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House Bill 4802 (as passed by the House)
Sponsor: Representative James Koetje
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 1-20-04

CONTENT

The bill would amend provisions of the Michigan Penal Code that prohibit certain activities involving devices, including the unlawful use of a device to obtain or disrupt telecommunications services.

Currently, the Code prohibits assembling, developing, manufacturing, possessing, delivering, offering to deliver, or advertising an "unlawful telecommunications access device" or a telecommunications device intending to use the device or allow it to be used to do any of the following or knowing or having reason to know that the device is intended to be used to do any of the following:

- Conceal the existence or place or origin or destination of any "telecommunications service".
- Receive, disrupt, decrypt, transmit, retransmit, acquire, intercept, or facilitate the receipt, disruption, decryption, transmission, retransmission, acquisition, or interception of any telecommunications service without the express authority or actual consent of the telecommunications service provider.
- Obtain or attempt to obtain a telecommunications service with the intent to avoid, aid, abet, or cause another to avoid any lawful charge for the service in violation of Section 219a of the Code.

(Section 219a prohibits knowingly obtaining or attempting to obtain telecommunications service with intent to avoid, attempt to avoid, or cause another to avoid or attempt to avoid any lawful charge for that service using a "telecommunications access device", an unlawful telecommunications access device, or a fraudulent or deceptive scheme, pretense, method, or conspiracy.)

The Code also prohibits a person from modifying, altering, programming, or reprogramming a telecommunications access device for a purpose described above.

The bill, instead, would prohibit a person from assembling, developing, manufacturing, possessing, delivering, or using any type of telecommunications access device with the intent to defraud by doing any of the following:

- Obtaining or attempting to obtain a telecommunications service in violation of Section 219a.
- Concealing the existence, place of origin, or destination of any telecommunications service.
- Receiving, disrupting, decrypting, transmitting, retransmitting, acquiring, or intercepting any telecommunications service without the express authority of the telecommunications service provider.

A person also could not modify, alter, program, or reprogram a telecommunications access device to commit any of those prohibited acts.

In addition, the Code prohibits a person from delivering, offering to deliver, or advertising plans, written instructions, or materials for the manufacture, assembly, or development of an unlawful telecommunications device or a telecommunications access device that the person intends to be used or know or has reason to know will be used or is likely to be used to violate the prohibitions listed above. The bill would delete from that provision the manufacture, assembly, or development of a telecommunications access device likely to be used to violate those prohibitions.

A violation of the provisions described above is a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. The bill would delete a requirement that all fines be imposed for each unlawful telecommunications access device or telecommunications access device involved in the offense. Each unlawful telecommunications access device or telecommunications access device still would be considered a separate violation.

"Telecommunications service" means any service lawfully provided for a charge or compensation to facilitate the origination, transmission, retransmission, emission, or reception of signs, data, images, signals, writings, sounds, or other intelligence or equivalence or intelligence of any nature over any telecommunications system by any method, including electronic, electromagnetic, magnetic, optical, photo-optical, digital, or analog technologies.

"Telecommunications access device" means 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.

"Telecommunications access device" also means any type of instrument, device, machine, equipment, technology, or software that facilitates telecommunications or 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 any part, accessory, or 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.

"Unlawful telecommunications access device" means 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 phone 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 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.
- 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

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

By eliminating the requirement that fines be assessed for each device involved in an offense, the bill potentially would decrease penal fine revenue to public libraries. To the extent that the other changes simply would clarify current law, the bill would have no significant fiscal impact on State or local government.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.