

Act No. 328
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. Green, Law, Walberg, Goschka, Horton, Voorhees and Perricone

ENROLLED HOUSE BILL No. 5750

AN ACT to amend Act No. 328 of the Public Acts of 1931, entitled as amended "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," as amended, being sections 750.1 to 750.568 of the Michigan Compiled Laws, by adding section 540g.

The People of the State of Michigan enact:

Section 1. Act No. 328 of the Public Acts of 1931, as amended, being sections 750.1 to 750.568 of the Michigan Compiled Laws, is amended by adding section 540g to read as follows:

Sec. 540g. (1) An officer, shareholder, partner, employee, agent, or independent contractor of a telecommunications service provider who knowingly and without authority uses or diverts telecommunications services for his or her own benefit or to the benefit of another person is guilty of a crime as follows:

(a) If the total value of the telecommunications service used or diverted is 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 total value of the telecommunications service used or diverted, 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 total value of the telecommunications service used or diverted, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service used or diverted is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) and has a prior conviction for committing or attempting to commit an offense under this section.

(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 total value of the telecommunications service used or diverted, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service used or diverted is \$1,000.00 or more but less than \$20,000.00.

(ii) The person violates subdivision (a) and has 2 prior convictions for committing or attempting to commit an offense under this section.

(iii) The person violates subdivision (b) and has a prior conviction for committing or attempting to commit an offense under this section.

(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 value of the telecommunications service used or diverted, or both:

(i) The total value of the telecommunications service used or diverted is \$20,000.00 or more.

(ii) The person violates subdivision (a) and has 3 or more prior convictions for committing or attempting to commit an offense under this section.

(iii) The person violates subdivision (b) and has 2 or more prior convictions for committing or attempting to commit an offense under this section.

(iv) The person violates subdivision (c) and has a prior conviction for committing or attempting to commit an offense under this section.

(2) The values of telecommunications service used or diverted in separate incidents pursuant to a scheme or course of conduct within 1 year may be aggregated to determine the total value of the telecommunications service used or diverted.

(3) 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.

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. 5752.

(b) House Bill No. 5753.

(c) House Bill No. 5748.

(d) House Bill No. 5749.

(e) House Bill No. 5751.

(f) House Bill No. 5755.

(g) House Bill No. 5754.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.