



HOUSE BILL No. 5751

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

A bill to amend sections 540c and 540d of Act No. 328 of the Public Acts of 1931, entitled as amended "The Michigan penal code," 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:

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

5 Sec. 540c. (1) ~~Any~~ A person ~~who (a) makes, possesses,~~
6 ~~uses, or knowingly participates in the use by another of any~~
7 ~~instrument, apparatus, equipment, or device designed or adapted~~
8 ~~for use (i) to fraudulently~~ SHALL NOT MANUFACTURE, POSSESS,

1 DELIVER, OFFER TO DELIVER, OR ADVERTISE A COUNTERFEIT

2 TELECOMMUNICATIONS DEVICE OR MANUFACTURE, POSSESS, DELIVER, OFFER
3 TO DELIVER, OR ADVERTISE A TELECOMMUNICATIONS DEVICE INTENDING TO
4 USE THE TELECOMMUNICATIONS DEVICE OR ALLOW THE TELECOMMUNICATIONS
5 DEVICE TO BE USED TO DO ANY OF THE FOLLOWING OR KNOWING OR HAVING
6 REASON TO KNOW THAT THE TELECOMMUNICATIONS DEVICE IS INTENDED TO
7 BE USED TO DO ANY OF THE FOLLOWING:

8 (A) OBTAIN OR ATTEMPT TO OBTAIN TELECOMMUNICATIONS SERVICE
9 WITH THE INTENT TO avoid ~~the~~ OR AID OR ABET OR CAUSE ANOTHER
10 PERSON TO AVOID ANY lawful charge for ~~any~~ telecommunications
11 service in violation of ~~this~~ section 219A. ~~or (ii) to conceal~~

12 (B) CONCEAL the existence or place of origin or destination
13 of any telecommunications service. ~~or to interconnect to 2 tele-~~
14 ~~phone lines so as to permit a person calling to 1 telephone line~~
15 ~~from or through a third telephone line to communicate with a~~
16 ~~person calling to the other telephone line from or through a~~
17 ~~fourth telephone line if that interconnection is not authorized~~
18 ~~by the supplier of the telephone service, or (b) sells, gives, or~~
19 ~~otherwise transfers to another, or offers or advertises to sell,~~
20 ~~give, or otherwise transfer any instrument, apparatus, equipment,~~
21 ~~or device described in clause (a), or instructions or plans for~~
22 ~~making or assembling any instrument, apparatus, equipment, or~~
23 ~~device described in clause (a),~~

24 (2) A PERSON SHALL NOT DELIVER, OFFER TO DELIVER, OR ADVER-
25 TISE PLANS, INSTRUCTIONS, OR MATERIALS FOR MANUFACTURE OF A COUN-
26 TERFEIT TELECOMMUNICATIONS DEVICE OR FOR MANUFACTURE OF A
27 TELECOMMUNICATIONS DEVICE THAT THE PERSON INTENDS TO BE USED OR

1 KNOWS OR HAS REASON TO KNOW WILL BE USED OR IS LIKELY TO BE USED
2 TO VIOLATE SUBSECTION (1).

3 (3) A PERSON WHO VIOLATES SUBSECTION (1) OR (2) is guilty of
4 a ~~misdemeanor,~~ FELONY punishable by imprisonment for not more
5 than ~~1 year,~~ 4 YEARS or a fine of not more than ~~\$500.00~~
6 \$2,000.00, or both. ~~, if the person engages in that conduct~~
7 ~~under circumstances evidencing an intent to use or employ the~~
8 ~~instrument, apparatus, equipment, or device, or to allow the same~~
9 ~~to be used or employed for a purpose described in clause (a)(i)~~
10 ~~or (ii) or knowing or having reason to believe that the same is~~
11 ~~intended to be so used, or that the plans or instructions are~~
12 ~~intended to be used for making or assembling that instrument,~~
13 ~~apparatus, equipment, or device.~~

14 ~~(2) Any person who, with the intent to fraudulently avoid~~
15 ~~the lawful charge to any person, alters or participates in the~~
16 ~~alteration of telecommunications service equipment or knowingly~~
17 ~~uses or participates in the use by another of altered telecommu-~~
18 ~~nications service equipment which is owned, controlled, or oper-~~
19 ~~ated by any other person is guilty of a misdemeanor, punishable~~
20 ~~by imprisonment for not more than 1 year, or a fine of not more~~
21 ~~than \$500.00, or both.~~

22 (4) ~~(3)~~ As used in this section and ~~section~~ SECTIONS
23 540d, 540F, AND 540G: ~~"telecommunications service" means any~~
24 ~~service, transmission, emission, or reception of signs, signals,~~
25 ~~writings, images, and sound or intelligence of any nature by~~
26 ~~wire, cable television system, closed circuit coaxial cable~~
27 ~~communications system.~~

1 (A) "COUNTERFEIT TELECOMMUNICATIONS DEVICE" MEANS A
2 TELECOMMUNICATIONS DEVICE ALONE OR WITH ANOTHER TELECOMMUNICA-
3 TIONS DEVICE THAT HAS BEEN ALTERED OR PROGRAMMED TO ACQUIRE,
4 INTERCEPT, RECEIVE, OR OTHERWISE FACILITATE THE USE OF A TELECOM-
5 MUNICATIONS SERVICE WITHOUT THE AUTHORITY OR CONSENT OF THE TELE-
6 COMMUNICATIONS SERVICE PROVIDER. COUNTERFEIT TELECOMMUNICATIONS
7 DEVICE INCLUDES BUT IS NOT LIMITED TO A CLONE TELEPHONE, CLONE
8 MICROCHIP, TUMBLER TELEPHONE, TUMBLER MICROCHIP, OR WIRELESS
9 SCANNING DEVICE CAPABLE OF ACQUIRING, INTERCEPTING, RECEIVING, OR
10 OTHERWISE FACILITATING THE USE OF A TELECOMMUNICATIONS SERVICE
11 WITHOUT IMMEDIATE DETECTION.

12 (B) "DELIVER" MEANS TO ACTUALLY OR CONSTRUCTIVELY SELL,
13 GIVE, LOAN, OR OTHERWISE TRANSFER A TELECOMMUNICATIONS DEVICE,
14 COUNTERFEIT TELECOMMUNICATIONS DEVICE, PLANS, INSTRUCTIONS, OR
15 MATERIALS TO ANOTHER PERSON.

16 (C) "TELECOMMUNICATIONS" MEANS THE ORIGINATION, EMISSION,
17 TRANSMISSION, OR RECEPTION OF DATA, IMAGES, SIGNALS, SOUNDS, OR
18 OTHER INTELLIGENCE OR EQUIVALENCE OF INTELLIGENCE OF ANY NATURE
19 OVER ANY COMMUNICATIONS SYSTEM BY ANY METHOD INCLUDING BUT NOT
20 LIMITED TO ELECTRONIC, MAGNETIC, OPTICAL, DIGITAL, OR ANALOG.

21 (D) "TELECOMMUNICATIONS DEVICE" MEANS ANY INSTRUMENT, EQUIP-
22 MENT, MACHINE, OR DEVICE THAT FACILITATES TELECOMMUNICATIONS.
23 TELECOMMUNICATIONS DEVICE INCLUDES BUT IS NOT LIMITED TO A COM-
24 PUTER, COMPUTER CHIP OR CIRCUIT, TELEPHONE, PAGER, PERSONAL COM-
25 MUNICATIONS DEVICE, TRANSPONDER, RECEIVER, RADIO, MODEM, OR
26 DEVICE THAT ENABLES USE OF A MODEM.

1 (E) "TELECOMMUNICATIONS SERVICE" MEANS PROVIDING, ALLOWING,
2 FACILITATING, OR GENERATING ANY FORM OF TELECOMMUNICATIONS
3 THROUGH THE USE OF TELECOMMUNICATIONS DEVICES OR TELECOMMUNICA-
4 TIONS ACCESS DEVICES OVER A TELECOMMUNICATIONS SYSTEM.

5 Sec. 540d. Any ~~instrument, apparatus, equipment,~~
6 TELECOMMUNICATIONS DEVICE, COUNTERFEIT TELECOMMUNICATIONS device,
7 plans, ~~or instruction~~ INSTRUCTIONS, OR MATERIALS described in
8 ~~the preceding~~ section 540C may be seized under warrant or inci-
9 dent to a lawful arrest. Upon conviction of a person for viola-
10 tion of ~~the preceding~~ section 540C the ~~instrument, apparatus,~~
11 ~~equipment,~~ TELECOMMUNICATIONS DEVICE, COUNTERFEIT
12 TELECOMMUNICATIONS device, plans, ~~or instruction~~ INSTRUCTIONS,
13 OR MATERIALS INVOLVED IN THE VIOLATION may be destroyed as con-
14 traband by the sheriff of the county in which ~~such~~ THE person
15 was convicted or turned over to the ~~person providing the~~ tele-
16 communications service ~~involved~~ PROVIDER in the territory in
17 which the ~~same was seized~~ SEIZURE OCCURRED.

18 Section 2. This amendatory act shall take effect April 1,
19 1997.

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

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

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

- 1 (c) Senate Bill No. _____ or House Bill No. 5748
2 (request no. 05833'95 *).
3 (d) Senate Bill No. _____ or House Bill No. 5749
4 (request no. 05833'95 a).
5 (e) Senate Bill No. _____ or House Bill No. 5755
6 (request no. 06379'95).
7 (f) Senate Bill No. _____ or House Bill No. 5754
8 (request no. 06380'95).
9 (g) Senate Bill No. _____ or House Bill No. 5750
10 (request no. 06381'95).