

Act No. 330
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. Bush, Jellema, Voorhees, Walberg, Goschka, Horton, Law and Perricone

ENROLLED HOUSE BILL No. 5752

AN ACT to amend section 219a 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," being section 750.219a of the Michigan Compiled Laws; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Section 219a of Act No. 328 of the Public Acts of 1931, being section 750.219a of the Michigan Compiled Laws, is amended to read as follows:

Sec. 219a. (1) A person shall not knowingly obtain or attempt to obtain telecommunications service with intent to avoid, attempt to avoid, or cause another person to avoid or attempt to avoid any lawful charge for that telecommunications service by using any of the following:

(a) A telecommunications access device without the authority or consent of the subscriber or lawful holder of that telecommunications access device.

(b) A counterfeit telecommunications access device.

(c) A fraudulent or deceptive scheme, pretense, method, or conspiracy, or any device or other means, including but not limited to any of the following:

(i) Using a false, altered, or stolen identification.

(ii) The use of a telecommunications access device to violate this section by a person other than the subscriber or lawful holder of the telecommunications access device pursuant to an exchange of anything of value to the subscriber or lawful holder to allow that unlawful use of the telecommunications access device.

(d) A telecommunications device or counterfeit telecommunications device.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) If the total value of the telecommunications service obtained or attempted to be obtained 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 obtained or attempted to be obtained, 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 obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service obtained or attempted to be obtained 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 or former section 219c.

(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 obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service obtained or attempted to be obtained 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 or former section 219c.

(iii) The person violates subdivision (b) and has a prior conviction for committing or attempting to commit an offense under this section or former section 219c.

(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 obtained or attempted to be obtained, or both:

(i) The total value of the telecommunications service obtained or attempted to be obtained 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 or former section 219c.

(iii) The person violates subdivision (b) and has 2 or more prior convictions for committing or attempting to commit an offense under this section or former section 219c.

(iv) The person violates subdivision (c) and has a prior conviction for committing or attempting to commit an offense under this section or former section 219c.

(3) The values of telecommunications service obtained or attempted to be obtained 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 obtained or attempted to be obtained.

(4) 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.

(5) As used in this section:

(a) "Counterfeit telecommunications access device" means a telecommunications access device that is false, fraudulent, unlawful, not issued to a legitimate telecommunications access device subscriber account, or otherwise invalid or that is expired, suspended, revoked, canceled, or otherwise terminated if notice of the expiration, suspension, revocation, cancellation, or termination has been sent to the telecommunications access device subscriber.

(b) "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.

(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 access device" means an instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device as defined in section 157m that alone or with another telecommunications access device can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.

(e) "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.

(f) "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.

(g) "Value of the telecommunications service obtained or attempted to be obtained" includes but is not limited to all of the following:

(i) Any lawful charge for telecommunications services avoided or attempted to be avoided.

(ii) The value of any other money, property, or telecommunications service lost, stolen, or rendered unrecoverable by the violation.

(iii) Any actual expenditure incurred by the victim to verify that a telecommunications device or telecommunications access device or telecommunications service was not altered, acquired, damaged, disrupted, destroyed, or stolen as a result of the violation.

Section 2. Section 219c of Act No. 328 of the Public Acts of 1931, being section 750.219c of the Michigan Compiled Laws, is repealed.

Section 3. This amendatory act shall take effect April 1, 1997.

Section 4. 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. 5753.

(b) House Bill No. 5748.

(c) House Bill No. 5749.

(d) House Bill No. 5751.

(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.