



HOUSE BILL No. 5750

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

A bill to amend Act No. 328 of the Public Acts of 1931,
entitled as amended

"The Michigan penal code,"

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:

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

4 SEC. 540G. (1) AN OFFICER, SHAREHOLDER, PARTNER, EMPLOYEE,
5 AGENT, OR INDEPENDENT CONTRACTOR OF A TELECOMMUNICATIONS SERVICE
6 PROVIDER WHO KNOWINGLY AND WITHOUT AUTHORITY USES OR DIVERTS
7 TELECOMMUNICATIONS SERVICES FOR HIS OR HER OWN BENEFIT OR TO THE
8 BENEFIT OF ANOTHER PERSON IS GUILTY OF A CRIME AS FOLLOWS:

1 (A) IF THE TOTAL VALUE OF THE TELECOMMUNICATIONS SERVICE
2 USED OR DIVERTED IS LESS THAN \$200.00, THE PERSON IS GUILTY OF A
3 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS
4 OR A FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE TOTAL VALUE OF
5 THE TELECOMMUNICATIONS SERVICE USED OR DIVERTED, WHICHEVER IS
6 GREATER, OR BOTH IMPRISONMENT AND A FINE.

7 (B) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
8 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
9 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE TOTAL VALUE
10 OF THE TELECOMMUNICATIONS SERVICE USED OR DIVERTED, WHICHEVER IS
11 GREATER, OR BOTH IMPRISONMENT AND A FINE:

12 (i) THE TOTAL VALUE OF THE TELECOMMUNICATIONS SERVICE USED
13 OR DIVERTED IS \$200.00 OR MORE BUT LESS THAN \$1,000.00.

14 (ii) THE PERSON VIOLATES SUBDIVISION (A) AND HAS A PRIOR
15 CONVICTION FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
16 UNDER THIS SECTION.

17 (C) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
18 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
19 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE TOTAL VALUE OF
20 THE TELECOMMUNICATIONS SERVICE USED OR DIVERTED, WHICHEVER IS
21 GREATER, OR BOTH IMPRISONMENT AND A FINE:

22 (i) THE TOTAL VALUE OF THE TELECOMMUNICATIONS SERVICE USED
23 OR DIVERTED IS \$1,000.00 OR MORE BUT LESS THAN \$20,000.00.

24 (ii) THE PERSON VIOLATES SUBDIVISION (A) AND HAS 2 PRIOR
25 CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
26 UNDER THIS SECTION.

1 (iii) THE PERSON VIOLATES SUBDIVISION (B) AND HAS A PRIOR
2 CONVICTION FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
3 UNDER THIS SECTION.

4 (D) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
5 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
6 FINE OF NOT MORE THAN 3 TIMES THE VALUE OF THE TELECOMMUNICATIONS
7 SERVICE USED OR DIVERTED, OR BOTH:

8 (i) THE TOTAL VALUE OF THE TELECOMMUNICATIONS SERVICE USED
9 OR DIVERTED IS \$20,000.00 OR MORE.

10 (ii) THE PERSON VIOLATES SUBDIVISION (A) AND HAS 3 OR MORE
11 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
12 OFFENSE UNDER THIS SECTION.

13 (iii) THE PERSON VIOLATES SUBDIVISION (B) AND HAS 2 OR MORE
14 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
15 OFFENSE UNDER THIS SECTION.

16 (iv) THE PERSON VIOLATES SUBDIVISION (C) AND HAS A PRIOR
17 CONVICTION FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
18 UNDER THIS SECTION.

19 (2) THE VALUES OF TELECOMMUNICATIONS SERVICE USED OR
20 DIVERTED IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR COURSE OF
21 CONDUCT WITHIN 1 YEAR MAY BE AGGREGATED TO DETERMINE THE TOTAL
22 VALUE OF THE TELECOMMUNICATIONS SERVICE USED OR DIVERTED.

23 (3) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
24 SENTENCE BASED UPON THE DEFENDANT HAVING A PRIOR CONVICTION, THE
25 PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT AND INFORMA-
26 TION A STATEMENT LISTING THAT PRIOR CONVICTION. THE EXISTENCE OF
27 THE DEFENDANT'S PRIOR CONVICTION SHALL BE DETERMINED BY THE

1 COURT, WITHOUT A JURY, AT SENTENCING. THE EXISTENCE OF A PRIOR
2 CONVICTION MAY BE ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT
3 PURPOSE, INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE
4 FOLLOWING:

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

6 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
7 SENTENCING.

8 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

9 (D) THE DEFENDANT'S STATEMENT.

10 Section 2. This amendatory act shall take effect April 1,
11 1997.

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

15 (a) Senate Bill No. _____ or House Bill No. 5752 (request
16 no. 05277'95).

17 (b) Senate Bill No. _____ or House Bill No. 5753 (request
18 no. 05277'95 a).

19 (c) Senate Bill No. _____ or House Bill No. 5748 (request
20 no. 05833'95 *).

21 (d) Senate Bill No. _____ or House Bill No. 5749 (request
22 no. 05833'95 a).

23 (e) Senate Bill No. _____ or House Bill No. 5751 (request
24 no. 06378'95).

25 (f) Senate Bill No. _____ or House Bill No. 5755 (request
26 no. 06379'95).

1 (g) Senate Bill No. _____ or House Bill No. 5754 (request
2 no. 06380'95).