HOUSE BILL No. 5186

December 9, 1999, Introduced by Reps. Howell, DeRossett, Jamnick and O'Neil and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1979 PA 53, 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,"

by amending section 7 (MCL 752.797), as amended by 1996 PA 326.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1   Sec. 7. (1) A person who violates this ~~act~~ SECTION OR

2 SECTION 4 is guilty of a crime as follows:

3   (a) If the violation involves an aggregate amount of less

4 than $200.00, the person is guilty of a misdemeanor punishable by

5 imprisonment for not more than 93 days or a fine of not more than

6 $500.00 or 3 times the aggregate amount, whichever is greater, or

7 both imprisonment and a fine.

1　　　　(b) If any of the following apply, the person is guilty of a

2 misdemeanor punishable by imprisonment for not more than 1 year

3 or a fine of not more than $2,000.00 or 3 times the aggregate

4 amount, whichever is greater, or both imprisonment and a fine:

5　　　　(*i*) The violation involves an aggregate amount of $200.00 or

6 more but less than $1,000.00.

7　　　　(*ii*) The person violates this act and has a prior conviction

8 for committing or attempting to commit a violation of this act.

9　　　　(c) If any of the following apply, the person is guilty of a

10 felony punishable by imprisonment for not more than 5 years or a

11 fine of not more than $10,000.00 or 3 times the aggregate amount,

12 whichever is greater, or both imprisonment and a fine:

13　　　　(*i*) The violation involves an aggregate amount of $1,000.00

14 or more but less than $20,000.00.

15　　　　(*ii*) The person ~~violates this act and~~ has 2 prior convic-

16 tions for violating this act.

17　　　　(d) If any of the following apply, the person is guilty of a

18 felony punishable by imprisonment for not more than 10 years or a

19 fine of not more than 3 times the aggregate amount, or both

20 imprisonment and a fine:

21　　　　(*i*) The violation involves an aggregate amount of $20,000.00

22 or more.

23　　　　(*ii*) The person ~~violates this act and~~ has 3 or more prior

24 convictions for violating this act.

25　　　　(2) If the prosecuting attorney intends to seek an enhanced

26 sentence UNDER THIS SECTION OR SECTION 4 based upon the defendant

27 having a prior conviction, the prosecuting attorney shall include

1 on the complaint and information a statement listing that prior

2 conviction. The existence of the defendant's prior conviction

3 shall be determined by the court, without a jury, at sentencing.

4 The existence of a prior conviction may be established by any

5 evidence relevant for that purpose, including, but not limited

6 to, 1 or more of the following:

7   (a) A copy of the judgment of conviction.

8   (b) A transcript of a prior trial, plea-taking, or

9 sentencing.

10   (c) Information contained in a presentence report.

11   (d) The defendant's statement.

12   (3) It is a rebuttable presumption IN A PROSECUTION FOR A

13 VIOLATION OF THIS SECTION OR SECTION 4 that the person did not

14 have authorization from the owner, system operator, or other

15 person who has authority from the owner or system operator to

16 grant permission to access the computer program, computer, com-

17 puter system, or computer network or has exceeded authorization

18 unless 1 or more of the following circumstances existed at the

19 time of access:

20   (a) Written or oral permission was granted by the owner,

21 system operator, or other person who has authority from the owner

22 or system operator to grant permission of the accessed computer

23 program, computer, computer system, or computer network.

24   (b) The accessed computer program, computer, computer

25 system, or computer network had a pre-programmed access procedure

26 that would display a bulletin, command, or other message before

27 access was achieved that a reasonable person would believe

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1 identified the computer program, computer, computer system, or

2 computer network as within the public domain.

3   (c) Access was achieved without the use of a set of instruc-

4 tions, code, or computer program that bypasses, defrauds, or oth-

5 erwise circumvents the pre-programmed access procedure for the

6 computer program, computer, computer system, or computer

7 network.

8   (4) A PERSON WHO VIOLATES SECTION 6 IS GUILTY OF A CRIME AS

9 FOLLOWS:

10   (A) IF THE CRIME COMMITTED OR ATTEMPTED IS A MISDEMEANOR

11 PUNISHABLE BY IMPRISONMENT FOR 1 YEAR OR LESS, THE PERSON IS

12 GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE

13 THAN 1 YEAR OR A FINE OF NOT MORE THAN $5,000.00, OR BOTH.

14   (B) IF THE CRIME COMMITTED OR ATTEMPTED IS A MISDEMEANOR

15 PUNISHABLE BY IMPRISONMENT FOR MORE THAN 1 YEAR BUT LESS THAN 2

16 YEARS, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISON-

17 MENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN

18 $5,000.00, OR BOTH.

19   (C) IF THE CRIME COMMITTED OR ATTEMPTED IS A FELONY PUNISH-

20 ABLE BY IMPRISONMENT FOR 2 YEARS OR MORE BUT LESS THAN 4 YEARS,

21 THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR

22 NOT MORE THAN 4 YEARS OR A FINE OF NOT MORE THAN $5,000.00, OR

23 BOTH.

24   (D) IF THE CRIME COMMITTED OR ATTEMPTED IS A FELONY PUNISH-

25 ABLE BY IMPRISONMENT FOR 4 YEARS OR MORE BUT LESS THAN 10 YEARS,

26 THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR

1 NOT MORE THAN 7 YEARS OR A FINE OF NOT MORE THAN $5,000.00, OR

2 BOTH.

3 (E) IF THE CRIME COMMITTED IS A FELONY PUNISHABLE BY IMPRIS-

4 ONMENT FOR 10 YEARS OR MORE BUT LESS THAN 20 YEARS, THE PERSON IS

5 GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN

6 10 YEARS OR A FINE OF NOT MORE THAN $10,000.00, OR BOTH.

7 (F) IF THE CRIME COMMITTED IS A FELONY PUNISHABLE BY IMPRIS-

8 ONMENT FOR 20 YEARS OR MORE OR LIFE, THE PERSON IS GUILTY OF A

9 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 20 YEARS OR A

10 FINE OF NOT MORE THAN $20,000.00, OR BOTH.

11 (5) THE COURT MAY ORDER THAT A TERM OF IMPRISONMENT IMPOSED

12 UNDER SUBSECTION (4) BE SERVED CONSECUTIVELY TO AND PRECEDING ANY

13 TERM OF IMPRISONMENT IMPOSED FOR CONVICTION OF THE UNDERLYING

14 OFFENSE.

15 Enacting section 1. This amendatory act does not take

16 effect unless all of the following bills of the 90th Legislature

17 are enacted into law:

18 (a) Senate Bill No. _____ or House Bill No. 5185 (request

19 no. 03514'99 *).

20 (b) Senate Bill No. _____ or House Bill No. 5184 (request

21 no. 03514'99 a *).

22 (c) Senate Bill No. _____ or House Bill No. 5187 (request

23 no. 05276'99).