Act No. 326
Public Acts of 1996
Approved by the Governor
June 25, 1996
Filed with the Secretary of State
June 26, 1996

STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996

Introduced by Reps. Perricone, Jellema, Bodem, Walberg, Goschka, Horton, McManus, Hammerstrom, Voorhees and Law

Reps. Alley, Bush, Byl, Ciaramitaro, Dalman, DeLange, DeMars, Dolan, Gagliardi, Galloway, Gnodtke, Gubow, Hill, Hood, Jaye, Jersevic, Johnson, Kaza, Kilpatrick, Kukuk, LaForge, Llewellyn, London, Lowe, McBryde, McNutt, Middaugh, Middleton, Nye, Olshove, Profit, Ryan, Tesanovich, Varga, Weeks and Wetters named co-sponsors

ENROLLED HOUSE BILL No. 5748

AN ACT to amend sections 2, 3, 4, 5, 6, and 7 of Act No. 53 of the Public Acts of 1979, 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; and to prescribe penalties," being sections 752.792, 752.793, 752.794, 752.795, 752.796, and 752.797 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 2, 3, 4, 5, 6, and 7 of Act No. 53 of the Public Acts of 1979, being sections 752.792, 752.793, 752.794, 752.795, 752.796, and 752.797 of the Michigan Compiled Laws, are amended to read as follows:

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

(2) "Aggregate amount" means any direct or indirect loss incurred by a victim including, but not limited to, the value of any money, property or service lost, stolen, or rendered unrecoverable by the offense, or any actual expenditure incurred by the victim to verify that a computer program, computer, computer system, or computer network was not altered, acquired, damaged, deleted, disrupted, or destroyed by the access.

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

(4) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

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

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

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

Sec. 3. (1) "Property" includes, but is not limited to, intellectual property, computer data, instructions or programs in either machine or human readable form, financial instruments or information, medical information, restricted personal information, or any other tangible or intangible item of value.

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

Sec. 4. A person shall not intentionally access or cause access to be made to a computer program, computer, computer system, or computer network to devise or execute a scheme or artifice with the intent to defraud or to obtain money, property, or a service by a false or fraudulent pretense, representation, or promise.

Sec. 5. A person shall not intentionally and without authorization or by exceeding valid authorization do any of the following:

(a) Access or cause access to be made to a computer program, computer, computer system, or computer network to acquire, alter, damage, delete, or destroy property or otherwise use the service of a computer program, computer, computer system, or computer network.

(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 destroy property or otherwise use the services of a computer program, computer, computer system, or computer network. 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.

Sec. 6. A person shall not utilize a computer program, computer, computer system, or computer network to commit a crime.

Sec. 7. (1) A person who violates this act is guilty of a crime as follows:

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

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

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

(ii) The person violates this act and has a prior conviction for committing or attempting to commit a violation of this act.

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

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

(ii) The person violates this act and has 2 prior convictions for violating this act.

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

(i) The violation involves an aggregate amount of $20,000.00 or more.

(ii) The person violates this act and has 3 or more prior convictions for violating this act.

(2) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having a prior conviction, the prosecuting attorney shall include on the complaint and information a statement listing that prior conviction. The existence of the defendant's prior conviction shall be determined by the court, without a jury, at sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

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

(c) Information contained in a presentence report.

(d) The defendant's statement.

(3) It is a rebuttable presumption that the person did not have authorization from the owner, system operator, or other person who has authority from the owner or system operator to grant permission to access the computer program, computer, computer system, or computer network or has exceeded authorization unless 1 or more of the following circumstances existed at the time of access:

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

(b) The accessed computer program, computer, computer system, or computer network had a pre-programmed access procedure that would display a bulletin, command, or other message before access was achieved that a reasonable person would believe identified the computer program, computer, computer system, or computer network as within the public domain.

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

Section 2. This amendatory act shall take effect April 1, 1997.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

(a) House Bill No. 5749.

(b) House Bill No. 5750.

(c) House Bill No. 5751.

(d) House Bill No. 5752.

(e) House Bill No. 5753.

(f) House Bill No. 5754.

(g) House Bill No. 5755.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.