



HOUSE BILL No. 5748

April 17, 1996, Introduced by Reps. Perricone, Jellema, Bodem, Walberg, Goschka, Horton, McManus, Hammerstrom, Voorhees and Law and referred to the Committee on Commerce.

A bill 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:

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

5 Sec. 2. (1) "Access" means to ~~approach~~, instruct,
6 communicate with, store data in, retrieve OR INTERCEPT data from,

1 or otherwise use the resources of ~~7~~ a COMPUTER PROGRAM,
2 computer, computer system, or computer network.

3 (2) "AGGREGATE AMOUNT" MEANS ANY DIRECT OR INDIRECT LOSS
4 INCURRED BY A VICTIM INCLUDING, BUT NOT LIMITED TO, THE VALUE OF
5 ANY MONEY, PROPERTY OR SERVICE LOST, STOLEN, OR RENDERED UNRECOV-
6 ERABLE BY THE OFFENSE, OR ANY ACTUAL EXPENDITURE INCURRED BY THE
7 VICTIM TO VERIFY THAT A COMPUTER PROGRAM, COMPUTER, COMPUTER
8 SYSTEM, OR COMPUTER NETWORK WAS NOT ALTERED, ACQUIRED, DAMAGED,
9 DELETED, DISRUPTED, OR DESTROYED BY THE ACCESS.

10 (3) ~~(2)~~ "Computer" means ~~an electronic device which~~
11 ~~performs~~ ANY CONNECTED, DIRECTLY INTEROPERABLE OR INTERACTIVE
12 DEVICE, EQUIPMENT, OR FACILITY THAT USES A COMPUTER PROGRAM OR
13 OTHER INSTRUCTIONS TO PERFORM SPECIFIC OPERATIONS INCLUDING logi-
14 cal, arithmetic, ~~and~~ OR memory functions ~~by the manipulations~~
15 ~~of electronic or magnetic impulses, and includes input, output,~~
16 ~~processing, storage, software, or communication facilities which~~
17 ~~are connected or related to a device in a~~ WITH OR ON COMPUTER
18 DATA OR A COMPUTER PROGRAM AND THAT CAN STORE, RETRIEVE, ALTER,
19 OR COMMUNICATE THE RESULTS OF THE OPERATIONS TO A PERSON, COM-
20 PUTER PROGRAM, COMPUTER, COMPUTER system, or COMPUTER network.

21 (4) ~~(3)~~ "Computer network" means the interconnection of
22 HARDWIRE OR WIRELESS communication lines with a computer through
23 remote terminals, or a complex consisting of 2 or more intercon-
24 nected computers.

25 (5) ~~(4)~~ "Computer program" means a series of INTERNAL OR
26 EXTERNAL instructions ~~or statements,~~ COMMUNICATED in a form
27 acceptable to a computer ~~7 which permits~~ THAT DIRECTS the

1 functioning of a COMPUTER, computer system, OR COMPUTER NETWORK
2 in a manner designed to provide ~~appropriate~~ OR PRODUCE products
3 OR RESULTS from the COMPUTER, computer system, OR COMPUTER
4 NETWORK.

5 ~~(5) "Computer software" means a set of computer programs,~~
6 ~~procedures, and associated documentation concerned with the oper-~~
7 ~~ation of a computer system.~~

8 (6) "Computer system" means a set of related, connected or
9 unconnected, computer equipment, devices, ~~and~~ software, OR
10 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
14 BY THE MANIPULATION OF ELECTRONIC, MAGNETIC, OR OTHER IMPULSES.

15 Sec. 3. (1) "Property" includes, BUT IS NOT LIMITED TO,
16 INTELLECTUAL PROPERTY, COMPUTER DATA, INSTRUCTIONS OR PROGRAMS IN
17 EITHER MACHINE OR HUMAN READABLE FORM, financial instruments ~~—~~
18 OR information, ~~including electronically produced data; computer~~
19 ~~software and programs in either machine or human readable form;~~
20 ~~and~~ MEDICAL INFORMATION, RESTRICTED PERSONAL INFORMATION, OR any
21 other tangible or intangible item of value.

22 (2) "Services" includes, BUT IS NOT LIMITED TO, computer
23 time, data processing, ~~and~~ storage functions, COMPUTER MEMORY,
24 OR THE UNAUTHORIZED USE OF A COMPUTER PROGRAM, COMPUTER, COMPUTER
25 SYSTEM, OR COMPUTER NETWORK, OR COMMUNICATION FACILITIES CON-
26 NECTED OR RELATED TO A COMPUTER, COMPUTER SYSTEM, OR COMPUTER
27 NETWORK.

1 Sec. 4. A person shall not ~~, for the purpose of devising~~
2 INTENTIONALLY ACCESS OR CAUSE ACCESS TO BE MADE TO A COMPUTER
3 PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK TO DEVISE
4 or ~~executing~~ EXECUTE a scheme or artifice with THE intent to
5 defraud or ~~for the purpose of obtaining~~ TO OBTAIN money, prop-
6 erty, or a service by ~~means of~~ a false or fraudulent pretense,
7 representation, or promise. ~~with intent to, gain access to or~~
8 ~~cause access to be made to a computer, computer system, or com-~~
9 ~~puter network.~~

10 Sec. 5. A person shall not intentionally and without autho-
11 rization ~~, gain access~~ OR BY EXCEEDING VALID AUTHORIZATION DO
12 ANY OF THE FOLLOWING:

13 (A) ACCESS OR CAUSE ACCESS TO BE MADE TO A COMPUTER PROGRAM,
14 COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK to ~~, ACQUIRE,~~
15 alter, damage, DELETE, or destroy PROPERTY OR OTHERWISE USE THE
16 SERVICE OF a COMPUTER PROGRAM, computer, computer system, or com-
17 puter network. ~~, or gain~~ access to, alter, damage, or destroy a
18 computer software program or data contained in a computer, com-
19 puter system, or computer network.

20 (B) INSERT OR ATTACH OR KNOWINGLY CREATE THE OPPORTUNITY FOR
21 AN UNKNOWING AND UNWANTED INSERTION OR ATTACHMENT OF A SET OF
22 INSTRUCTIONS OR A COMPUTER PROGRAM INTO A COMPUTER PROGRAM, COM-
23 PUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK, THAT IS DESIGNED TO
24 ACQUIRE, ALTER, DAMAGE, DELETE, DISRUPT, OR DESTROY PROPERTY OR
25 OTHERWISE USE THE SERVICES OF A COMPUTER PROGRAM, COMPUTER, COM-
26 PUTER SYSTEM, OR COMPUTER NETWORK.

1 Sec. 6. A person shall not utilize a COMPUTER PROGRAM,
2 computer, computer system, or computer network to commit a CRIME.
3 ~~violation of section 174 of Act No. 328 of the Public Acts of~~
4 ~~1931, as amended, being section 750.174 of the Michigan Compiled~~
5 ~~Laws, section 279 of Act No. 328 of the Public Acts of 1931,~~
6 ~~being section 750.279 of the Michigan Compiled Laws, section 356~~
7 ~~of Act No. 328 of the Public Acts of 1931, as amended, being sec-~~
8 ~~tion 750.356 of the Michigan Compiled Laws, or section 362 of Act~~
9 ~~No. 328 of the Public Acts of 1931, as amended, being section~~
10 ~~750.362 of the Michigan Compiled Laws.~~

11 Sec. 7. (1) A person who violates this act ~~, if~~ IS GUILTY
12 OF A CRIME AS FOLLOWS:

13 (A) IF the violation involves ~~-\$100.00 or~~ AN AGGREGATE
14 AMOUNT OF less THAN \$200.00, THE PERSON is guilty of a misde-
15 meanor PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A
16 FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE AGGREGATE AMOUNT,
17 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE. ~~If the~~
18 ~~violation involves more than \$100.00, the person is guilty of a~~
19 ~~felony, punishable by imprisonment for not more than 10 years, or~~
20 ~~a fine of not more than \$5,000.00, or both.~~

21 (B) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
22 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
23 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE AGGREGATE
24 AMOUNT, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

25 (i) THE VIOLATION INVOLVES AN AGGREGATE AMOUNT OF \$200.00 OR
26 MORE BUT LESS THAN \$1,000.00.

1 (ii) THE PERSON VIOLATES THIS ACT AND HAS A PRIOR CONVICTION
2 FOR COMMITTING OR ATTEMPTING TO COMMIT A VIOLATION OF THIS ACT.

3 (C) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
4 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
5 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE AGGREGATE AMOUNT,
6 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

7 (i) THE VIOLATION INVOLVES AN AGGREGATE AMOUNT OF \$1,000.00
8 OR MORE BUT LESS THAN \$20,000.00.

9 (ii) THE PERSON VIOLATES THIS ACT AND HAS 2 PRIOR CONVIC-
10 TIONS FOR VIOLATING THIS ACT.

11 (D) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
12 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
13 FINE OF NOT MORE THAN 3 TIMES THE AGGREGATE AMOUNT, OR BOTH
14 IMPRISONMENT AND A FINE:

15 (i) THE VIOLATION INVOLVES AN AGGREGATE AMOUNT OF \$20,000.00
16 OR MORE.

17 (ii) THE PERSON VIOLATES THIS ACT AND HAS 3 OR MORE PRIOR
18 CONVICTIONS FOR VIOLATING THIS ACT.

19 (2) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
20 SENTENCE BASED UPON THE DEFENDANT HAVING A PRIOR CONVICTION, THE
21 PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT AND INFORMA-
22 TION A STATEMENT LISTING THAT PRIOR CONVICTION. THE EXISTENCE OF
23 THE DEFENDANT'S PRIOR CONVICTION SHALL BE DETERMINED BY THE
24 COURT, WITHOUT A JURY, AT SENTENCING. THE EXISTENCE OF A PRIOR
25 CONVICTION MAY BE ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT
26 PURPOSE, INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE
27 FOLLOWING:

1 (A) A COPY OF THE JUDGMENT OF CONVICTION.

2 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
3 SENTENCING.

4 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

5 (D) THE DEFENDANT'S STATEMENT.

6 (3) IT IS A REBUTTABLE PRESUMPTION THAT THE PERSON DID NOT
7 HAVE AUTHORIZATION FROM THE OWNER, SYSTEM OPERATOR, OR OTHER
8 PERSON WHO HAS AUTHORITY FROM THE OWNER OR SYSTEM OPERATOR TO
9 GRANT PERMISSION TO ACCESS THE COMPUTER PROGRAM, COMPUTER, COM-
10 PUTER SYSTEM, OR COMPUTER NETWORK OR HAS EXCEEDED AUTHORIZATION
11 UNLESS 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES EXISTED AT THE
12 TIME OF ACCESS:

13 (A) WRITTEN OR ORAL PERMISSION WAS GRANTED BY THE OWNER,
14 SYSTEM OPERATOR, OR OTHER PERSON WHO HAS AUTHORITY FROM THE OWNER
15 OR SYSTEM OPERATOR TO GRANT PERMISSION OF THE ACCESSED COMPUTER
16 PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK.

17 (B) THE ACCESSED COMPUTER PROGRAM, COMPUTER, COMPUTER
18 SYSTEM, OR COMPUTER NETWORK HAD A PRE-PROGRAMMED ACCESS PROCEDURE
19 THAT WOULD DISPLAY A BULLETIN, COMMAND, OR OTHER MESSAGE BEFORE
20 ACCESS WAS ACHIEVED THAT A REASONABLE PERSON WOULD BELIEVE IDEN-
21 TIFIED THE COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COM-
22 PUTER NETWORK AS WITHIN THE PUBLIC DOMAIN.

23 (C) ACCESS WAS ACHIEVED WITHOUT THE USE OF A SET OF INSTRUC-
24 TIONS, CODE, OR COMPUTER PROGRAM THAT BYPASSES, DEFRAUDS, OR OTH-
25 ERWISE CIRCUMVENTS THE PRE-PROGRAMMED ACCESS PROCEDURE FOR THE
26 COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK.

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

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

6 (a) Senate Bill No. _____ or House Bill No. 5753 (request
7 no. 05277'95 a).

8 (b) Senate Bill No. _____ or House Bill No. _____ (request
9 no. 05833'95).

10 (c) Senate Bill No. _____ or House Bill No. 5749 (request
11 no. 05833'95 a).

12 (d) Senate Bill No. _____ or House Bill No. 5751 (request
13 no. 06378'95).

14 (e) Senate Bill No. _____ or House Bill No. 5755 (request
15 no. 06379'95).

16 (f) Senate Bill No. _____ or House Bill No. 5754 (request
17 no. 06380'95).

18 (g) Senate Bill No. _____ or House Bill No. 5750 (request
19 no. 06381'95).