



HOUSE BILL No. 5752

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

A bill to amend section 219a of Act No. 328 of the Public Acts of 1931, entitled as amended
"The Michigan penal code,"
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:

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

4 Sec. 219a. (1) ~~Any~~ A person ~~who~~ SHALL NOT knowingly
5 ~~obtains~~ OBTAIN or ~~attempts~~ ATTEMPT to obtain ~~telephone~~
6 TELECOMMUNICATIONS service ~~or the transmission of a telephone~~
7 message ~~by the use of any false or fictitious telephone credit~~
8 number ~~or telephone number, or by the use of any telephone credit~~
9 number ~~or telephone number of another without the authority of~~

~~1 the person to whom such credit number or telephone number was
2 issued, is guilty of a misdemeanor. If the total value of tele-
3 phone service obtained in a manner prohibited by this section
4 exceeds \$100.00, the offense shall be prosecuted as a felony.~~

5 WITH INTENT TO AVOID, ATTEMPT TO AVOID, OR CAUSE ANOTHER PERSON
6 TO AVOID OR ATTEMPT TO AVOID ANY LAWFUL CHARGE FOR THAT TELECOM-
7 MUNICATIONS SERVICE BY USING ANY OF THE FOLLOWING:

8 (A) A TELECOMMUNICATIONS ACCESS DEVICE WITHOUT THE AUTHORITY
9 OR CONSENT OF THE SUBSCRIBER OR LAWFUL HOLDER OF THAT TELECOMMUN-
10 ICATIONS ACCESS DEVICE.

11 (B) A COUNTERFEIT TELECOMMUNICATIONS ACCESS DEVICE.

12 (C) A FRAUDULENT OR DECEPTIVE SCHEME, PRETENSE, METHOD, OR
13 CONSPIRACY, OR ANY DEVICE OR OTHER MEANS, INCLUDING BUT NOT
14 LIMITED TO ANY OF THE FOLLOWING:

15 (i) USING A FALSE, ALTERED, OR STOLEN IDENTIFICATION.

16 (ii) THE USE OF A TELECOMMUNICATIONS ACCESS DEVICE TO VIO-
17 LATE THIS SECTION BY A PERSON OTHER THAN THE SUBSCRIBER OR LAWFUL
18 HOLDER OF THE TELECOMMUNICATIONS ACCESS DEVICE PURSUANT TO AN
19 EXCHANGE OF ANYTHING OF VALUE TO THE SUBSCRIBER OR LAWFUL HOLDER
20 TO ALLOW THAT UNLAWFUL USE OF THE TELECOMMUNICATIONS ACCESS
21 DEVICE.

22 (D) A TELECOMMUNICATIONS DEVICE OR COUNTERFEIT TELECOMMUNI-
23 CATIONS DEVICE.

24 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A
25 CRIME AS FOLLOWS:

26 (A) IF THE TOTAL VALUE OF THE TELECOMMUNICATIONS SERVICE
27 OBTAINED OR ATTEMPTED TO BE OBTAINED IS LESS THAN \$200.00, THE

1 PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
2 NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00 OR 3
3 TIMES THE TOTAL VALUE OF THE TELECOMMUNICATIONS SERVICE OBTAINED
4 OR ATTEMPTED TO BE OBTAINED, WHICHEVER IS GREATER, OR BOTH
5 IMPRISONMENT AND A FINE.

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

11 (i) THE TOTAL VALUE OF THE TELECOMMUNICATIONS SERVICE
12 OBTAINED OR ATTEMPTED TO BE OBTAINED IS \$200.00 OR MORE BUT LESS
13 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 OR FORMER SECTION 219C.

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 OBTAINED OR ATTEMPTED TO BE
21 OBTAINED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

22 (i) THE TOTAL VALUE OF THE TELECOMMUNICATIONS SERVICE
23 OBTAINED OR ATTEMPTED TO BE OBTAINED IS \$1,000.00 OR MORE BUT
24 LESS THAN \$20,000.00.

25 (ii) THE PERSON VIOLATES SUBDIVISION (A) AND HAS 2 PRIOR
26 CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
27 UNDER THIS SECTION OR FORMER SECTION 219C.

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 OR FORMER SECTION 219C.

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 OBTAINED OR ATTEMPTED TO BE OBTAINED, OR BOTH:

8 (i) THE TOTAL VALUE OF THE TELECOMMUNICATIONS SERVICE
9 OBTAINED OR ATTEMPTED TO BE OBTAINED 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 OR FORMER SECTION 219C.

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 OR FORMER SECTION 219C.

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 OR FORMER SECTION 219C.

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

24 (4) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
25 SENTENCE BASED UPON THE DEFENDANT HAVING A PRIOR CONVICTION, THE
26 PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT AND
27 INFORMATION A STATEMENT LISTING THAT PRIOR CONVICTION. THE

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

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

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

9 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

10 (D) THE DEFENDANT'S STATEMENT.

11 (5) AS USED IN THIS SECTION:

12 (A) "COUNTERFEIT TELECOMMUNICATIONS ACCESS DEVICE" MEANS A
13 TELECOMMUNICATIONS ACCESS DEVICE THAT IS FALSE, FRAUDULENT,
14 UNLAWFUL, NOT ISSUED TO A LEGITIMATE TELECOMMUNICATIONS ACCESS
15 DEVICE SUBSCRIBER ACCOUNT, OR OTHERWISE INVALID OR THAT IS
16 EXPIRED, SUSPENDED, REVOKED, CANCELED, OR OTHERWISE TERMINATED IF
17 NOTICE OF THE EXPIRATION, SUSPENSION, REVOCATION, CANCELLATION,
18 OR TERMINATION HAS BEEN SENT TO THE TELECOMMUNICATIONS ACCESS
19 DEVICE SUBSCRIBER.

20 (B) "COUNTERFEIT TELECOMMUNICATIONS DEVICE" MEANS A TELECOM-
21 MUNICATIONS DEVICE ALONE OR WITH ANOTHER TELECOMMUNICATIONS
22 DEVICE THAT HAS BEEN ALTERED OR PROGRAMMED TO ACQUIRE, INTERCEPT,
23 RECEIVE, OR OTHERWISE FACILITATE THE USE OF A TELECOMMUNICATIONS
24 SERVICE WITHOUT THE AUTHORITY OR CONSENT OF THE TELECOMMUNICA-
25 TIONS SERVICE PROVIDER. COUNTERFEIT TELECOMMUNICATIONS DEVICE
26 INCLUDES BUT IS NOT LIMITED TO A CLONE TELEPHONE, CLONE
27 MICROCHIP, TUMBLER TELEPHONE, TUMBLER MICROCHIP, OR WIRELESS

1 SCANNING DEVICE CAPABLE OF ACQUIRING, INTERCEPTING, RECEIVING, OR
2 OTHERWISE FACILITATING THE USE OF A TELECOMMUNICATIONS SERVICE
3 WITHOUT IMMEDIATE DETECTION.

4 (C) "TELECOMMUNICATIONS" MEANS THE ORIGINATION, EMISSION,
5 TRANSMISSION, OR RECEPTION OF DATA, IMAGES, SIGNALS, SOUNDS, OR
6 OTHER INTELLIGENCE OR EQUIVALENCE OF INTELLIGENCE OF ANY NATURE
7 OVER ANY COMMUNICATIONS SYSTEM BY ANY METHOD, INCLUDING BUT NOT
8 LIMITED TO ELECTRONIC, MAGNETIC, OPTICAL, DIGITAL, OR ANALOG.

9 (D) "TELECOMMUNICATIONS ACCESS DEVICE" MEANS AN INSTRUMENT,
10 DEVICE, CARD, PLATE, CODE, ACCOUNT NUMBER, PERSONAL IDENTIFICA-
11 TION NUMBER, ELECTRONIC SERIAL NUMBER, MOBILE IDENTIFICATION
12 NUMBER, COUNTERFEIT NUMBER, OR FINANCIAL TRANSACTION DEVICE AS
13 DEFINED IN SECTION 157M THAT ALONE OR WITH ANOTHER TELECOMMUNICA-
14 TIONS ACCESS DEVICE CAN ACQUIRE, INTERCEPT, PROVIDE, RECEIVE,
15 USE, OR OTHERWISE FACILITATE THE USE OF A TELECOMMUNICATIONS
16 DEVICE, COUNTERFEIT TELECOMMUNICATIONS DEVICE, OR TELECOMMUNICA-
17 TIONS SERVICE.

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

24 (F) "TELECOMMUNICATIONS SERVICE" MEANS PROVIDING, ALLOWING,
25 FACILITATING, OR GENERATING ANY FORM OF TELECOMMUNICATIONS
26 THROUGH THE USE OF TELECOMMUNICATIONS DEVICES OR

1 TELECOMMUNICATIONS ACCESS DEVICES OVER A TELECOMMUNICATIONS
2 SYSTEM.

3 (G) "VALUE OF THE TELECOMMUNICATIONS SERVICE OBTAINED OR
4 ATTEMPTED TO BE OBTAINED" INCLUDES BUT IS NOT LIMITED TO ALL OF
5 THE FOLLOWING:

6 (i) ANY LAWFUL CHARGE FOR TELECOMMUNICATIONS SERVICES
7 AVOIDED OR ATTEMPTED TO BE AVOIDED.

8 (ii) THE VALUE OF ANY OTHER MONEY, PROPERTY, OR TELECOMMUNI-
9 CATIONS SERVICE LOST, STOLEN, OR RENDERED UNRECOVERABLE BY THE
10 VIOLATION.

11 (iii) ANY ACTUAL EXPENDITURE INCURRED BY THE VICTIM TO
12 VERIFY THAT A TELECOMMUNICATIONS DEVICE OR TELECOMMUNICATIONS
13 ACCESS DEVICE OR TELECOMMUNICATIONS SERVICE WAS NOT ALTERED,
14 ACQUIRED, DAMAGED, DISRUPTED, DESTROYED, OR STOLEN AS A RESULT OF
15 THE VIOLATION.

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

19 Section 3. This amendatory act shall take effect April 1,
20 1997.

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

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

26 (b) Senate Bill No. _____ or House Bill No. 5748
27 (request no. 05833'95 *).

- 1 (c) Senate Bill No. _____ or House Bill No. 5749
2 (request no. 05833'95 a).
- 3 (d) Senate Bill No. _____ or House Bill No. 5751
4 (request no. 06378'95).
- 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).