

Act No. 1
Public Acts of 2004
Approved by the Governor
February 12, 2004
Filed with the Secretary of State
February 12, 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Rep. Koetje

ENROLLED HOUSE BILL No. 4802

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 540c (MCL 750.540c), as amended by 2002 PA 672.

The People of the State of Michigan enact:

Sec. 540c. (1) A person shall not assemble, develop, manufacture, possess, deliver, or use any type telecommunications access device with the intent to defraud by doing, but not limited to, any of the following:

(a) Obtain or attempt to obtain a telecommunications service in violation of section 219a.

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

(c) To receive, disrupt, decrypt, transmit, retransmit, acquire, or intercept any telecommunications service without the express authority of the telecommunications service provider.

(2) A person shall not modify, alter, program, or reprogram a telecommunications access device to commit an act prohibited under subsection (1).

(3) A person shall not deliver or advertise plans, written instructions, or materials for the manufacture, assembly, or development of an unlawful telecommunications access device. As used in this subsection, "materials" includes any hardware, cables, tools, data, computer software, or other information or equipment used or intended for use in the manufacture, assembly, or development of any type of a telecommunications access device.

(4) A person who violates subsection (1), (2), or (3) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both. Each unlawful telecommunications access device or telecommunications access device is considered a separate violation.

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

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

(a) Destroyed or retained as provided under section 540d.

(b) Returned to the telecommunications service provider if the device is owned or controlled by the provider or disposed of as provided under section 540d.

(7) The court shall order a person convicted of violating subsection (1), (2), or (3) to make restitution in accordance with section 1a of the code of criminal procedure, 1927 PA 175, MCL 769.1a.

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

(9) As used in this section and sections 540f and 540g:

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

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

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

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

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor