

ASSEMBLY, No. 2187

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Assemblyman DiGAETANO, Assemblywoman ALLEN,
Assemblymen DeSopo, Roma, Bucco, Garrett, Bodine,
Assemblywoman Bark, Assemblymen LeFevre, Blee, Kramer,
Gregg, Assemblywomen Crecco, Heck, Assemblymen Geist and
Malone

1 AN ACT concerning telecommunications crime and revising various
2 parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.2C:20-1 is amended to read as follows:
8 2C:20-1. Definitions. In chapters 20 and 21, unless a different
9 meaning plainly is required:

10 a. "Deprive" means: (1) to withhold or cause to be withheld
11 property of another permanently or for so extended a period as to
12 appropriate a substantial portion of its economic value, or with
13 purpose to restore only upon payment of reward or other
14 compensation; or (2) to dispose or cause disposal of the property so
15 as to make it unlikely that the owner will recover it.

16 b. "Fiduciary" means an executor, general administrator of an
17 intestate, administrator with the will annexed, substituted
18 administrator, guardian, substituted guardian, trustee under any trust,
19 express, implied, resulting or constructive, substituted trustee,
20 executor, conservator, curator, receiver, trustee in bankruptcy,
21 assignee for the benefit of creditors, partner, agent or officer of a
22 corporation, public or private, temporary administrator, administrator,
23 administrator pendente lite, administrator ad prosequendum,
24 administrator ad litem or other person acting in a similar capacity.

25 c. "Financial institution" means a bank, insurance company, credit
26 union, savings and loan association, investment trust or other
27 organization held out to the public as a place of deposit of funds or
28 medium of savings or collective investment.

29 d. "Government" means the United States, any state, county,
30 municipality, or other political unit, or any department, agency or

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

Matter underlined thus is new matter.

1 subdivision of any of the foregoing, or any corporation or other
2 association carrying out the functions of government.

3 e. "Movable property" means property the location of which can
4 be changed, including things growing on, affixed to, or found in land,
5 [and] documents or data, although the rights represented thereby have
6 no physical location. "Immovable property" is all other property.

7 f. "Obtain" means: (1) in relation to property, to bring about a
8 transfer or purported transfer of a legal interest in the property,
9 whether to the obtainer or another; or (2) in relation to labor or
10 service, to secure performance thereof.

11 g. "Property" means anything of value, including real estate,
12 tangible and intangible personal property, trade secrets, contract
13 rights, choses in action and other interests in or claims to wealth,
14 admission or transportation tickets, captured or domestic animals,
15 food and drink, electric, gas, steam or other power, financial
16 instruments, information, data, and computer software, in either
17 human readable or computer readable form, copies or originals.

18 h. "Property of another" includes property in which any person
19 other than the actor has an interest which the actor is not privileged to
20 infringe, regardless of the fact that the actor also has an interest in the
21 property and regardless of the fact that the other person might be
22 precluded from civil recovery because the property was used in an
23 unlawful transaction or was subject to forfeiture as contraband.
24 Property in possession of the actor shall not be deemed property of
25 another who has only a security interest therein, even if legal title is in
26 the creditor pursuant to a conditional sales contract or other security
27 agreement.

28 i. "Trade secret" means the whole or any portion or phase of any
29 scientific or technical information, design, process, procedure, formula
30 or improvement which is secret and of value. A trade secret shall be
31 presumed to be secret when the owner thereof takes measures to
32 prevent it from becoming available to persons other than those
33 selected by the owner to have access thereto for limited purposes.

34 j. "Dealer in property" means a person who buys and sells property
35 as a business.

36 k. "Traffic" means:

37 (1) To sell, transfer, distribute, dispense or otherwise dispose of
38 property to another person; or

39 (2) To buy, receive, possess, or obtain control of or use property,
40 with intent to sell, transfer, distribute, dispense or otherwise dispose
41 of such property to another person.

42 l. "Broken succession of title" means lack of regular documents of
43 purchase and transfer by any seller except the manufacturer of the
44 subject property, or possession of documents of purchase and transfer
45 by any buyer without corresponding documents of sale and transfer in
46 possession of seller, or possession of documents of sale and transfer

1 by seller without corresponding documents of purchase and transfer
2 in possession of any buyer.

3 m. "Person" includes any individual or entity or enterprise, as
4 defined herein, holding or capable of holding a legal or beneficial
5 interest in property.

6 n. "Anything of value" means any direct or indirect gain or
7 advantage to any person.

8 o. "Interest in property which has been stolen" means title or right
9 of possession to such property.

10 p. "Stolen property" means property that has been the subject of
11 any unlawful taking.

12 q. "Enterprise" includes any individual, sole proprietorship,
13 partnership, corporation, business trust, association, or other legal
14 entity, and any union or group of individuals associated in fact,
15 although not a legal entity, and it includes illicit as well as licit
16 enterprises and governmental as well as other entities.

17 r. "Attorney General" includes the Attorney General of New
18 Jersey, his assistants and deputies. The term shall also include a
19 county prosecutor or his designated assistant prosecutor, if a county
20 prosecutor is expressly authorized in writing by the Attorney General
21 to carry out the powers conferred on the Attorney General by this
22 chapter.

23 s. "Access device" means property consisting of any telephone
24 calling card number, credit card number, account number, mobile
25 identification number, electronic serial number, personal identification
26 number, or any other data intended to control or limit access to
27 telecommunications or other computer networks in either human
28 readable or computer readable form, either copy or original, that can
29 be used to obtain telephone service.

30 t. "Defaced access device" means any access device, in either
31 human readable or computer readable form, either copy or original,
32 which has been removed, erased, defaced, altered, destroyed, covered
33 or otherwise changed in any manner from its original configuration.

34 (cf: P.L.1984, c.184, s.1)

35

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

37 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions
38 Applicable to Theft Generally. a. Consolidation of Theft Offenses.
39 Conduct denominated theft in this chapter constitutes a single offense,
40 but each episode or transaction may be the subject of a separate
41 prosecution and conviction. A charge of theft may be supported by
42 evidence that it was committed in any manner that would be theft
43 under this chapter, notwithstanding the specification of a different
44 manner in the indictment or accusation, subject only to the power of
45 the court to ensure fair trial by granting a bill of particulars, discovery,
46 a continuance, or other appropriate relief where the conduct of the

- 1 defense would be prejudiced by lack of fair notice or by surprise.
- 2 b. Grading of theft offenses.
- 3 (1) Theft constitutes a crime of the second degree if:
- 4 (a) The amount involved is \$75,000.00 or more;
- 5 (b) The property is taken by extortion;
- 6 (c) The property stolen is a controlled dangerous substance or
- 7 controlled substance analog as defined in N.J.S.2C:35-2 and the
- 8 quantity is in excess of one kilogram; or
- 9 (d) The property stolen is a person's benefits under federal or State
- 10 law, or from any other source, which the Department of Human
- 11 Services or an agency acting on its behalf has budgeted for the
- 12 person's health care and the amount involved is \$75,000 or more.
- 13 (2) Theft constitutes a crime of the third degree if:
- 14 (a) The amount involved exceeds \$500.00 but is less than
- 15 \$75,000.00;
- 16 (b) The property stolen is a firearm, motor vehicle, vessel, boat,
- 17 horse or airplane;
- 18 (c) The property stolen is a controlled dangerous substance or
- 19 controlled substance analog as defined in N.J.S.2C:35-2 and the
- 20 amount involved is less than \$75,000.00 or is undetermined and the
- 21 quantity is one kilogram or less;
- 22 (d) It is from the person of the victim;
- 23 (e) It is in breach of an obligation by a person in his capacity as a
- 24 fiduciary;
- 25 (f) It is by threat not amounting to extortion;
- 26 (g) It is of a public record, writing or instrument kept, filed or
- 27 deposited according to law with or in the keeping of any public office
- 28 or public servant;
- 29 (h) The property stolen is a person's benefits under federal or State
- 30 law, or from any other source, which the Department of Human
- 31 Services or an agency acting on its behalf has budgeted for the
- 32 person's health care and the amount involved is less than \$75,000; [or
- 33]
- 34 (i) The property stolen is any real or personal property related to,
- 35 necessary for, or derived from research, regardless of value, including,
- 36 but not limited to, any sample, specimens and components thereof,
- 37 research subject, including any warm-blooded or cold-blooded animals
- 38 being used for research or intended for use in research, supplies,
- 39 records, data or test results, prototypes or equipment, as well as any
- 40 proprietary information or other type of information related to
- 41 research ;or
- 42 (j) The property stolen consists of an access device or a defaced
- 43 access device.
- 44 (3) Theft constitutes a crime of the fourth degree if the amount
- 45 involved is at least \$200.00 but does not exceed \$500.00. If the
- 46 amount involved was less than \$200.00 the offense constitutes a

1 disorderly persons offense.

2 (4) The amount involved in a theft shall be determined by the trier
3 of fact. The amount shall include, but shall not be limited to, the
4 amount of any State tax avoided, evaded or otherwise unpaid,
5 improperly retained or disposed of. Amounts involved in thefts
6 committed pursuant to one scheme or course of conduct, whether
7 from the same person or several persons, may be aggregated in
8 determining the grade of the offense.

9 c. Claim of right. It is an affirmative defense to prosecution for
10 theft that the actor:

11 (1) Was unaware that the property or service was that of another;

12 (2) Acted under an honest claim of right to the property or service
13 involved or that he had a right to acquire or dispose of it as he did; or

14 (3) Took property exposed for sale, intending to purchase and pay
15 for it promptly, or reasonably believing that the owner, if present,
16 would have consented.

17 d. Theft from spouse. It is no defense that theft was from the
18 actor's spouse, except that misappropriation of household and personal
19 effects, or other property normally accessible to both spouses, is theft
20 only if it occurs after the parties have ceased living together.

21 (cf: P.L.1995, c.20, s.5)

22

23 3. N.J.S.2C:20-3 is amended to read as follows:

24 2C:20-3. Theft by Unlawful Taking or Disposition.

25 a. Movable property. A person is guilty of theft if he unlawfully
26 takes, or exercises unlawful control over, movable property of
27 another, including but not limited to an access device or a defaced
28 access device, with purpose to deprive him thereof.

29 b. Immovable property. A person is guilty of theft if he unlawfully
30 transfers any interest in immovable property of another with purpose
31 to benefit himself or another not entitled thereto.

32 (cf: P.L.1978, c.95, s.2C:20-3)

33

34 4. N.J.S.2C:20-4 is amended to read as follows:

35 2C:20-4. Theft by Deception.

36 A person is guilty of theft if he purposely obtains property of
37 another by deception. A person deceives if he purposely:

38 a. Creates or reinforces a false impression, including false
39 impressions as to identity, law, value, intention or other state of
40 mind; but deception as to a person's intention to perform a promise
41 shall not be inferred from the fact alone that he did not subsequently
42 perform the promise;

43 b. Prevents another from acquiring information which would affect
44 his judgment of a transaction; or

45 c. Fails to correct a false impression which the deceiver previously
46 created or reinforced, or which the deceiver knows to be influencing

1 another to whom he stands in a fiduciary or confidential relationship.

2 The term "deceive" does not, however, include falsity as to
3 matters having no pecuniary significance, or puffing or exaggeration
4 by statements unlikely to deceive ordinary persons in the group
5 addressed.

6 (cf: P.L.1978, c.95, s.2C:20-4)

7

8 5. N.J.S.2C:20-7 is amended to read as follows:

9 2C:20-7. Receiving Stolen Property.

10 a. Receiving. A person is guilty of theft if he knowingly receives
11 or brings into this State movable property of another, including but
12 not limited to an access device or defaced access device, knowing
13 that it has been stolen, or believing that it is probably stolen. It is an
14 affirmative defense that the property was received with purpose to
15 restore it to the owner. "Receiving" means acquiring possession,
16 control or title, or lending on the security of the property.

17 b. Presumption of knowledge. The requisite knowledge or belief
18 is presumed in the case of a person who:

19 (1) Is found in possession or control of two or more items of
20 property stolen on two or more separate occasions; or

21 (2) Has received stolen property in another transaction within the
22 year preceding the transaction charged; or

23 (3) Being a person in the business of buying or selling property of
24 the sort received, acquires the property without having ascertained by
25 reasonable inquiry that the person from whom he obtained it had a
26 legal right to possess and dispose of it; or

27 (4) Is found in possession of two or more access devices or
28 defaced access devices.

29 (cf: P.L.1981, c.290, s.19)

30

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

32 2C:20-8. Theft of Services.

33 a. A person is guilty of theft if he purposely obtains services which
34 he knows are available only for compensation, by deception or threat,
35 or by false token, slug, or other means, including but not limited to
36 mechanical or electronic devices or through fraudulent statements, to
37 avoid payment for the service. "Services" include labor or professional
38 service; transportation, telephone, telecommunications, electric, water,
39 gas, cable television, or other public service; accommodation in hotels,
40 restaurants or elsewhere; entertainment; admission to exhibitions; use
41 of vehicles or other movable property. Where compensation for
42 service is ordinarily paid immediately upon the rendering of such
43 service, as in the case of hotels and restaurants, absconding without
44 payment or offer to pay gives rise to a presumption that the service
45 was obtained by deception as to intention to pay.

46 b. A person commits theft if, having control over the disposition of

1 services of another, to which he is not entitled, he knowingly diverts
2 such services to his own benefit or to the benefit of another not
3 entitled thereto.

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

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

11 (2) Connects or disconnects the meters, pipes or conduits of such
12 vendor or any other person or in any other manner tampers or
13 interferes with such meters, pipes or conduits, or connects with such
14 meters, pipes or conduits by pipes, conduits or other instruments--is
15 guilty of a disorderly persons offense.

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

26 A violation of this subsection shall be deemed to be a continuing
27 offense as long as the conditions described in this subsection exist.

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

37 The existence of any of the conditions with reference to meters or
38 attachments described in this subsection is presumptive evidence that
39 the person to whom electricity is at the time being furnished by or
40 through such meters or attachments has, with intent to defraud,
41 created or caused to be created with reference to such meters or
42 attachments, the condition so existing; provided, however, that the
43 presumption shall not apply to any person so furnished with electricity
44 for less than 31 days or until there has been at least one meter reading.

45 A violation of this subsection shall be deemed to be a continuing
46 offense as long as the conditions described in this subsection exist.

1 e. Any person who, with intent to obtain cable television service
2 without payment, in whole or in part, of the lawful charges therefor,
3 or with intent to deprive another of the lawful receipt of such service,
4 damages, cuts, tampers with, installs, taps or makes any connection
5 with, or who displaces, removes, injures or destroys any wire, cable,
6 conduit, apparatus or equipment of a cable television company
7 operating a CATV system; or who, without authority of a cable
8 television company, intentionally prevents, obstructs or delays, by any
9 means or contrivance, the sending, transmission, conveyance,
10 distribution or receipt of programming material carried by equipment
11 of the cable television company operating a CATV system, is a
12 disorderly person.

13 The existence of any of the conditions with reference to wires,
14 cables, conduits, apparatus or equipment described in this subsection
15 is presumptive evidence that the person to whom cable television
16 service is at the time being furnished has, with intent to obtain cable
17 television service without authorization or compensation or to
18 otherwise defraud, created or caused to be created the condition so
19 existing.

20 f. Any person who purposely or knowingly manufactures,
21 constructs, sells, offers for sale, distributes or installs any equipment,
22 device or instrument designed or intended to facilitate the interception,
23 decoding or receipt of any cable television service with intent to obtain
24 such service and avoid the lawful payment of the charges therefor to
25 the provider, in whole or in part, is a disorderly person.

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

30 g. Any person who purposely or knowingly maintains or possesses
31 any equipment, device or instrument of the type described in
32 subsection f. of this section or maintains or possesses any equipment,
33 device or instrument actually used to facilitate the interception,
34 decoding or receipt of any cable television service with intent to obtain
35 such service and avoid the lawful payment, in whole or in part, of the
36 charges therefor to the provider, is a disorderly person.

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

41 h. Any person who, with the intent of depriving a telephone
42 company of its lawful charges therefor, purposely or knowingly makes
43 use of any telecommunications service by means of the unauthorized
44 use of any electronic or mechanical device or connection, or by the
45 unauthorized use of billing information, or by the use of a computer,
46 computer equipment or computer software, or by the use of

1 misidentifying or misleading information given to a representative of
2 the telephone company is guilty of a [disorderly persons offense] crime
3 of the third degree.

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

11 i. Any person who purposely or knowingly manufactures,
12 constructs, sells, offers for sale, distributes, installs, or otherwise
13 provides any service, equipment, device, computer, computer
14 equipment, computer software or instrument designed or intended to
15 facilitate the receipt of any telecommunications service and avoid the
16 lawful payment of the charges therefor to the provider, in whole or in
17 part, is guilty of a [disorderly persons offense] crime of the third
18 degree.

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

23 j. Any person who purposely or knowingly maintains or possesses
24 any equipment, device, computer, computer equipment, computer
25 software or instrument of the type described in subsection i. of this
26 section, or maintains or possesses any equipment, device, computer,
27 computer equipment, computer software or instrument actually used
28 to facilitate the receipt of any telecommunications service with intent
29 to obtain such service and avoid the lawful payment, in whole or in
30 part, of the charges therefor to the provider, is guilty of a [disorderly
31 persons offense] crime of the third degree.

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

36 k. In addition to any other disposition authorized by law, and
37 notwithstanding the provisions of N.J.S.2C:43-3, every person who
38 violates this section shall be sentenced to make restitution to the
39 vendor and to pay a minimum fine of \$500.00 for each offense. In
40 determining the amount of restitution, the court shall consider the
41 costs expended by the vendor, including but not limited to the repair
42 and replacement of damaged equipment, the cost of the services
43 unlawfully obtained, investigation expenses, and attorney fees.

44 l. The presumptions of evidence applicable to offenses defined in
45 subsections c., d., e. and h. of this section shall also apply in any
46 prosecution for theft of services brought pursuant to the provisions of

1 subsection a. or b. of this section.

2 (cf: P.L.1989, c.112, s.1)

3

4 7. N.J.S.2C:21-1 is amended to read as follows:

5 2C:21-1. Forgery and Related Offenses.

6 a. Forgery. A person is guilty of forgery if, with purpose to
7 defraud or injure anyone, or with knowledge that he is facilitating a
8 fraud or injury to be perpetrated by anyone, the actor:

9 (1) Alters or changes any writing of another without his
10 authorization;

11 (2) Makes, completes, executes, authenticates, issues or transfers
12 any writing so that it purports to be the act of another who did not
13 authorize that act or of a fictitious person, or to have been executed
14 at a time or place or in a numbered sequence other than was in fact
15 the case, or to be a copy of an original when no such original existed;
16 or

17 (3) Utters any writing which he knows to be forged in a manner
18 specified in paragraph (1) or (2).

19 "Writing" includes printing or any other method of recording
20 information, money, coins, tokens, stamps, seals, credit cards, badges,
21 trademarks, access devices, and other symbols of value, right,
22 privilege, or identification.

23 b. Grading of forgery. Forgery is a crime of the third degree if the
24 writing is or purports to be part of an issue of money, securities,
25 postage or revenue stamps, or other instruments, certificates or
26 licenses issued by the government, or part of an issue of stock, bonds
27 or other instruments representing interest in or claims against any
28 property or enterprise, or an access device.

29 Otherwise forgery is a crime of the fourth degree.

30 c. Possession of forgery devices. A person is guilty of possession
31 of forgery devices, a crime of the third degree, when with purpose to
32 use, or to aid or permit another to use the same for purposes of
33 forging written instruments, including access devices, he makes or
34 possesses any device, apparatus, equipment, computer, computer
35 equipment, computer software or article specially designed or adapted
36 to such use.

37 (cf: P.L.1981, c.290, s.20)

38

39 8. N.J.S.2C:41-1 is amended to read as follows:

40 2C:41-1. Definitions.

41 For purposes of this section and N.J.S.2C:41-2 through
42 N.J.S.2C:41-6:

43 a. "Racketeering activity" means (1) any of the following crimes
44 which are crimes under the laws of New Jersey or are equivalent
45 crimes under the laws of any other jurisdiction:

46 (a) murder

- 1 (b) kidnapping
2 (c) gambling
3 (d) promoting prostitution
4 (e) obscenity
5 (f) robbery
6 (g) bribery
7 (h) extortion
8 (i) criminal usury
9 (j) violations of Title 33 of the Revised Statutes
10 (k) violations of Title 54A of the New Jersey Statutes and Title 54
11 of the Revised Statutes
12 (l) arson
13 (m) burglary
14 (n) theft and related crimes
15 (o) forgery and fraudulent practices
16 (p) fraud in the offering, sale or purchase of securities
17 (q) alteration of motor vehicle identification numbers
18 (r) unlawful manufacture, purchase, use or transfer of firearms
19 (s) unlawful possession or use of destructive devices or explosives
20 (t) violation of sections 112 through 116 inclusive of the "Casino
21 Control Act," P.L.1977, c.110 (C.5:12-112 through 5:12-116)
22 (u) violation of N.J.S.2C:35-5 except possession of 84 grams or
23 less of marijuana or of N.J.S.2C:35-4 or N.J.S.2C:35-6
24 (v) violation of subsection b. of N.J.S.2C:24-4 except for
25 subparagraph (b) of paragraph (5) of subsection b.
26 (w) violations of subsection h., i. or j. of N.J.S.2C:20-8 or
27 violations of section 10 of P.L. .c. (C.)(now pending before the
28 Legislature as section 10 of this bill),
29 (2) any conduct defined as "racketeering activity" under Title 18,
30 U.S.C.{1961(1)(A), (B) and (D).
31 b. "Person" includes any individual or entity or enterprise as
32 defined herein holding or capable of holding a legal or beneficial
33 interest in property.
34 c. "Enterprise" includes any individual, sole proprietorship,
35 partnership, corporation, business or charitable trust, association, or
36 other legal entity, any union or group of individuals associated in fact
37 although not a legal entity, and it includes illicit as well as licit
38 enterprises and governmental as well as other entities.
39 d. "Pattern of racketeering activity" requires
40 (1) Engaging in at least two incidents of racketeering conduct one
41 of which shall have occurred after the effective date of this act and the
42 last of which shall have occurred within 10 years (excluding any period
43 of imprisonment) after a prior incident of racketeering activity; and
44 (2) A showing that the incidents of racketeering activity embrace
45 criminal conduct that has either the same or similar purposes, results,
46 participants or victims or methods of commission or are otherwise

1 interrelated by distinguishing characteristics and are not isolated
2 incidents.

3 e. "Unlawful debt" means a debt

4 (1) Which was incurred or contracted in gambling activity which
5 was in violation of the law of the United States, a state or political
6 subdivision thereof; or

7 (2) Which is unenforceable under state or federal law in whole or
8 in part as to principal or interest because of the laws relating to usury.

9 f. "Documentary material" includes any book, paper, document,
10 writing, drawing, graph, chart, photograph, phonorecord, magnetic or
11 recording or video tape, computer printout, other data compilation
12 from which information can be obtained or from which information can
13 be translated into useable form or other tangible item.

14 g. "Attorney General" includes the Attorney General of New
15 Jersey, his assistants and deputies. The term shall also include a
16 county prosecutor or his designated assistant prosecutor if a county
17 prosecutor is expressly authorized in writing by the Attorney General
18 to carry out the powers conferred on the Attorney General by this
19 chapter.

20 h. "Trade or commerce" shall include all economic activity
21 involving or relating to any commodity or service.

22 (cf: P.L.1995, c.110, s.1)

23

24 9. Section 8 of P.L.1968, c.409 (C.2A:156A-8) is amended to read
25 as follows:

26 8. The Attorney General, county prosecutor or a person designated
27 to act for such an official and to perform his duties in and during his
28 actual absence or disability, may authorize, in writing, an ex parte
29 application to a judge designated to receive the same for an order
30 authorizing the interception of a wire, or electronic or oral
31 communication by the investigative or law enforcement officers or
32 agency having responsibility for an investigation when such
33 interception may provide evidence of the commission of the offense of
34 murder, kidnapping, gambling, robbery, bribery, a violation of
35 paragraph (1) or (2) of subsection b. of N.J.S.2C:12-1, a violation of
36 N.J.S.2C:21-19 punishable by imprisonment for more than one year,
37 terroristic threats, violations of N.J.S.2C:35-3, N.J.S.2C:35-4 and
38 N.J.S.2C:35-5, violations of sections 112 through 116, inclusive, of
39 the "Casino Control Act," P.L.1977, c.110 (C.5:12-112 through
40 5:12-116), arson, burglary, theft and related offenses punishable by
41 imprisonment for more than one year, endangering the welfare of a
42 child pursuant to N.J.S.2C:24-4, escape, forgery, alteration of motor
43 vehicle identification numbers, unlawful manufacture, purchase, use,
44 or transfer of firearms, unlawful possession or use of destructive
45 devices or explosives, racketeering or a violation of subsection g. of
46 N.J.S.2C:5-2, leader of organized crime, violations of subsection h.

1 i. or j. of N.J.S.2C:20-8, violations of section 10 of P.L. .c.
2 (C.)(now pending before the Legislature as section 10 of this bill),
3 organized criminal activity directed toward the unlawful
4 transportation, storage, disposal, discharge, release, abandonment or
5 disposition of any harmful, hazardous, toxic, destructive, or polluting
6 substance, or any conspiracy to commit any of the foregoing offenses
7 or which may provide evidence aiding in the apprehension of the
8 perpetrator or perpetrators of any of the foregoing offenses.
9 (cf: P.L.1995, c.119, s.1)

10

11 10. (New section) A person is a leader of a cellular fraud
12 trafficking network if he conspires with others as an organizer,
13 supervisor, financier, or manager, to engage for profit in a scheme or
14 course of conduct to unlawfully take, acquire, distribute, or otherwise
15 traffic in access devices, defaced access devices, or any service
16 equipment, device, computer, computer equipment, computer software
17 or instrument designed or intended to facilitate the receipt of any
18 telecommunications service and to avoid the lawful payment of the
19 charges therefore to the provider, in whole or in part. Leader of a
20 cellular fraud trafficking networks is a crime of the second degree.
21 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the
22 court may impose a fine, or order restitution, or both, not to exceed
23 \$250,000 or five times the losses associated with any access devices
24 or defaced access devices in either human readable or computer
25 readable form, copies or originals, seized at the time of arrest,
26 whichever is greater.

27 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
28 leader of a cellular fraud trafficking network shall not merge with the
29 conviction for any offense which is the object of the conspiracy.
30 Nothing contained in this act shall prohibit the court from imposing an
31 extended term pursuant to N.J.S.2C:43-7; nor shall this act be
32 construed in any way to preclude or limit the prosecution or
33 conviction of any person for conspiracy under N.J.S.2C:5-2, or any
34 prosecution or conviction for any other offense.

35 It shall not be necessary in any prosecution under this act for the
36 State to prove that any intended profit was actually realized. The trier
37 of fact may infer that a particular scheme or course of conduct was
38 undertaken for profit from all of the attending circumstances, including
39 but not limited to the number of persons involved in the scheme or
40 course of conduct, the actor's net worth and expenditures in relation
41 to his legitimate sources of income, the number of access devices or
42 defaced access devices involved, the quantity and functions of any
43 cellular telephones and other instruments, computers, computer
44 equipment, computer software or equipment seized at the time of
45 arrest, or the total amount of losses incurred by the affected
46 telecommunications carriers related to the scheme or course of

1 conduct.

2 It shall not be a defense to a prosecution under this act that the
3 access devices, defaced access devices or any other related
4 instruments or equipment involved in the scheme or course of conduct
5 had been obtained in another jurisdiction; nor shall it be a defense that
6 the ultimate distribution of the access devices or defaced access
7 devices , or any profit therefrom, was to occur in another jurisdiction.

8 In any prosecution under this act, possession of two or more access
9 devices, one or more defaced access devices, or any equipment,
10 device, computer, computer equipment, computer software or
11 instrument used or capable of adaptation for use in removing,
12 defacing, altering, destroying, changing, or otherwise modifying the
13 original configuration of an access device shall be presumptive
14 evidence of an intent to traffic in access devices.

15

16 11. (New section) In any prosecution for an offense enumerated
17 in chapter 20 of Title 2C of the New Jersey Statutes involving a
18 defaced access device, any removal, erasure, defacement, alteration,
19 destruction, covering or other change in such access device from its
20 original configuration performed by any person other than an
21 authorized manufacturer of, or service provider to access devices shall
22 be presumed to be for an unlawful purpose.

23

24 12. This act shall take effect immediately.

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STATEMENT

28

29 This bill amends various sections of the criminal law concerning
30 theft to include references to access devices and defaced access
31 devices. Possession of two or more stolen access devices or defaced
32 access devices would be a crime of the third degree. The statutes on
33 theft by unlawful taking, theft by deception and receiving of stolen
34 property are amended to include references to access devices and
35 defaced access devices. N.J.S.2C:20-8 concerning theft of services is
36 amended in subsections h., i. and j. to upgrade those offenses from
37 disorderly persons offenses to crimes of the third degree. The
38 definition of a "writing" for purposes of the forgery statute is amended
39 to include access devices.

40 The bill creates the new offense of leader of a cellular fraud
41 trafficking network. It would be a crime of the second degree to
42 conspire with others as an organizer, supervisor, financier, or
43 manager, to engage for profit in a scheme or course of conduct to
44 unlawfully take, acquire, distribute, or otherwise traffic in access
45 devices, defaced access devices, or any service equipment, device, or
46 instrument designed or intended to facilitate the receipt of any

1 telecommunications service and to avoid the lawful payment of the
2 charges.

3 The bill also amends the racketeering statute to include in the
4 definition of "racketeering activity" violations of subsections h., i. or
5 j. of N.J.S.2C:20-8 and the new offense of leader of a cellular fraud
6 network. These same crimes would be included in the statute
7 providing authorizations for wiretaps.

8 The sponsor notes many New Jersey residents have fallen prey in
9 recent years to several forms of telecommunications crime, which
10 occurs when a victim uses a telephone calling card at a public pay
11 telephone located in an airport, a bus terminal, a train station, or other
12 densely crowded area. As victims enter their calling card numbers to
13 place calls, criminals known as "shoulder-surfers" record those digits
14 for later use in obtaining fraudulent long-distance service. Alternately,
15 criminals frequently place telephone calls to victims and claim to be
16 a telephone company representative. The victims are then asked to
17 provide their calling card numbers as part of a "security check." While
18 the financial loss for these fraudulent calls is ultimately borne by the
19 affected long-distance carrier, New Jersey citizens suffer both the
20 inconvenience and a sense of personal invasion associated with the
21 unauthorized appropriation and use of their calling card information.

22 Another form of telecommunications crime is committed through
23 the theft of a legitimate cellular telephone user's electronic
24 identification codes, which are intercepted, along with the legitimate
25 user's private communications, by illegal scanning equipment. These
26 electronic codes are then programmed into other stolen cellular
27 telephones, which are ultimately used to steal cellular service from
28 telecommunications carriers in New Jersey and throughout the region.
29 Once again, while the telecommunications carriers ultimately bear the
30 financial burden of these crimes, New Jersey citizens are affected by
31 the illegal accessing of their personal communications, as well as the
32 increase in car burglaries and related crimes needed to supply the so-
33 called "cloners" with the cellular telephones into which the stolen
34 electronic codes are programmed.

35

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39 Revises statutes concerning telecommunications crime.