

No. 2000-116

AN ACT

SB 1173

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, reenacting provisions on manufacture, disposition, use or possession of devices for telecommunications theft; providing for the offense of discharge of a firearm into an occupied structure; and further providing for sale or illegal use of certain solvents.

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 reenacted 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.—

(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 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.—

(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 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) 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 a section to read:

§ 2707.1. Discharge of a firearm into an occupied structure.

(a) *Offense defined.*—A person commits an offense if he knowingly, intentionally or recklessly discharges a firearm from any location into an occupied structure.

(b) *Grading.*—An offense under this section shall be a felony of the third degree.

(c) *Defense.*—It is a defense to prosecution under this section that:

(1) the person discharging the firearm was a law enforcement officer engaged in the performance of his official law enforcement duties; or

(2) the person discharging the firearm was engaged in a hunting activity; and

(i) the discharge of the firearm took place from a location where the hunting activity is lawful; and

(ii) the passage of the projectile from the firearm into the occupied structure was not intentional, knowing or reckless.

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

“Firearm.” Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosion or the frame or receiver of any such weapon.

“Occupied structure.” Any structure, vehicle or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present.

Section 3. Section 7303 of Title 18 is amended to read:

§ 7303. Sale or illegal use of certain solvents and noxious substances.

(a) *Offense defined.*—No person shall, for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, intentionally smell or inhale the fumes from any *noxious substance* or substance containing a solvent having the property of releasing toxic vapors or fumes.

(b) *Exception.*—Subsection (a) of this section shall not apply to the inhalation of any anesthesia for medical or dental purposes.

(c) Possession prohibited.—No person shall, for the purpose of violating subsection (a) of this section, use, or possess for the purpose of so using, any *noxious substance or substance* containing a solvent having the property of releasing toxic vapors or fumes.

(d) Sale prohibited.—No person shall sell at retail, or offer to sell, to any other person any tube or other container of *any noxious substance or substance* containing a solvent having the property of releasing toxic vapors or fumes, if he has reasonable cause to suspect that the product sold, or offered for sale, will be used for the purpose set forth in subsection (a) of this section.

(e) Grading.—Any person who violates any provision of this section shall be guilty of a misdemeanor of the third degree.

(f) Definition.—As used in this section, the phrase “any *noxious substance or substance* containing a solvent having the property of releasing toxic vapors or fumes” shall mean any substance containing one or more of the following chemical compounds: acetone, acetate, benzene, butyl alcohol, *cyclohexyl nitrite*, ethyl alcohol, ethylene dichloride, gaseous or liquid fluorocarbons, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, *nitrous oxide*, pentachlorophenol, petroleum ether, or toluene.

Section 4. This act shall take effect as follows:

(1) The amendment or addition of 18 Pa.C.S. §§ 2707.1 and 7303 shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 20th day of December, A.D. 2000.

THOMAS J. RIDGE