

SUBSTITUTE FOR
SENATE BILL NO. 927

A bill to amend 1979 PA 53, entitled

"An act to prohibit access to computers, computer systems, and computer networks for certain fraudulent purposes; to prohibit intentional and unauthorized access, alteration, damage, and destruction of computers, computer systems, computer networks, computer software programs, and data; to prohibit the sending of certain electronic messages; and to prescribe penalties,"

by amending the title and sections 2, 3, 5, 6, and 7 (MCL 752.792, 752.793, 752.795, 752.796, and 752.797), the title as amended by 2004 PA 242, section 2 as amended by 2000 PA 181, sections 3 and 5 as amended by 1996 PA 326, section 6 as amended by 2000 PA 179, and section 7 as amended by 2000 PA 180.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to prohibit access to computers, computer systems, and
3 computer networks for certain ~~fraudulent~~ purposes; to prohibit
4 intentional and unauthorized access, alteration, damage,

1 **DISRUPTION, IMPAIRMENT,** and destruction of computers, computer
2 systems, computer networks, computer software programs, **MOTOR**
3 **VEHICLE ELECTRONIC SYSTEMS,** and data; to prohibit the sending of
4 certain electronic messages; and to prescribe penalties.

5 Sec. 2. (1) "Access" means to instruct, communicate with,
6 store data in, retrieve or intercept data from, or otherwise use
7 the resources of a computer program, computer, computer system, or
8 computer network.

9 (2) "Aggregate amount" means any direct or indirect loss
10 incurred by a victim or group of victims including, but not limited
11 to, the value of any money, property or service lost, stolen, or
12 rendered unrecoverable by the offense, or any actual expenditure
13 incurred by the victim or group of victims to verify that a
14 computer program, computer, computer system, or computer network
15 was not altered, acquired, damaged, deleted, disrupted, or
16 destroyed by the access. The direct or indirect losses incurred in
17 separate incidents ~~pursuant to~~ **OF** a scheme or course of conduct
18 within any 12-month period may be aggregated to determine the total
19 value of the loss involved in the violation of this act.

20 (3) "Computer" means any connected, directly interoperable or
21 interactive device, equipment, or facility that uses a computer
22 program or other instructions to perform specific operations
23 including logical, arithmetic, or memory functions with or on
24 computer data or a computer program and that can store, retrieve,
25 alter, or communicate the results of the operations to a person,
26 computer program, computer, computer system, or computer network.

27 (4) "Computer network" means the interconnection of hardware

1 or wireless communication lines with a computer through remote
2 terminals, or a complex consisting of 2 or more interconnected
3 computers.

4 (5) "Computer program" means a series of internal or external
5 instructions communicated in a form acceptable to a computer that
6 directs the functioning of a computer, computer system, or computer
7 network in a manner designed to provide or produce products or
8 results from the computer, computer system, or computer network.

9 (6) "Computer system" means a set of related, connected or
10 unconnected, computer equipment, devices, software, or hardware.

11 (7) "Device" includes, but is not limited to, an electronic,
12 magnetic, electrochemical, biochemical, hydraulic, optical, or
13 organic object that performs input, output, or storage functions by
14 the manipulation of electronic, magnetic, or other impulses.

15 (8) **"MECHANIC" MEANS A MOTOR VEHICLE MECHANIC, MASTER**
16 **MECHANIC, OR SPECIALTY MECHANIC AS THOSE TERMS ARE DEFINED IN**
17 **SECTION 2 OF THE MOTOR VEHICLE SERVICE AND REPAIR ACT, 1974 PA 300,**
18 **MCL 257.1302.**

19 (9) **"MOTOR VEHICLE" MEANS THAT TERM AS DEFINED IN SECTION 33**
20 **OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.33.**

21 (10) **"MOTOR VEHICLE DEALER" MEANS A DEALER AS THAT TERM IS**
22 **DEFINED IN SECTION 11 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,**
23 **MCL 257.11.**

24 (11) **"MOTOR VEHICLE ELECTRONIC SYSTEM" MEANS A COMPUTER,**
25 **COMPUTER SYSTEM, COMPUTER NETWORK, VEHICLE COMMUNICATION SYSTEM, OR**
26 **OTHER DEVICE OR SYSTEM DESIGNED TO IMPLEMENT, ASSIST, OR ENHANCE**
27 **THE MANUAL OR AUTONOMOUS OPERATION OF A MOTOR VEHICLE, PROVIDE**

1 VEHICLE TELEMATICS SERVICES, OR ENSURE THE SAFETY OF A MOTOR
2 VEHICLE OPERATOR OR PASSENGER.

3 (12) "MOTOR VEHICLE MANUFACTURER" MEANS A MANUFACTURER AS THAT
4 TERM IS DEFINED IN SECTION 28 OF THE MICHIGAN VEHICLE CODE, 1949 PA
5 300, MCL 257.28.

6 Sec. 3. (1) "PRIOR CONVICTION" MEANS A VIOLATION OR ATTEMPTED
7 VIOLATION OF SECTION 145D OF THE MICHIGAN PENAL CODE, 1931 PA 328,
8 MCL 750.145D, THIS ACT, OR A SUBSTANTIALLY SIMILAR LAW OF THE
9 UNITED STATES, ANOTHER STATE, OR A POLITICAL SUBDIVISION OF ANOTHER
10 STATE.

11 (2) ~~(1)~~ "Property" includes, but is not limited to,
12 intellectual property, computer data, instructions or programs in
13 either machine or human readable form, financial instruments or
14 information, medical information, restricted personal information,
15 or any other tangible or intangible item of value.

16 (3) "RESEARCHER" MEANS AN ENTITY OR AN EMPLOYEE OF AN ENTITY
17 PERFORMING DEVELOPMENTAL, OPERATIONAL, OR DIAGNOSTIC TESTING ON A
18 MOTOR VEHICLE OR MOTOR VEHICLE ELECTRONIC SYSTEMS IN THE ORDINARY
19 COURSE OF THE ENTITY'S BUSINESS.

20 (4) "SERIOUS IMPAIRMENT OF A BODY FUNCTION" MEANS THAT TERM AS
21 DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,
22 MCL 257.58C.

23 (5) ~~(2)~~ "Services" includes, but is not limited to, computer
24 time, data processing, storage functions, computer memory, or the
25 unauthorized use of a computer program, computer, computer system,
26 or computer network, or communication facilities connected or
27 related to a computer, computer system, or computer network.

(a) Access or cause access to be made to a computer program, computer, computer system, or computer network to acquire, alter, damage, delete, ~~or~~ **DISRUPT, IMPAIR**, destroy, ~~property~~ or otherwise use **OR GAIN CONTROL OF** the service of a computer program, computer, computer system, ~~or~~ computer network, **OR OTHER PROPERTY.**

(b) Insert or attach or knowingly create the opportunity for an unknowing and unwanted insertion or attachment of a set of instructions or a computer program into a computer program, computer, computer system, or computer network, that is intended to acquire, alter, damage, delete, disrupt, ~~or~~ **IMPAIR**, destroy, ~~property~~ or otherwise use **OR GAIN CONTROL OF** the services of a computer program, computer, computer system, or computer network, **OR OTHER PROPERTY**. This subdivision does not prohibit conduct protected under section 5 of article I of the state constitution of 1963 or under the first amendment of the constitution of the United States.

(C) ACCESS OR CAUSE ACCESS TO BE MADE TO A MOTOR VEHICLE ELECTRONIC SYSTEM TO ALTER, DAMAGE, DELETE, DISRUPT, IMPAIR, DESTROY, OR OTHERWISE USE OR CONTROL A MOTOR VEHICLE ELECTRONIC SYSTEM OR << >> IF THE PURPOSE OF THIS UNAUTHORIZED ACTION OR ACTIONS IS TO DAMAGE THE SYSTEMS OR SERVICES.

(D) ACCESS OR CAUSE ACCESS TO BE MADE TO A MOTOR VEHICLE
ELECTRONIC SYSTEM TO ALTER, DAMAGE, DELETE, DISRUPT, IMPAIR,

1 DESTROY, OR OTHERWISE USE OR CONTROL A MOTOR VEHICLE ELECTRONIC
2 SYSTEM IF THE PURPOSE OF THIS UNAUTHORIZED ACTION OR ACTIONS IS TO
3 INJURE PERSONS OR DAMAGE OTHER PROPERTY THROUGH UNAUTHORIZED
4 MOVEMENT OF A VEHICLE OR VEHICLES.

5 (2) THE FOLLOWING CONDUCT DOES NOT VIOLATE SUBSECTION (1) (C) :

6 (A) THE ACTIONS OF A MOTOR VEHICLE MANUFACTURER, A LICENSED
7 MOTOR VEHICLE DEALER, OR LICENSED MECHANICS OR THEIR EMPLOYEES OR
8 CONTRACTORS WHEN SERVICING, REPAIRING, UPDATING, OR UPGRADING A
9 MOTOR VEHICLE ELECTRONIC SYSTEM IF THE PURPOSE OF THOSE ACTIONS IS
10 NOT TO INJURE THE VEHICLE OR OTHER PROPERTY OR PERSONS.

11 (B) THE ACTIONS OF A RESEARCHER IF THAT RESEARCH IS CONDUCTED
12 UNDER SAFE AND CONTROLLED CONDITIONS AND THE PURPOSE OF THE
13 RESEARCH IS TO TEST, REFINE, OR IMPROVE A MOTOR VEHICLE ELECTRONIC
14 SYSTEM AND NOT TO DAMAGE THE CRITICAL HIGHWAY INFRASTRUCTURE OR
15 OTHER PROPERTY OR INJURE PEOPLE.

16 Sec. 6. (1) A person shall not use a computer program,
17 computer, computer system, ~~ex~~-computer network, **COMMUNICATIONS**
18 **SYSTEM, OR MOTOR VEHICLE ELECTRONIC SYSTEM** to commit, attempt to
19 commit, conspire to commit, or solicit another person to commit a
20 crime.

21 (2) This section does not prohibit a person from being charged
22 with, convicted of, or punished for any other violation of law
23 committed by that person while violating or attempting to violate
24 this section, including the underlying offense.

25 (3) This section applies regardless of whether the person is
26 convicted of committing, attempting to commit, conspiring to
27 commit, or soliciting another person to commit the underlying

1 offense.

2 Sec. 7. (1) A person who violates section 4 is guilty of a
3 crime as follows:

4 (a) If the violation involves an aggregate amount of less than
5 \$200.00, the person is guilty of a misdemeanor punishable by
6 imprisonment for not more than 93 days or a fine of not more than
7 \$500.00 or 3 times the aggregate amount, whichever is greater, or
8 both imprisonment and a fine.

9 (b) If any of the following apply, the person is guilty of a
10 misdemeanor punishable by imprisonment for not more than 1 year or
11 a fine of not more than \$2,000.00 or 3 times the aggregate amount,
12 whichever is greater, or both imprisonment and a fine:

13 (i) The violation involves an aggregate amount of \$200.00 or
14 more but less than \$1,000.00.

15 (ii) The person violates this act and has a prior conviction.

16 (c) If any of the following apply, the person is guilty of a
17 felony punishable by imprisonment for not more than 5 years or a
18 fine of not more than \$10,000.00 or 3 times the aggregate amount,
19 whichever is greater, or both imprisonment and a fine:

20 (i) The violation involves an aggregate amount of \$1,000.00 or
21 more but less than \$20,000.00.

22 (ii) The person has 2 prior convictions.

23 (d) If any of the following apply, the person is guilty of a
24 felony punishable by imprisonment for not more than 10 years or a
25 fine of not more than 3 times the aggregate amount, or both
26 imprisonment and a fine:

27 (i) The violation involves an aggregate amount of \$20,000.00

1 or more.

2 (ii) The person has 3 or more prior convictions.

3 (2) A person who violates section 5 is guilty of a crime as
4 follows:

5 (a) Except as **OTHERWISE** provided in ~~subdivision (b)~~, **THIS**
6 **SUBSECTION**, the person is guilty of a felony punishable by
7 imprisonment for not more than 5 years or a fine of not more than
8 \$10,000.00, or both.

9 (b) If the person has a prior conviction **OTHER THAN A**
10 **CONVICTION DESCRIBED IN SUBDIVISION (C)**, OR IF THE VIOLATION
11 **RESULTED IN SERIOUS IMPAIRMENT OF A BODY FUNCTION**, the person is
12 guilty of a felony punishable by imprisonment for not more than 10
13 years or a fine of not more than \$50,000.00, or both.

14 (C) IF THE PERSON VIOLATES SECTION 5(1)(C) AND THE EFFECT OF
15 THE VIOLATION CAN BE REVERSED OR CURED WITHOUT INJURY TO ANY PERSON
16 OR DAMAGE TO ANY PROPERTY, THE PERSON IS GUILTY OF A MISDEMEANOR
17 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF
18 NOT MORE THAN \$500.00, OR BOTH.

19 (D) IF THE VIOLATION RESULTED IN DEATH, THE PERSON IS GUILTY
20 OF A FELONY PUNISHABLE BY IMPRISONMENT FOR LIFE OR ANY TERM OF
21 YEARS.

22 (3) A person who violates section 6 is guilty of a crime as
23 follows:

24 (a) If the underlying crime is a misdemeanor or a felony with
25 a maximum term of imprisonment of 1 year or less, the person is
26 guilty of a misdemeanor punishable by imprisonment for not more
27 than 1 year or a fine of not more than \$5,000.00, or both.

1 (b) If the underlying crime is a misdemeanor or a felony with
2 a maximum term of imprisonment of more than 1 year but less than 2
3 years, the person is guilty of a felony punishable by imprisonment
4 for not more than 2 years or a fine of not more than \$5,000.00, or
5 both.

6 (c) If the underlying crime is a misdemeanor or a felony with
7 a maximum term of imprisonment of 2 years or more but less than 4
8 years, the person is guilty of a felony punishable by imprisonment
9 for not more than 4 years or a fine of not more than \$5,000.00, or
10 both.

11 (d) If the underlying crime is a felony with a maximum term of
12 imprisonment of 4 years or more but less than 10 years, the person
13 is guilty of a felony punishable by imprisonment for not more than
14 7 years or a fine of not more than \$5,000.00, or both.

15 (e) If the underlying crime is a felony punishable by a
16 maximum term of imprisonment of 10 years or more but less than 20
17 years, the person is guilty of a felony punishable by imprisonment
18 for not more than 10 years or a fine of not more than \$10,000.00,
19 or both.

20 (f) If the underlying crime is a felony punishable by a
21 maximum term of imprisonment of 20 years or more or for life, the
22 person is guilty of a felony punishable by imprisonment for not
23 more than 20 years or a fine of not more than \$20,000.00, or both.

24 (4) The court may order that a term of imprisonment imposed
25 under subsection (3) be served consecutively to any term of
26 imprisonment imposed for conviction of the underlying offense.

27 (5) If the prosecuting attorney intends to seek an enhanced

1 sentence under section 4 or section 5 based upon the defendant
2 having a prior conviction, the prosecuting attorney shall include
3 on the complaint and information a statement listing that prior
4 conviction. The existence of the defendant's prior conviction shall
5 be determined by the court, without a jury, at sentencing. The
6 existence of a prior conviction may be established by any evidence
7 relevant for that purpose, including, but not limited to, 1 or more
8 of the following:

9 (a) A copy of the judgment of conviction.

10 (b) A transcript of a prior trial, plea-taking, or sentencing.

11 (c) Information contained in a presentence report.

12 (d) The defendant's statement.

13 (6) It is a rebuttable presumption in a prosecution for a
14 violation of section 5 that the person did not have authorization
15 from the owner, system operator, or other person who has authority
16 from the owner or system operator to grant permission to access the
17 computer program, computer, computer system, or computer network or
18 has exceeded authorization unless 1 or more of the following
19 circumstances existed at the time of access:

20 (a) Written or oral permission was granted by the owner,
21 system operator, or other person who has authority from the owner
22 or system operator to grant permission of the accessed computer
23 program, computer, computer system, or computer network.

24 (b) The accessed computer program, computer, computer system,
25 or computer network had a pre-programmed access procedure that
26 would display a bulletin, command, or other message before access
27 was achieved that a reasonable person would believe identified the

1 computer program, computer, computer system, or computer network as
2 within the public domain.

3 (c) Access was achieved without the use of a set of
4 instructions, code, or computer program that bypasses, defrauds, or
5 otherwise circumvents the pre-programmed access procedure for the
6 computer program, computer, computer system, or computer network.

7 (7) The court may order a person convicted of violating this
8 act to reimburse this state or a local unit of government of this
9 state for expenses incurred in relation to the violation in the
10 same manner that expenses may be ordered to be reimbursed under
11 section 1f of chapter IX of the code of criminal procedure, 1927 PA
12 175, MCL 769.1f.

13 ~~—— (8) As used in this section, "prior conviction" means a~~
14 ~~violation or attempted violation of section 145d of the Michigan~~
15 ~~penal code, 1931 PA 328, MCL 750.145d, or this act or a~~
16 ~~substantially similar law of the United States, another state, or a~~
17 ~~political subdivision of another state.~~

18 Enacting section 1. This amendatory act takes effect 90 days
19 after the date it is enacted into law.