

TELECOMMUNICATIONS: CLARIFY PROHIBITED CONDUCT

**House Bill 4802 as introduced
First Analysis (6-19-03)**

**Sponsor: Rep. James Koetje
Committee: Criminal Justice**

THE APPARENT PROBLEM:

Public Act 672 of 2002 amended the Michigan Penal Code to, among other things, update laws relating to telecommunication devices to include newer technology. In particular, the legislation sought to address concerns voiced by the members of the film and television industry that new devices and computer programs were being used to unlawfully copy and distribute copyrighted materials and that current laws were inadequate for successful prosecution. (For more information, see the House Legislative Analysis Section's analysis of enrolled House Bill 6079 dated 2-7-03.)

Apparently, however, Public Act 672 has been interpreted by the Electronic Freedom Foundation and many others as being overly broad. The concern is that the new act could prohibit the use of some security and privacy computer software programs, as well as restrict the types of equipment that a person could connect to a home cable, satellite, or Internet line. Reportedly, the sponsor of the 2002 legislation has been inundated with calls and letters from concerned residents, as have some other legislators.

Though many believe that Public Act 672 is clearly intended to update laws prohibiting the unlawful use of copyrighted materials and activities meant to defraud others, legislation has nonetheless been offered to clarify what others see as a confusing provision.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to revise several provisions that pertain to prohibited conduct with regard to telecommunications access and to delete several redundant passages.

Under the bill, several references to "an unlawful telecommunications access device" would be changed to "any type of" telecommunications access device. The terms "unlawful telecommunications device" and "telecommunications access device" are

defined in the code. The full definitions can be found at the end of the summary.

The bill would delete language that prohibits the offer to deliver or advertise an unlawful telecommunications access device or assemble, develop, manufacture, possess, deliver, offer to deliver, or advertise a telecommunications device intending to use those devices or to allow the devices to be used to do several listed unlawful actions. *Instead, the bill would prohibit the assembly, development, manufacture, possession, delivery, or use of any type of telecommunications access device with the intent to defraud* by doing any of the following (but not limited to these) actions:

- Obtain or attempt to obtain a telecommunications service in violation of the code's provisions in Section 219a, which pertains to obtaining telecommunications services with the intent to avoid charge. (The bill would delete a phrase that included in the action the intent to avoid or aid or abet or cause another person to avoid any lawful charge for the telecommunications service.)
- Conceal the existence or place of origin or destination of any telecommunications service. (This provision is unchanged by the bill.)
- Receive, disrupt, decrypt, transmit, retransmit, acquire, or intercept any telecommunications service without the express authority of the telecommunications service provider. (The bill would delete the element of facilitating the receipt, disruption, decryption, transmission, retransmission, acquisition, or interception of the services, and would delete needing to have the actual consent of the telecommunications service provider.)

It is currently prohibited to deliver, offer to deliver, or advertise plans, written instructions, or materials for the manufacture, assembly, or development of an unlawful telecommunications access device. The bill would delete "offer to deliver". The bill would also

delete language from this provision that specifically prohibits the manufacture, assembly, or development of a telecommunications access device that the person intends to be used or knows or has reason to know will be used or is likely to be used to violate the ban on using such devices unlawfully.

Currently, a person who violates this section of law is guilty of a felony punishable by imprisonment, a fine, or both, and the use of each telecommunications access device or unlawful telecommunications access device is considered a separate offense. However, the bill would strike a provision that specifies that all fines must be imposed for each unlawful telecommunications access device or telecommunications access device involved in the offense.

[The act defines “telecommunications access device” as any of the following:

- any instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or “financial transaction device” that alone or with another device can acquire, transmit, intercept, provide, receive, use, or otherwise facilitate the use, acquisition, interception, provision, reception, and transmission of any telecommunications service; or
- any type of instrument, device, machine, equipment, technology, or software that facilitates telecommunications or which is capable of transmitting, acquiring, intercepting, decrypting, or receiving any telephonic, electronic, data, Internet access, audio, video, microwave, or radio transmissions, signals, telecommunications, or services, including the receipt, acquisition, interception, transmission, retransmission, or decryption of all telecommunications, transmissions, signals, or services provided by or through any cable television, fiber optic, telephone, satellite, microwave, data transmission, radio, Internet based or wireless distribution network, system, or facility, or security module, smart card, software, computer chip, pager, cellular telephone, personal communications device, transponder, receiver, modem, electronic mechanism or other component, accessory, or part of any other device that is capable of facilitating the interception, transmission, retransmission, decryption, acquisition, or reception of any telecommunications, transmissions, signals, or services.

The act defines “unlawful telecommunications access device” as any of the following:

- a telecommunications access device that is false, fraudulent, unlawful, not issued to a legitimate telecommunications access device subscriber account, or otherwise invalid or that is expired, suspended, revoked, canceled, or otherwise terminated if notice of the expiration, suspension, revocation, cancellation, or termination has been sent to the telecommunications access device subscriber;
- any phones altered to obtain service without the express authority or actual consent of the telecommunications service provider, a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use, acquisition, interception, or receipt of a telecommunications service without the express authority or actual consent of the telecommunications service provider;
- any telecommunications access device that has been manufactured, assembled, altered, designed, modified, programmed, or reprogrammed, alone or in conjunction with another device, so as to be capable of facilitating the disruption, acquisition, interception, receipt, transmission, retransmission, or decryption of a telecommunications service without the actual consent or express authorization of the telecommunications service provider, including any device, technology, product, service, equipment, computer software, or component or part, primarily distributed, sold, designed, assembled, manufactured, modified, programmed, reprogrammed, or used for the purpose of providing the unauthorized receipt of, transmission of, interception of, disruption of, decryption of, access to, or acquisition of any telecommunications service provided by any telecommunications service provider; or
- any type of instrument, device, machine, equipment, technology, or software that is primarily designed, assembled, developed, manufactured, sold, distributed, possessed, used, or offered, promoted, or advertised, for the purpose of defeating or circumventing any technology, device, or software, or any component or part, used by the provider, owner, or licensee of any telecommunications service or of any data, audio, or video programs or transmissions, to protect any such telecommunications, data, audio, or video services, programs, or transmissions from unauthorized receipt, acquisition, interception, access, decryption,

disclosure, communication, transmission, or retransmission.]

MCL 750.540c

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Public Act 672 of 2002 was intended, among other things, to update existing laws prohibiting unlawful uses of telecommunications access devices to include newer technologies used to “pirate” copyrighted materials. In particular, members of the motion picture industry reported an increasing problem with people using digital technologies to make bootleg copies of films showing in the U.S. and then distributing the copies in overseas markets before the films were released there. As high-speed cable Internet connection gains in popularity, a concern also has surfaced that computers could be used to download films to be copied and distributed. At the time, many felt that existing state laws were not sufficient to support successful prosecution in such cases. While the sponsor of Public Act 672 and others felt the act was clearly addressing activities meant to defraud others and the unlawful use or distribution of copyrighted materials, many apparently believe that the act can be construed to make it illegal to use some currently acceptable software programs that increase privacy and security on personal and business computers. Also, some interpreted the act as putting restrictions on the types of equipment (faxes, modems, televisions, VCRs, etc.) that a person could connect to his or her home Internet, cable, or satellite lines. The bill would make no substantive change to the penal code, but would clarify that activities meant to defraud via the use of telecommunications access devices would be prohibited.

POSITIONS:

A representative of the Motion Picture Association has indicated the association is neutral on the bill. (6-18-03)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.