

No. 2000-64

AN ACT

SB 255

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for certain restriction on alcoholic beverages and for operating a motor vehicle not equipped with ignition interlock; and making a repeal.

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

Section 1. Section 910 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

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

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

(1) 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 telecommunication service or to *disrupt, transmit, decrypt*, acquire or facilitate the *disruption, transmission, decryption or* acquisition of *any* telecommunication service without the consent of the telecommunication service provider; or

(ii) to conceal or to assist another to conceal from any 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:

(i) unlawful telecommunication device, or plans or instructions for making or assembling the same, under circumstances evidencing an intent to use or employ such unlawful telecommunication device, or to allow the same to be used or employed for a purpose described in paragraph (1), 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 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 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 first degree.]

(1) *Except for violations of this section as provided for in paragraph (2) or (3), an offense under this section is a misdemeanor of the first degree.*

(2) *An offense under this section is a felony of the third degree if:*

(i) *the defendant has been convicted previously under this section or convicted of any similar crime in this or any Federal or other state jurisdiction; or*

(ii) *the violation of this section involves at least ten, but not more than 50, unlawful telecommunication devices.*

(3) *An offense under this section is a felony of the second degree if:*

(i) *the defendant has been convicted previously on two or more occasions for offenses under this section or for any similar crime in this or any Federal or other state jurisdiction; or*

(ii) *the violation of this section involves more than 50 unlawful telecommunication devices.*

(4) *For purposes of grading an offense based upon a prior conviction under this section or for any similar crime pursuant to paragraphs (2)(i) and (3)(i), a prior conviction shall consist of convictions upon separate indictments or criminal complaints for offenses under this section or any similar crime in this or any Federal or other state jurisdiction.*

(5) *As provided for in paragraphs (2)(i) and (3)(i), in grading an offense under this section based upon a prior conviction, the term "any similar crime" shall include, but not be limited to, offenses involving theft of service or fraud, including violations of the Cable Communications Policy Act of 1984 (Public Law 98-549, 98 Stat. 2779).*

(b.1) *Separate offenses.—For purposes of all criminal penalties or fines established for violations of this section, the prohibited activity established herein as it applies to each unlawful telecommunication device shall be deemed a separate offense.*

(b.2) *Fines.—For purposes of imposing fines upon conviction of a defendant for an offense under this section, all fines shall be imposed in accordance with section 1101 (relating to fines).*

(c) *Restitution.—The court [may] shall, 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).*

(c.1) *Forfeiture of unlawful telecommunication devices.—Upon conviction of a defendant under this section, the court may, in addition to any other sentence authorized by law, direct that the defendant forfeit any unlawful telecommunication devices in the defendant's possession or*

control which were involved in the violation for which the defendant was convicted.

(c.2) Venue.—An offense under subsection (a) may be deemed to have been committed at either place where the defendant manufactures or assembles an unlawful telecommunication device or assists others in doing so or the places where the unlawful telecommunication device is sold or delivered to a purchaser, in accordance with section 102 (relating to territorial applicability). It shall be no defense to a violation of subsection (a) that some of the acts constituting the offense occurred outside of this Commonwealth.

(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.]

(1) Any person aggrieved by a violation of this section may bring a civil action in any court of competent jurisdiction.

(2) The court may:

(i) grant preliminary and final injunctions to prevent or restrain violations of this section;

(ii) at any time while an action is pending, order the impounding, on such terms as it deems reasonable, of any unlawful telecommunication device that is in the custody or control of the violator and that the court has reasonable cause to believe was involved in the alleged violation of this section;

(iii) award damages as described in subsection (d.1);

(iv) in its discretion, award reasonable attorney fees and costs, including, but not limited to, costs for investigation, testing and expert witness fees, to an aggrieved party who prevails; or

(v) as part of a final judgment or decree finding a violation of this section, order the remedial modification or destruction of any unlawful telecommunication device involved in the violation that is in the custody or control of the violator or has been impounded under subparagraph (ii).

(d.1) Types of damages recoverable.—Damages awarded by a court under this section shall be computed as either of the following:

(1) Upon his election of such damages at any time before final judgment is entered, the complaining party may recover the actual damages suffered by him as a result of the violation of this section and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages. In determining the violator's profits, the complaining party shall be required to prove only the violator's gross revenue, and the violator

shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation.

(2) Upon election by the complaining party at any time before final judgment is entered, that party may recover in lieu of actual damages an award of statutory damages of between \$250 to \$10,000 for each unlawful telecommunication device involved in the action, with the amount of statutory damages to be determined by the court, not the jury, as the court considers just. In any case where the court finds that any of the violations of this section were committed willfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of statutory damages by an amount of not more than \$50,000 for each unlawful telecommunication device involved in the action.

(3) For purposes of all civil remedies established for violations of this section, the prohibited activity established in this section applies to each unlawful telecommunication device and shall be deemed a separate violation.

(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, *disrupting, receiving, transmitting, decrypting* or facilitating the acquisition, *disruption, receipt, transmission or decryption* of a telecommunication service without the consent of the telecommunication service provider *or to knowingly assist others in those activities.*

“Telecommunication device.” Any type of instrument, device, machine or equipment which is capable of transmitting, *acquiring, decrypting* or receiving *any* telephonic, electronic, *data, Internet access, audio, video, microwave* or radio *transmissions, signals*, 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.] *services, including the receipt, acquisition, transmission or decryption of all such communications, transmissions, signals or services over any cable television, telephone, satellite, microwave, radio or wireless distribution system or facility, or any part, accessory or components thereof, including any computer circuit, security module, smart card, software, computer chip, electronic mechanism or other component, accessory or part which is capable of facilitating the transmission, decryption, acquisition or reception of all such communications, transmissions, signals or services.*

[“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).]

“Telecommunication service.” *The meaning given to it in section 3926 (relating to theft of services) and also any service provided by any radio, telephone, cable television, satellite, microwave or wireless distribution system or facility, including, but not limited to, any and all electronic, data, video, audio, Internet access, telephonic, microwave and radio communications, transmissions, signals and services.*

“Telecommunication service provider.” *The meaning given to it in section 3926 (relating to theft of services) and includes any person or entity providing any telecommunication service, including, but not limited to, any person or entity owning or operating any cable television, satellite, telephone, wireless, microwave or radio distribution system or facility.*

“Unlawful telecommunication device.” *The meaning given to it in section 3926 (relating to theft of services) and includes any telecommunication device which is capable of or has been altered, designed, modified, programmed or reprogrammed, alone or in conjunction with another telecommunication device or devices so as to be capable of facilitating the disruption, acquisition, receipt, transmission or decryption of a telecommunication service without the consent or knowledge of the telecommunication service provider. In addition to the examples listed in section 3926, the term includes, but is not limited to, any device, technology, product, service, equipment, computer software or component or part thereof, primarily distributed, sold, designed, assembled, manufactured, modified, programmed, reprogrammed or used for the purpose of providing unauthorized disruption of, decryption of, access to or acquisition of any telecommunication service provided by any cable television, satellite, telephone, wireless, microwave or radio distribution system or facility.*

Section 2. Title 18 is amended by adding sections to read:

§ 7513. *Restriction on alcoholic beverages.*

(a) *General rule.—It is unlawful for any person who is an operator or an occupant in any motor vehicle to be in possession of an open alcoholic beverage container or to consume any alcoholic beverage or controlled substance as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, in a motor vehicle while the motor vehicle is located on any highway in this Commonwealth.*

(b) *Exception.—This section does not prohibit possession or consumption by passengers in the passenger areas of a motor vehicle designed, maintained or used primarily for the lawful transportation of persons for compensation, including buses, taxis and limousines, or persons in the living quarters of a house coach or house trailer.*

(c) *Penalty.*—Any person who violates this section commits a summary offense.

§ 7514. Operating a motor vehicle not equipped with ignition interlock.

(a) *Offense defined.*—A person required to operate only motor vehicles equipped with an approved ignition interlock system pursuant to 42 Pa.C.S. Ch. 70 (relating to ignition interlock devices) who operates a motor vehicle on the highways of this Commonwealth without such a system commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$200 and not more than \$1,000 and to imprisonment for not more than 30 days.

(b) *Tampering with an interlock system.*—A person who tampers with an interlock system required by law commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100.

(c) *Revocation of operating privilege.*—Upon receiving a certified record of the conviction of any person under this section, the department shall revoke the person's operating privilege for a period of one year.

(d) *Definitions.*—As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Department." The Department of Transportation of the Commonwealth.

"Ignition interlock system." A system approved by the Department of Transportation that prevents a vehicle from being started or operated unless the operator first provides a breath sample indicating that the operator has an alcohol level less than .025%.

Section 3. The provisions of 75 Pa.C.S. § 3715 are repealed.

Section 4. This act shall take effect as follows:

- (1) The addition of 18 Pa.C.S. § 7513 shall take effect September 1, 2000.
- (2) The addition of 18 Pa.C.S. § 7514 shall take effect September 30, 2000.
- (3) The repeal of 75 Pa.C.S. § 3715 shall take effect September 1, 2000.
- (4) This section shall take effect immediately.
- (5) The remainder of this act shall take effect in 60 days.

APPROVED—The 22nd day of June, A.D. 2000.

THOMAS J. RIDGE