



# HOUSE BILL No. 5755

April 17, 1996, Introduced by Reps. Byl, Dalman, Goschka, Walberg, Horton, Hammerstrom, Bodem, Voorhees, Law, Jellema 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 540f.

## 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 540f to read as follows:

4 SEC. 540F. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), A  
5 PERSON WHO KNOWINGLY OR INTENTIONALLY PUBLISHES A TELECOMMUNICA-  
6 TIONS ACCESS DEVICE OR COUNTERFEIT TELECOMMUNICATIONS ACCESS  
7 DEVICE WITH THE INTENT THAT IT BE USED OR KNOWING OR HAVING  
8 REASON TO KNOW THAT IT WILL BE USED OR IS LIKELY TO BE USED TO  
9 VIOLATE SECTION 219A IS GUILTY OF A MISDEMEANOR PUNISHABLE BY

1 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN  
2 \$100.00, OR BOTH.

3 (2) A PERSON WHO VIOLATES SUBSECTION (1) AND HAS A PREVIOUS  
4 CONVICTION FOR A VIOLATION OF SECTION 219A OR 540C OR FORMER SEC-  
5 TION 219C IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR  
6 NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN \$5,000.00, OR  
7 BOTH.

8 (3) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED  
9 SENTENCE BASED UPON THE DEFENDANT HAVING A PRIOR CONVICTION, THE  
10 PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT AND INFORMA-  
11 TION A STATEMENT LISTING THAT PRIOR CONVICTION. THE EXISTENCE OF  
12 THE DEFENDANT'S PRIOR CONVICTION SHALL BE DETERMINED BY THE  
13 COURT, WITHOUT A JURY, AT SENTENCING. THE EXISTENCE OF A PRIOR  
14 CONVICTION MAY BE ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT  
15 PURPOSE, INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE  
16 FOLLOWING:

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

18 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR  
19 SENTENCING.

20 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

21 (D) THE DEFENDANT'S STATEMENT.

22 (4) AS USED IN THIS SECTION:

23 (A) "COUNTERFEIT TELECOMMUNICATIONS ACCESS DEVICE" MEANS A  
24 TELECOMMUNICATIONS ACCESS DEVICE THAT IS FALSE, FRAUDULENT,  
25 UNLAWFUL, NOT ISSUED TO A LEGITIMATE TELECOMMUNICATIONS ACCESS  
26 DEVICE SUBSCRIBER ACCOUNT, OR OTHERWISE INVALID OR THAT IS  
27 EXPIRED, SUSPENDED, REVOKED, CANCELED, OR OTHERWISE TERMINATED IF

1 NOTICE OF THE EXPIRATION, SUSPENSION, REVOCATION, CANCELLATION,  
2 OR TERMINATION HAS BEEN SENT TO THE TELECOMMUNICATIONS ACCESS  
3 DEVICE SUBSCRIBER.

4 (B) "PUBLISH" MEANS TO COMMUNICATE INFORMATION OR MAKE  
5 INFORMATION AVAILABLE TO 1 OR MORE PERSONS ORALLY, IN WRITING, OR  
6 BY MEANS OF ANY TELECOMMUNICATIONS. PUBLISH INCLUDES BUT IS NOT  
7 LIMITED TO COMMUNICATING INFORMATION ON A COMPUTER BULLETIN BOARD  
8 OR SIMILAR SYSTEM.

9 (C) "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 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. 5751  
6 (request no. 06378'95).
- 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).