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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1120 Session of  
2013

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FARRY, CLYMER, KULA AND HENNESSEY, APRIL 3, 2013

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REFERRED TO COMMITTEE ON JUDICIARY, APRIL 3, 2013

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in theft and related offenses, further  
3 providing for grading of theft offenses and for theft of  
4 services.

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

7 Section 1. Sections 3903 and 3926 of Title 18 of the  
8 Pennsylvania Consolidated Statutes are amended to read:

9 § 3903. Grading of theft offenses.

10 (a) Felony of the second degree.--Theft constitutes a felony  
11 of the second degree if:

12 (1) The offense is committed during a manmade disaster,  
13 a natural disaster or a war-caused disaster and constitutes a  
14 violation of section 3921 (relating to theft by unlawful  
15 taking or disposition), 3925 (relating to receiving stolen  
16 property), 3928 (relating to unauthorized use of automobiles  
17 and other vehicles) or 3929 (relating to retail theft).

1 (2) The property stolen is a firearm.

2 (3) In the case of theft by receiving stolen property,  
3 the property received, retained or disposed of is a firearm.

4 (4) The property stolen is any amount of anhydrous  
5 ammonia.

6 (5) The property stolen is the property of certain  
7 service providers involving an amount of \$50 or more and is  
8 being used at the time of the offense to provide service as  
9 provided in section 3926(d) (relating to theft of services  
10 and certain service provider property).

11 (a.1) Felony of the third degree.--Except as provided in  
12 subsection (a) or (a.2) and in section 3926(d), theft  
13 constitutes a felony of the third degree if the amount involved  
14 exceeds \$2,000, or if the property of certain service providers  
15 having a value of \$250 or more is stolen while it is not being  
16 used to provide service as set forth in section 3926(d), or if  
17 the property stolen is an automobile, airplane, motorcycle,  
18 motorboat or other motor-propelled vehicle, or in the case of  
19 theft by receiving stolen property, if the receiver is in the  
20 business of buying or selling stolen property.

21 (a.2) Felony of the first degree.--Theft constitutes a  
22 felony of the first degree if, in the case of theft by receiving  
23 stolen property, the property received, retained or disposed of  
24 is a firearm and the receiver is in the business of buying or  
25 selling stolen property.

26 (b) Other grades.--Theft not within subsection (a), (a.1) or  
27 (a.2), and theft of services involving an amount of \$250 or more  
28 as provided in section 3926(d), constitutes a misdemeanor of the  
29 first degree, except that other than in theft of such services,  
30 if the property was not taken from the person or by threat, or

1 in breach of fiduciary obligation, and:

2 (1) the amount involved was \$50 or more but less than  
3 \$200 the offense constitutes a misdemeanor of the second  
4 degree; or

5 (2) the amount involved was less than \$50 the offense  
6 constitutes a misdemeanor of the third degree.

7 (c) Valuation.--The amount involved in a theft shall be  
8 ascertained as follows:

9 (1) Except as otherwise specified in this section, value  
10 means the market value of the property at the time and place  
11 of the crime, or if such cannot be satisfactorily  
12 ascertained, the cost of replacement of the property within a  
13 reasonable time after the crime.

14 (2) Whether or not they have been issued or delivered,  
15 certain written instruments, not including those having a  
16 readily ascertainable market value such as some public and  
17 corporate bonds and securities, shall be evaluated as  
18 follows:

19 (i) The value of an instrument constituting an  
20 evidence of debt, such as a check, draft or promissory  
21 note, shall be deemed the amount due or collectible  
22 thereon or thereby, such figure ordinarily being the face  
23 amount of the indebtedness less any portion thereof which  
24 has been satisfied.

25 (ii) The value of any other instrument which  
26 creates, releases, discharges or otherwise affects any  
27 valuable legal right, privilege or obligation shall be  
28 deemed the greatest amount of economic loss which the  
29 owner of the instrument might reasonably suffer by virtue  
30 of the loss of the instrument.

1           (3) When the value of property cannot be satisfactorily  
2           ascertained pursuant to the standards set forth in paragraphs  
3           (1) and (2) of this subsection its value shall be deemed to  
4           be an amount less than \$50. Amounts involved in thefts  
5           committed pursuant to one scheme or course of conduct,  
6           whether from the same person or several persons, may be  
7           aggregated in determining the grade of the offense.

8           (d) Definitions.--As used in this section, the following  
9           words and phrases shall have the meanings given to them in this  
10          subsection:

11          "Manmade disaster." Any industrial, nuclear or  
12          transportation accident, explosion, conflagration, power  
13          failure, natural resource shortage or other condition, except  
14          enemy action, resulting from manmade causes, such as oil spills  
15          and other injurious environmental contamination, which threatens  
16          or causes substantial damage to property, human suffering,  
17          hardship or loss of life.

18          "Natural disaster." Any hurricane, tornado, storm, flood,  
19          high water, wind-driven water, tidal wave, earthquake,  
20          landslide, mudslide, snowstorm, drought, fire, explosion or  
21          other catastrophe which results in substantial damage to  
22          property, hardship, suffering or possible loss of life.

23          "War-caused disaster." Any condition following an attack  
24          upon the United States resulting in substantial damage to  
25          property or injury to persons in the United States caused by use  
26          of bombs, missiles, shellfire, nuclear, radiological, chemical  
27          or biological means, or other weapons or overt paramilitary  
28          actions, or other conditions such as sabotage.

29          § 3926. Theft of services and certain service provider  
30                                   property.

1 (a) Acquisition of services.--

2 (1) A person is guilty of theft if he intentionally  
3 obtains services for himself or for another which he knows  
4 are available only for compensation, by deception or threat,  
5 by altering or tampering with the public utility meter or  
6 measuring device by which such services are delivered or by  
7 causing or permitting such altering or tampering, by making  
8 or maintaining any unauthorized connection, whether  
9 physically, electrically [or], inductively or otherwise, to a  
10 distribution or transmission line, by attaching or  
11 maintaining the attachment of any unauthorized object or  
12 device to any cable, wire or other component of an electric,  
13 [telephone] natural gas, heating oil, kerosene, propane,  
14 telecommunications or cable television system or to a  
15 television receiving set connected to a cable television  
16 system, by making or maintaining any unauthorized  
17 modification or alteration to any device installed by a cable  
18 television system, or by false token or other trick or  
19 artifice to avoid payment for the service.

20 (1.1) A person is guilty of theft if he intentionally  
21 obtains or attempts to obtain telecommunication service by  
22 the use of an unlawful telecommunication device or without  
23 the consent of the telecommunication service provider.

24 (1.2) A person is guilty of theft if he intentionally  
25 obtains or attempts to obtain natural gas or electric service  
26 by the use of a means to divert electricity or natural gas  
27 away from measurement by a natural gas or electric meter or  
28 without the consent of the natural gas, propane or electric  
29 service provider.

30 (3) A person is not guilty of theft of cable television

1 service under this section who subscribes to and receives  
2 service through an authorized connection of a television  
3 receiving set at his dwelling and, within his dwelling, makes  
4 an unauthorized connection of an additional television  
5 receiving set or sets or audio system which receives only  
6 basic cable television service obtained through such  
7 authorized connection.

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

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

19 (b.1) Acquisition of property of certain service  
20 providers.--A person is guilty of theft if he unlawfully takes,  
21 or exercises unlawful control over, property of an electric,  
22 natural gas, heating oil, kerosene, propane, telecommunications  
23 or cable television provider, with intent to deprive the owner  
24 thereof.

25 (c) Grading.--

26 (1) An acquisition or diversion of services offense  
27 under this section constitutes a summary offense when the  
28 value of the services obtained or diverted is less than [\$50]  
29 \$250.

30 (2) When the value of the services obtained or diverted

1 is [~~\$50~~] \$250 or more but less than \$1,000, the grading of  
2 the offense shall be [as established in section 3903  
3 (relating to grading of theft offenses).] a misdemeanor of  
4 the third degree with a minimum fine of \$2,500.

5 (2.1) When the value of the services obtained or  
6 diverted is \$1,000 or more but less than \$5,000, the grading  
7 of the offense shall be a misdemeanor of the second degree  
8 with a minimum fine of \$5,000.

9 (2.2) When the value of the services obtained or  
10 diverted is \$5,000 or more, the grading of the offense shall  
11 be a misdemeanor of the first degree with a minimum fine of  
12 \$10,000.

13 (2.3) When the value of electric, natural gas, propane,  
14 telecommunications or cable television service provider  
15 property unlawfully taken or controlled is less than \$250,  
16 the offense constitutes a summary offense.

17 (2.4) When the value of electric, natural gas, propane,  
18 telecommunications or cable television service provider  
19 property unlawfully taken or controlled is \$250 or more, and  
20 the offense occurred while the property was being used to  
21 provide service, the offense constitutes a misdemeanor of the  
22 second degree.

23 (2.5) When the value of electric, natural gas, propane,  
24 telecommunications or cable television service provider  
25 property unlawfully taken or controlled is \$250 or more, and  
26 the offense did not occur while the property was being used  
27 to provide service, the offense constitutes a misdemeanor of  
28 the third degree.

29 (3) Amounts involved in theft of services or property  
30 committed pursuant to one scheme or course of conduct,

1 whether from the same person or several persons, may be  
2 aggregated in determining the grade of the offense.

3 (d) Inferences.--

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

15 (2) Any person having possession of or access to the  
16 location of the distribution or transmission lines or other  
17 facilities of a cable television system which have been  
18 tapped, altered or tampered with or to which any unauthorized  
19 connection has been made or to which any unauthorized object  
20 or device has been attached or any person having possession  
21 of or access to any device installed by a cable television  
22 system to which an unauthorized modification or alteration  
23 has been made, the result of which tapping, altering,  
24 tampering, connection, attachment or modification is to avoid  
25 payment for all or any part of the cable television service  
26 for which payment is normally required, and who enjoys the  
27 use of or receives the benefit from the cable television  
28 service, may be reasonably inferred to have acted to have  
29 tapped, altered, tampered with, connected or attached to or  
30 modified cable television facilities with the intent to



1 obtain cable television service without making full  
2 compensation therefor. This inference shall not apply to the  
3 act of a subscriber to cable television service, who receives  
4 service through an authorized connection of a television  
5 receiving set at his dwelling, in making, within his  
6 dwelling, an unauthorized connection of an additional  
7 television receiving set or sets or audio system which  
8 receives only basic cable television service obtained through  
9 such authorized connection.

10 (e) Sale or transfer of device or plan intended for  
11 acquisition or diversion.--A person is guilty of a misdemeanor  
12 of the [third] first degree if he sells, gives or otherwise  
13 transfers to others or offers, advertises or exposes for sale to  
14 others, any device, kit, plan or other instructional procedure  
15 for the making of such device or a printed circuit, under  
16 circumstances indicating his having knowledge or reason to  
17 believe that such device, kit, plan or instructional procedure  
18 is intended for use by such others for the acquisition or  
19 diversion of services as set forth in subsections (a) and (b). A  
20 person is presumed to have the intent to defraud the energy or  
21 telecommunications provider if the person creates, transfers and  
22 includes or sells the device, kit, plan or instructional  
23 procedure for the making of such device or printed circuit as  
24 well as purchasing or installing such device. The minimum fine  
25 for this act shall be \$5,000.

26 (f) Restitution.--The court may, in addition to any other  
27 sentence authorized by law, sentence a person convicted of  
28 violating this section to make restitution under section 1106  
29 (relating to restitution for injuries to person or property) or  
30 42 Pa.C.S. § 9721(c) (relating to sentencing generally). The

1 court shall sentence all consumers convicted of violating this  
2 section to compensate the vendor of service for the full value  
3 of the theft, the investigative costs incurred by the vendor,  
4 the costs of full and safe restoration of service at the  
5 location of the theft and interest charges for the value of  
6 services taken during the period of theft within a 60-day period  
7 following the imposition of sentence. In addition to any  
8 restitution, the court shall impose a fine on the person  
9 convicted of violating this section in the amount of not less  
10 than \$1,000. When emergency personnel are called to the scene of  
11 theft of service, the responding volunteer fire department is  
12 entitled to receive as restitution the full cost of their  
13 response from the person convicted of violating this section.

14 (g) Civil action.--A [telecommunication] telecommunications  
15 service provider, an electric service provider, a natural gas  
16 service provider, propane service provider or heating oil  
17 service provider or a kerosene service provider or a cable  
18 television service provider aggrieved by a violation of this  
19 section may in a civil action in any court of competent  
20 jurisdiction obtain appropriate relief, including preliminary  
21 and other equitable or declaratory relief, compensatory and  
22 punitive damages, reasonable investigation expenses, costs of  
23 suit and attorney fees.

24 (g.1) Statement of purpose.--The General Assembly believes  
25 that it is important to protect the innocent citizens of this  
26 Commonwealth from the personal and public dangers caused by the  
27 theft of energy, telecommunications and cable television  
28 services or property used to provide these services. Theft of  
29 these services and property is a public safety issue that cuts  
30 across classes, individuals and businesses. Safety hazards

1 include public exposure to serious injury or death and  
2 destruction of public or personal property, which affects  
3 individuals, neighborhoods, homes, apartments and other  
4 facilities. The General Assembly seeks to provide additional  
5 tools that support legal and punitive measures to combat the  
6 dangerous aspects of this crime. Furthermore, the General  
7 Assembly recognizes another effect of theft of the foregoing  
8 service providers' services and property: the adverse impact on  
9 service provider rates and the increased cost unfairly placed on  
10 paying customers.

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

14 "Cable television provider." A person or entity providing  
15 for compensation, cable television service.

16 "Electric service provider." A person or entity providing,  
17 for compensation, electric distribution, transmission or  
18 generation service.

19 "Heating oil service provider." A person or entity  
20 providing, for compensation, heating oil or heating oil supply  
21 service.

22 "Kerosene service provider." A person or entity providing,  
23 for compensation, kerosene or kerosene service.

24 "Natural gas service provider." A person or entity  
25 providing, for compensation, natural gas distribution or supply  
26 service.

27 "Propane service provider." A person or entity providing,  
28 for compensation, propane or propane distribution service.

29 "Service." Includes, but is not limited to, labor,  
30 professional service, transportation service, the supplying of

1 hotel accommodations, restaurant services, entertainment, cable  
2 television service, the supplying of equipment for use and the  
3 supplying of commodities of a public utility nature such as gas,  
4 electricity, steam and water, and [telephone or  
5 telecommunication] telecommunications service. The term  
6 "unauthorized" means that payment of full compensation for  
7 service has been avoided, or has been sought to be avoided,  
8 without the consent of the supplier of the service.

9 ["Telecommunication service provider." A person or entity  
10 providing telecommunication service, including, but not limited  
11 to, a cellular, paging or other wireless communications company  
12 or other person or entity which, for a fee, supplies the  
13 facility, cell site, mobile telephone switching office or other  
14 equipment or telecommunication service.]

15 "Telecommunications service." Includes, but is not limited  
16 to, any service provided for a charge or compensation to  
17 facilitate the origination, transmission, emission or reception  
18 of signs, signals, data, writings, images and sounds or  
19 intelligence of any nature by telephone, including cellular  
20 telephones, wire, radio, electromagnetic, photoelectronic or  
21 photo-optical system.

22 "Telecommunications service provider." A person or entity  
23 providing telecommunications service, including, but not limited  
24 to, a cellular, paging or other wireless communications company  
25 or other person or entity which, for a fee, supplies the  
26 facility, cell site, mobile telephone switching office or other  
27 equipment or telecommunications service.

28 ["Telephone service" or "telecommunication service."  
29 Includes, but is not limited to, any service provided for a  
30 charge or compensation to facilitate the origination,

1 transmission, emission or reception of signs, signals, data,  
2 writings, images and sounds or intelligence of any nature by  
3 telephone, including cellular telephones, wire, radio,  
4 electromagnetic, photoelectronic or photo-optical system.]

5 "Unlawful [telecommunication] telecommunications device."

6 Any electronic serial number, mobile identification number,  
7 personal identification number or any [telecommunication]  
8 telecommunications device that is capable or has been altered,  
9 modified, programmed or reprogrammed alone or in conjunction  
10 with another access device or other equipment so as to be  
11 capable of acquiring or facilitating the acquisition of a  
12 [telecommunication] telecommunications service without the  
13 consent of the [telecommunication] telecommunications service  
14 provider. The term includes, but is not limited to, phones  
15 altered to obtain service without the consent of the  
16 [telecommunication] telecommunications service provider, tumbler  
17 phones, counterfeit or clone phones, tumbler microchips,  
18 counterfeit or clone microchips, scanning receivers of wireless  
19 [telecommunication service of a telecommunication]  
20 telecommunications service of a telecommunications service  
21 provider and other instruments capable of disguising their  
22 identity or location or of gaining access to a communications  
23 system operated by a [telecommunication] telecommunications  
24 service provider.

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