—If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Section 5. The addition of 18 Pa.C.S. § 6317 shall apply to all offenses occurring on or after the effective date of this act.

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

APPROVED—The 25th day of June, A.D. 1997.

THOMAS J. RIDGE