

2C:20-8

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:20-8 (Theft of electricity, gas-- telecommunications service-- upgrade)

LAWS OF: 1989 **CHAPTER:** 112

BILL NO: A790

SPONSOR(S): Shusted

Date Introduced: Pre-filed

Committee: **Assembly:** Judiciary
Senate: Judiciary

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: **Assembly:** July 11, 1988
Senate: May 1, 1989

Date of Approval: June 29, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes
Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

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[THIRD REPRINT]

ASSEMBLY, No. 790

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman SHUSTED

1 AN ACT concerning theft of services and amending
N.J.S.2C:20-8.

3

BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

1. N.J.S.2C:20-8 is amended to read as follows:

7 2C:20-8. Theft of Services.

a. A person is guilty of theft if he purposely obtains services
9 which he knows are available only for compensation, by deception
or threat, or by false token, slug, or other means, including but
11 not limited to mechanical or electronic devices or through
fraudulent statements, to avoid payment for the service.
13 "Services" include labor¹[,] or¹ professional service¹[,];¹
transportation, telephone, ¹telecommunications, electric, water,
15 gas, cable television,¹ or other public service¹[,];¹
accommodation in hotels, restaurants or elsewhere¹[,];¹
17 entertainment¹[,];¹ admission to exhibitions¹[,];¹ use of vehicles
or other movable property. Where compensation for service is
19 ordinarily paid immediately upon the rendering of such service, as
in the case of hotels and restaurants, absconding without payment
21 or offer to pay gives rise to a presumption that the service was
obtained by deception as to intention to pay.

b. A person commits theft if, having control over the
23 disposition of services of another, to which he is not entitled, he
25 knowingly diverts such services to his own benefit or to the
benefit of another not entitled thereto.

c. Any person who, without permission and for the purpose of
27 obtaining electric current, gas or water with intent to defraud
any vendor of electricity, gas or water or a person who is
29 furnished by a vendor with electric current, gas or water:

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted June 2, 1988.

² Assembly floor amendments adopted June 20, 1988.

³ Senate SJU committee amendments adopted October 20, 1988.

1 (1) Connects or causes to be connected by wire or any other
device with the wires, cables or conductors of any such vendor or
3 any other person; or

5 (2) Connects or disconnects the meters, pipes or conduits of
such vendor or any other person or in any other manner tampers
or interferes with such meters, pipes or conduits, or connects
7 with such meters, pipes or conduits by pipes, conduits or other
instruments--is guilty of a [disorderly persons offense] ¹[crime of
9 the fourth degree] disorderly persons offense¹. ¹[In addition to
any other disposition authorized by law, such person shall also be
11 ordered to make restitution for any loss or damage caused by the
offense. In determining the amount of restitution, the court shall
13 consider the costs expended by the vendor, including but not
limited to the repair and replacement of damaged equipment, the
15 cost of the services unlawfully obtained, investigation expenses,
and attorney fees.]¹

17 The existence of any of the conditions with reference to
meters, pipes, conduits or attachments, described in this
19 ¹[section] subsection¹, is presumptive evidence that the person to
whom gas, electricity or water is at the time being furnished by
21 or through such meters, pipes, conduits or attachments has, with
intent to defraud, created or caused to be created with reference
23 to such meters, pipes, conduits or attachments, the condition so
existing; provided, however, that the presumption shall not apply
25 to any person so furnished with gas, electricity or water for less
than 31 days or until there has been at least one meter reading.

27 A violation of this ¹[section] subsection¹ shall be deemed to be
a continuing offense as long as the conditions described in this
29 ¹[section] subsection¹ exist.

d. Any person who, without permission or authority, connects
31 or causes to be connected by wires or other devices, any meter
erected or set up for the purpose of registering or recording the
33 amount of electric current supplied to any customer by any
vendor of electricity within this State, or changes or shunts the
35 wiring leading to or from any such meter, or by any device,
appliance or means whatsoever tampers with any such meter so
37 that the meter will not measure or record the full amount of
electric current supplied to such customer, is guilty of a
39 [disorderly persons offense] ¹[crime of the fourth degree]

1 disorderly persons offense¹. ¹[In addition to any other disposition
2 authorized by law, such person shall also be ordered to make
3 restitution for any loss or damage caused by the offense. In
4 determining the amount of restitution, the court shall consider
5 the costs expended by the vendor, including but not limited to the
6 repair and replacement of damaged equipment, the cost of the
7 services unlawfully obtained, investigation expenses, and attorney
8 fees.]¹

9 The existence of any of the conditions with reference to
10 meters or attachments described in this subsection ¹[or in
11 subsection c.]¹ is presumptive evidence that the person to whom
12 electricity is at the time being furnished by or through such
13 meters or attachments has, with intent to defraud, created or
14 caused to be created with reference to such meters or
15 attachments, the condition so existing; provided, however, that
16 the presumption shall not apply to any person so furnished with
17 electricity for less than 31 days or until there has been at least
18 one meter reading.

19 A violation of this ¹[section] subsection¹ shall be deemed to be
20 a continuing offense as long as the conditions described in this
21 ¹[section] subsection¹ exist.

22 e. Any person who, with intent to obtain cable television
23 service without payment, in whole or in part, of the lawful
24 charges therefor, or with intent to deprive another of the lawful
25 receipt of such service, damages, cuts, tampers with, installs,
26 taps or makes any connection with, or who displaces, removes,
27 injures or destroys any wire, cable, conduit, apparatus or
28 equipment of a cable television company operating a CATV
29 system; or who, without authority of a cable television company,
30 intentionally prevents, obstructs or delays, by any means or
31 contrivance, the sending, transmission, conveyance, distribution
32 or receipt of programming material carried by equipment of the
33 cable television company operating a CATV system, is a
34 disorderly person.

35 The existence of any of the conditions with reference to wires,
36 cables, conduits, apparatus or equipment described in this
37 subsection is presumptive evidence that the person to whom cable
38 television service is at the time being furnished has, with intent
39 to obtain cable television service without authorization or

1 compensation or to otherwise defraud, created or caused to be
2 created the condition so existing.

3 f. Any person who purposely or knowingly manufactures,
4 constructs, sells, offers for sale, distributes or installs any
5 equipment, device or instrument designed or intended to
6 facilitate the interception, decoding or receipt of any cable
7 television service with intent to obtain such service and avoid the
8 lawful payment of the charges therefor to the provider, in whole
9 or in part, is a disorderly person.

10 Any communications paraphernalia prohibited under this
11 subsection shall be subject to forfeiture and may be seized by the
12 State or any law enforcement officer in accordance with the
13 provisions of N.J.S.2C:64-1 et seq.

14 g. Any person who purposely or knowingly maintains or
15 possesses any equipment, device or instrument of the type
16 described in subsection f. of this section or maintains or possesses
17 any equipment, device or instrument actually used to facilitate
18 the interception, decoding or receipt of any cable television
19 service with intent to obtain such service and avoid the lawful
20 payment, in whole or in part, of the charges therefor to the
21 provider, is a disorderly person.

22 Any communications paraphernalia prohibited under this
23 subsection shall be subject to forfeiture and may be seized by the
24 State or any law enforcement officer in accordance with the
25 provisions of N.J.S.2C:64-1 et seq.

26 h. Any person who, with the intent of depriving a telephone
27 company of its lawful charges therefor, purposely or knowingly
28 makes use of any telecommunications service by means of the
29 unauthorized use of any electronic or mechanical device or
30 connection, or by the unauthorized use of billing information, or
31 by the use of misidentifying or misleading information given to a
32 representative of the telephone company is guilty of a ¹[crime of
33 the fourth degree. In addition to any other disposition authorized
34 by law, such person shall also be ordered to make restitution for
35 any loss or damage caused by the offense. In determining the
36 amount of restitution, the court shall consider the costs expended
37 by the vendor, including but not limited to the repair and
38 replacement of damaged equipment, the cost of the services
39 unlawfully obtained, investigation expenses, and attorney fees]

1 disorderly persons offense¹.

2 The existence of any of the conditions with reference to
3 electronic or mechanical devices described in this subsection is
4 presumptive evidence that the person to whom
5 telecommunications service is at the time being furnished has,
6 with intent to obtain telecommunications service without
7 authorization or compensation or to otherwise defraud, created
8 or caused to be created the condition so existing.

9 i. Any person who purposely or knowingly manufactures,
10 constructs, sells, offers for sale, distributes, installs, or otherwise
11 provides any service, equipment, device or instrument designed or
12 intended to facilitate the receipt of any telecommunications
13 service and avoid the lawful payment of the charges therefor to
14 the provider, in whole or in part, is guilty of a ¹[crime of the
15 fourth degree. In addition to any other disposition authorized by
16 law, such person shall also be ordered to make restitution for any
17 loss or damage caused by the offense. In determining the amount
18 of restitution, the court shall consider the costs expended by the
19 vendor, including but not limited to the repair and replacement of
20 damaged equipment, the cost of the services unlawfully obtained,
21 investigation expenses, and attorney fees] disorderly person
22 offense¹.

23 Any communications paraphernalia prohibited under this
24 subsection shall be subject to forfeiture and may be seized by the
25 State or any law-enforcement officer in accordance with the
26 provisions of N.J.S.2C:64-1 et seq.

27 j. Any person who purposely or knowingly maintains or
28 possesses any equipment, device or instrument of the type
29 described in subsection i. of this section, or maintains or
30 possesses any equipment, device or instrument actually used to
31 facilitate the receipt of any telecommunications service with
32 intent to obtain such service and avoid the lawful payment, in
33 whole or in part, of the charges therefor to the provider, is guilty
34 of a ¹[crime of the fourth degree. In addition to any other
35 disposition authorized by law, such person shall also be ordered to
36 make restitution for any loss or damage caused by the offense. In
37 determining the amount of restitution, the court shall consider
38 the costs expended by the vendor, including but not limited to the
39 repair and replacement of damaged equipment, the cost of the

1 services unlawfully obtained, investigation expenses, and attorney
2 fees] disorderly persons offense¹.

3 Any communications paraphernalia prohibited under this
4 subsection shall be subject to forfeiture and may be seized by the
5 State or any law-enforcement officer in accordance with the
6 provisions of N.J.S.2C:64-1 et seq.

7 ¹k. In addition to any other disposition authorized by law, and
8 notwithstanding the provisions of N.J.S.2C:43-3, every person
9 who violates ³[subsections c., d., e., f., g., h., i. or j. of]³ this
10 section shall be sentenced to make restitution to the vendor ²[of
11 the service in an amount equal to three times the value of the
12 service obtained]² and to pay a minimum fine of \$500.00 for each
13 offense.¹ ²In determining the amount of restitution, the court
14 shall consider the costs expended by the vendor, including but not
15 limited to the repair and replacement of damaged equipment, the
16 cost of the services unlawfully obtained, investigation expenses,
17 and attorney fees.²

18 ³l. The presumptions of evidence applicable to offenses defined
19 in subsections c., d., e. and h. of this section shall also apply in
20 any prosecution for theft of services brought pursuant to the
21 provisions of subsections a. or b. of this section.³

(cf: P.L.1985, c.10)

22 2. This act shall take effect immediately.

25

CRIMINAL JUSTICE

27

Criminal Sentences and Bail

29 Provides for mandatory restitution and \$500 penalty for certain
theft of services offenses.

1 intended to facilitate the receipt of any telecommunications
 2 service and avoid the lawful payment of the charges therefor to
 3 the provider, in whole or in part, is guilty of a crime of the fourth
 4 degree. In addition to any other disposition authorized by law,
 5 such person shall also be ordered to make restitution for any loss
 6 or damage caused by the offense. In determining the amount of
 7 restitution, the court shall consider the costs expended by the
 8 vendor, including but not limited to the repair and replacement of
 9 damaged equipment, the cost of the services unlawfully obtained,
 10 investigation expenses, and attorney fees.

11 Any communications paraphernalia prohibited under this
 12 subsection shall be subject to forfeiture and may be seized by the
 13 State or any law-enforcement officer in accordance with the
 14 provisions of N.J.S. 2C:64-1 et seq.

15 j. Any person who purposely or knowingly maintains or
 16 possesses any equipment, device or instrument of the type
 17 described in subsection i. of this section, or maintains or
 18 possesses any equipment, device or instrument actually used to
 19 facilitate the receipt of any telecommunications service with
 20 intent to obtain such service and avoid the lawful payment, in
 21 whole or in part, of the charges therefor to the provider, is guilty
 22 of a crime of the fourth degree. In addition to any other
 23 disposition authorized by law, such person shall also be ordered to
 24 make restitution for any loss or damage caused by the offense. In
 25 determining the amount of restitution, the court shall consider
 26 the costs expended by the vendor, including but not limited to the
 27 repair and replacement of damaged equipment, the cost of the
 28 services unlawfully obtained, investigation expenses, and attorney
 29 fees.

30 Any communications paraphernalia prohibited under this
 31 subsection shall be subject to forfeiture and may be seized by the
 32 State or any law-enforcement officer in accordance with the
 33 provisions of N.J.S. 2C:64-1 et seq.

(cf.: P.L. 1985, c.10)

35 2. This act shall take effect immediately.

37

STATEMENT

39 This bill increases the penalty for certain "theft of services"
 40 offenses. Currently, unlawfully obtaining electric current, gas,
 41 telecommunications services or water, or tampering with an

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1 electric meter so that it does not record the full amount of
2 electric current used, is a disorderly persons offense, punishable
3 by a fine of up to \$1,000.00 or a term or imprisonment of up to
4 six months, or both. This bill would classify the offense as a
5 crime of the fourth degree, punishable by a fine of up to
6 \$7,500.00 or a term or imprisonment of up to 18 months, or both.
7 The bill would also require that a person convicted of the offense
8 make restitution to the vendor of the costs incurred. In
9 determining the amount of restitution to be paid the vendor, the
10 court would take into consideration the vendor's costs for repair
11 and replacement of damaged equipment, the cost of the services
12 unlawfully obtained, investigation expenses, and attorney fees.

13 The bill also adds statutory language specifically applicable to
14 defining this offense as it relates to telecommunications services,
15 and makes equipment and devices used in the theft of
16 telecommunications services subject to forfeiture.

17

19

CRIMINAL JUSTICE
Criminal Sentences and Bail

21

22 Upgrades the offense of unlawfully obtaining electric current,
23 gas, telecommunications services, or water to a crime of the
fourth degree.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1284

STATE OF NEW JERSEY

DATED: January 25, 1988

The Assembly Municipal Government Committee favorably reports Assembly Bill No. 1284.

This bill amends section 2 of P.L. 1942, c. 72 (C. 40:48B-2) which concerns certain joint contracts of municipalities and counties, so as to correct an erroneous reference to section 4 of the "Interlocal Services Act" and inserts the proper reference to section 4 of P.L. 1973, c. 208 (C. 40:8A-4), the "Interlocal Services Act."

The bill was drafted by the Office of Legislative Services in furtherance of its duty to conduct a continuous revision of the general and permanent statutory law of the State.

This bill was pre-filed for introduction in the 1988 session pending technical review. Technical review has been completed and all technical corrections have been made.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 790

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 2, 1988

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 790.

As amended by committee, Assembly Bill No. 790 requires restitution to be paid to the vendor for any loss or damage caused by theft of services. In determining the amount of restitution the court will consider the cost of repair and replacement of damaged equipment, the cost of the services unlawfully obtained, investigation expenses and attorney fees. The committee amendment provides for a minimum \$500 fine.

In addition this bill adds a new offense, theft of telecommunications services. This is classified as a disorderly persons offense and the offender is required to make restitution for any loss or damage caused by the offense. In determining the amount of restitution, the court will consider the same factors described above.

A disorderly persons offense is punishable by a prison term up to 6 months, a \$1,000 fine, or both.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[SECOND REPRINT]

ASSEMBLY, No. 790

with Senate committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 20, 1988

The Senate Judiciary Committee reports favorably and with Senate committee amendments Assembly Bill No. 790 [2R].

N.J.S.2C:20-8 criminalizes the theft of services. In addition to two provisions (subsections a. and b.), when dealing with theft of services in general terms, N.J.S.A.2C:20-8 presently contains several disorderly persons offense related to particular kinds of service such as gas, electric, water and cable television. This bill would create three new disorderly persons offenses under N.J.S.A.2C:20-8 to deal with the theft of telecommunications services. One of these new offenses criminalizes the use of telecommunication services by means of an unauthorized use of billing information or by the use of misidentifying or misleading information given to the telephone company.

The second proposed disorderly persons offense criminalizes the manufacture, sale or installation of equipment designed or intended to facilitate the receipt of telecommunications service without payment of lawful charges.

The third disorderly persons offenses criminalizes the possession or maintenance of equipment or devices designed to facilitate the receipt of telecommunications service with intent to avoid lawful charges.

The bill also specifies that any equipment used in the commission of these offenses is subject to forfeiture. The specific reference to forfeiture is necessary because forfeiture under present law is limited to property used in the commission of crimes and not disorderly persons offenses.

In addition, the bill mandates that restitution be paid to the vendor for any loss or damage caused by any offense committed pursuant to N.J.S.A.2C:20-8. In determining the amount of restitution, the court is required to consider both the cost of repair and replacement of damaged equipment and the cost of the services unlawfully obtained.

This bill further establishes a minimum fine of \$500 for any offense committed under N.J.S.A.2C:20-8.

The amendments adopted by the committee clarify the bill as follows:

1. The intent of the bill was to have its mandatory restitution and minimum fine provisions apply to any offense under N.J.S.A.2C:20-8. As drafted these provisions apply to those sections of N.J.S.A.2C:20-8 applicable to specific services but do not apply to subsection a. and b. of N.J.S.A.2C:20-8 which deal generally with theft of services. The amendments clarify that mandatory restitution and the \$500 minimum fine apply to all offenses committed under N.J.S.A.2C:20-8.

2. Several sections of N.J.S.A.2C:20-8 create presumptions of evidence which a jury may consider in determining whether one of the several disorderly persons offenses under N.J.S.A.2C:20-8 has occurred. For example, in subsection e., evidence of a tampered metering device is presumptive evidence that the person receiving electrical service monitored by such meter has tampered with it with intent to defraud. In State v. Dixon, 220 N.J. Super. 550 (App. Div., 1987), the issue was raised whether these presumptions, because of the manner in which N.J.S.A.2C:20-8 was drafted, apply to a general charge of theft of services or only to the disorderly persons offense in which the presumption is set forth. The Appellate Division, while noting the awkward construction of N.J.S.A.2C:20-8, ruled that the presumptions would apply to a charge of theft of services. The amendments clarify N.J.S.A.2C:20-8 in accordance with the holding in Dixon.