

Act No. 329
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. Ryan, Law, Walberg, Goschka, Horton, Voorhees and Perricone

ENROLLED HOUSE BILL No. 5751

AN ACT to amend sections 540c and 540d of 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," section 540c as amended by Act No. 375 of the Public Acts of 1984, being sections 750.540c and 750.540d of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 540c and 540d of Act No. 328 of the Public Acts of 1931, section 540c as amended by Act No. 375 of the Public Acts of 1984, being sections 750.540c and 750.540d of the Michigan Compiled Laws, are amended to read as follows:

Sec. 540c. (1) A person shall not manufacture, possess, deliver, offer to deliver, or advertise a counterfeit telecommunications device or manufacture, possess, deliver, offer to deliver, or advertise a telecommunications device intending to use the telecommunications device or allow the telecommunications device to be used to do any of the following or knowing or having reason to know that the telecommunications device is intended to be used to do any of the following:

(a) Obtain or attempt to obtain telecommunications service with the intent to avoid or aid or abet or cause another person to avoid any lawful charge for telecommunications service in violation of section 219a.

(b) Conceal the existence or place of origin or destination of any telecommunications service.

(2) A person shall not deliver, offer to deliver, or advertise plans, instructions, or materials for manufacture of a counterfeit telecommunications device or for manufacture of a telecommunications device that the person intends to be used or knows or has reason to know will be used or is likely to be used to violate subsection (1).

(3) A person who violates subsection (1) or (2) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(4) This section does not prohibit or restrict the possession of radio receivers or transceivers by licensees of the federal communications commission in the amateur radio service that are intended primarily or exclusively for use in the amateur radio service.

(5) As used in this section and sections 540d, 540f, and 540g:

(a) "Counterfeit telecommunications device" means a telecommunications device alone or with another telecommunications device that has been altered or programmed to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service without the authority or consent of the telecommunications service provider. Counterfeit telecommunications device includes but is not limited to a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of a telecommunications service without immediate detection.

(b) "Deliver" means to actually or constructively sell, give, loan, or otherwise transfer a telecommunications device, counterfeit telecommunications device, plans, instructions, or materials to another person.

(c) "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method including but not limited to electronic, magnetic, optical, digital, or analog.

(d) "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications. Telecommunications device includes but is not limited to a computer, computer chip or circuit, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables use of a modem.

(e) "Telecommunications service" means providing, allowing, facilitating, or generating any form of telecommunications through the use of telecommunications devices or telecommunications access devices over a telecommunications system.

Sec. 540d. Any telecommunications device, counterfeit telecommunications device, plans, instructions, or materials described in section 540c may be seized under warrant or incident to a lawful arrest. Upon conviction of a person for violation of section 540c, all of the following apply to the telecommunications device, counterfeit telecommunications device, plans, instructions, or materials involved in the violation that are seized under this section:

(a) The telecommunications device or materials shall be returned to the lawful owner of that device or materials unless he or she was convicted of the violation or had prior actual knowledge of and consented to the violation or unless the lawful owner cannot be determined or located.

(b) The counterfeit telecommunications device, plans, or instructions and any telecommunications device or materials not required to be returned to the lawful owner under subdivision (a) may be destroyed as contraband by the seizing law enforcement agency or retained and used by the seizing law enforcement agency for law enforcement purposes.

(c) Any telecommunications device or materials not required to be returned to the lawful owner under subdivision (a) may be turned over by the seizing law enforcement agency to the telecommunications service provider in the territory in which the seizure occurred.

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. 5755.
- (f) House Bill No. 5754.
- (g) House Bill No. 5750.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.