

HOUSE BILL No. 4802

June 3, 2003, Introduced by Rep. Koetje and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 540c (MCL 750.540c), as amended by 2002 PA
672.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 540c. (1) A person shall not assemble, develop,
2 manufacture, possess, deliver, ~~offer to deliver, or advertise an~~
3 ~~unlawful telecommunications access device or assemble, develop,~~
4 ~~manufacture, possess, deliver, offer to deliver, or advertise a~~
5 ~~telecommunications device intending to use those devices or to~~
6 ~~allow the devices to be used to do any of the following or~~
7 ~~knowing or having reason to know that the devices are intended to~~
8 ~~be used to do~~ or use any type telecommunications access device
9 with the intent to defraud by doing, but not limited to, any of
10 the following:

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1 (a) Obtain or attempt to obtain a telecommunications service
2 ~~with the intent to avoid or aid or abet or cause another person~~
3 ~~to avoid any lawful charge for the telecommunications service~~ in
4 violation of section 219a.

5 (b) Conceal the existence or place of origin or destination
6 of any telecommunications service.

7 (c) To receive, disrupt, decrypt, transmit, retransmit,
8 acquire, **or** intercept ~~, or facilitate the receipt, disruption,~~
9 ~~decryption, transmission, retransmission, acquisition, or~~
10 ~~interception of~~ any telecommunications service without the
11 express authority ~~or actual consent~~ of the telecommunications
12 service provider.

13 (2) A person shall not modify, alter, program, or reprogram a
14 telecommunications access device ~~for the purposes described in~~
15 **to commit an act prohibited under** subsection (1).

16 (3) A person shall not deliver ~~, offer to deliver,~~ or
17 advertise plans, written instructions, or materials for the
18 manufacture, assembly, or development of an unlawful
19 telecommunications access device. ~~or for the manufacture,~~
20 ~~assembly, or development of a telecommunications access device~~
21 ~~that the person intends to be used or knows or has reason to know~~
22 ~~will be used or is likely to be used to violate subsection (1).~~
23 As used in this subsection, "materials" includes any hardware,
24 cables, tools, data, computer software, or other information or
25 equipment used or intended for use in the manufacture, assembly,
26 or development of ~~an unlawful telecommunications access device~~
27 **or any type of** a telecommunications access device.

1 (4) A person who violates subsection (1), (2), or (3) is
2 guilty of a felony punishable by imprisonment for not more than 4
3 years or a fine of not more than \$2,000.00, or both. ~~All fines~~
4 ~~shall be imposed for each unlawful telecommunications access~~
5 ~~device or telecommunications access device involved in the~~
6 ~~offense.~~ Each unlawful telecommunications access device or
7 telecommunications access device is considered a separate
8 violation.

9 (5) This section does not prohibit or restrict the possession
10 of radio receivers or transceivers by licensees of the federal
11 communications commission in the amateur radio service that are
12 intended primarily or exclusively for use in the amateur radio
13 service.

14 (6) Any unlawful telecommunications access device involved in
15 violation of this section is subject to forfeiture in the same
16 manner as provided in sections 4701 to 4709 of the revised
17 judiciary act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709,
18 and the court may order either of the following:

19 (a) ~~The unlawful telecommunications access device be~~
20 ~~destroyed~~ **Destroyed** or retained as provided under section 540d.

21 (b) ~~The unlawful telecommunications access device be~~
22 ~~returned~~ **Returned** to the telecommunications service provider if
23 the device is owned or controlled by the provider or disposed of
24 as provided under section 540d.

25 (7) The court shall order a person convicted of violating
26 subsection (1), (2), or (3) to make restitution in accordance
27 with section 1a of the code of criminal procedure, 1927 PA 175,

1 MCL 769.1a.

2 (8) A violation of subsection (1), (2), or (3) is considered
3 to have occurred at the place where the person manufactures,
4 assembles, develops, or designs ~~an unlawful telecommunications~~
5 ~~access device or~~ **any type of** telecommunications access device,
6 or the places where the ~~unlawful telecommunications access~~
7 ~~device or telecommunications access~~ device is sold or delivered
8 to another person.

9 (9) As used in this section and sections ~~540d,~~ 540f ~~,~~ and
10 540g:

11 (a) "Deliver" means to actually or constructively sell, give,
12 loan, lease, or otherwise transfer a telecommunications access
13 device, unlawful telecommunications access device, and plans,
14 written instructions, or materials concerning the devices to
15 another person.

16 (b) "Telecommunications access device" shall have the same
17 meaning as in section 219a.

18 (c) "Telecommunications service" shall have the same meaning
19 as in section 219a.

20 (d) "Telecommunications service provider" shall have the same
21 meaning as in section 219a.

22 (e) "Telecommunications system" shall have the same meaning
23 as in section 219a.

24 (f) "Unlawful telecommunications access device" shall have
25 the same meaning as in section 219a.