

# SENATE BILL No. 144

January 31, 2007, Introduced by Senators BROWN, JELINEK, KAHN, RICHARDVILLE, BASHAM, BIRKHOLZ, CROPSEY and PAPPAGEORGE and referred to the Committee on Judiciary.

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; to prohibit the sending of certain electronic messages; and to prescribe penalties,"

by amending section 7 (MCL 752.797), as amended by 2000 PA 180, and by adding section 5b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 5B. (1) A PERSON SHALL NOT DO ANY OF THE FOLLOWING:

(A) INTENTIONALLY AND WITHOUT AUTHORIZATION INSTALL OR ATTEMPT TO INSTALL SPYWARE INTO A COMPUTER, COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK BELONGING TO ANOTHER PERSON.

(B) INTENTIONALLY AND WITHOUT AUTHORIZATION USE OR ATTEMPT TO USE SPYWARE THAT HAS BEEN INSTALLED INTO A COMPUTER, COMPUTER

1 PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK BELONGING TO ANOTHER  
2 PERSON.

3 (C) MANUFACTURE, SELL, OR POSSESS SPYWARE WITH THE INTENT THAT  
4 IT BE USED TO VIOLATE THIS ACT.

5 (2) THIS SECTION DOES NOT PROHIBIT THE PERSON FROM BEING  
6 CHARGED WITH, CONVICTED OF, OR SENTENCED FOR ANY OTHER VIOLATION OF  
7 LAW ARISING OUT OF THE VIOLATION OF THIS SECTION.

8 (3) AS USED IN THIS SECTION:

9 (A) "AUTHORIZED USER" MEANS THE OWNER OF A COMPUTER, COMPUTER  
10 PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK OR A PERSON  
11 AUTHORIZED BY THE OWNER OR THE LESSEE TO USE THE COMPUTER, COMPUTER  
12 PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK.

13 (B) "COOKIE" MEANS A NONEXECUTABLE TEXT OR DATA FILE THAT IS  
14 USED BY, OR PLACED ON, THE COMPUTER, COMPUTER PROGRAM, COMPUTER  
15 SYSTEM, OR COMPUTER NETWORK, BY AN INTERNET SERVICE PROVIDER,  
16 INTERACTIVE COMPUTER SERVICE, OR INTERNET WEBSITE, TO RETURN  
17 INFORMATION TO THAT PROVIDER, SERVICE, OR WEBSITE, OR TO ANY DEVICE  
18 SUCH AS A WEB BEACON TO FACILITATE THE USE OF THE COMPUTER,  
19 COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK BY AN  
20 AUTHORIZED USER.

21 (C) "DECEPTIVELY" MEANS TO KNOWINGLY DO ANY OF THE FOLLOWING  
22 WITH THE INTENT TO DECEIVE OR WHEN UNRELATED TO AN AUTHORIZED USE:

23 (i) MAKE A MATERIALLY FALSE STATEMENT OR PRETENSE.

24 (ii) OMIT MATERIAL INFORMATION REGARDING A USE OR CONCEAL THE  
25 EXISTENCE OR PURPOSE FROM AN AUTHORIZED USER.

26 (D) "INSTALL" MEANS TO ATTACH OR INSERT COMPUTER INSTRUCTIONS  
27 OR A COMPUTER PROGRAM.

(E) "INTERNET" MEANS THAT TERM AS DEFINED IN 47 USC 230.

(F) EXCEPT AS PROVIDED IN SUBSECTION (4), "SPYWARE" MEANS COMPUTER INSTRUCTIONS OR A COMPUTER PROGRAM THAT DECEPTIVELY MONITORS, COLLECTS, COPIES, OR TRANSFERS COPIES OF OR IS DECEPTIVELY INSTALLED TO MONITOR, COLLECT, COPY, OR TRANSFER COPIES OF, DATA OR INFORMATION FROM OR INFORMATION REGARDING THE USE OF A COMPUTER, COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK, INCLUDING ANY OF THE FOLLOWING:

(i) KEYSTROKES MADE BY AN AUTHORIZED USER.

(ii) WEBSITES VISITED BY AN AUTHORIZED USER, OTHER THAN WEBSITES OF THE PROVIDER OF THE SOFTWARE OR THE ORIGINATING WEBSITE LOCATION OR UNIFORM RESOURCE LOCATOR AUTOMATICALLY SENT TO THE DESTINATION WEBSITE WHEN AN AUTHORIZED USER CHANGES WEBSITES.

(iii) OTHER DATA OR INFORMATION CONTAINED ON THE COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK, SUCH AS PERSONALLY IDENTIFIABLE FILES ON A HARD DRIVE.

(4) SPYWARE DOES NOT INCLUDE ANY OF THE FOLLOWING:

(A) CONDUCT BY A PERSON ACTING PURSUANT TO A VALID LEGAL PROCESS WITHIN THE SCOPE OF HIS OR HER LEGAL AUTHORITY.

(B) A COOKIE.

(C) ANY OF THE FOLLOWING:

(i) MONITORING OF, OR INTERACTION WITH, AN AUTHORIZED USER'S INTERNET OR OTHER NETWORK OR CONNECTION SERVICE, OR COMPUTER BY A TELECOMMUNICATIONS CARRIER, CABLE OPERATOR, COMPUTER HARDWARE OR SOFTWARE PROVIDER, PROVIDER OF INFORMATION SERVICE, OR INTERACTIVE COMPUTER SERVICE.

(ii) FOR NETWORK OR COMPUTER SECURITY PURPOSES, DIAGNOSTICS,

1 TECHNICAL SUPPORT, REPAIR, AUTHORIZED UPDATES OF SOFTWARE, OR  
2 SYSTEM FIRMWARE.

3 (iii) AUTHORIZED REMOTE SYSTEM MANAGEMENT.

4 (iv) DETECTION OR PREVENTION OF THE UNAUTHORIZED USE OF, OR  
5 FRAUDULENT OR OTHER ILLEGAL ACTIVITIES IN CONNECTION WITH, A  
6 NETWORK, SERVICE, OR COMPUTER SOFTWARE, INCLUDING SCANNING FOR AND  
7 REMOVING SOFTWARE WITH THE REASONABLE BELIEF THAT IT WAS INSTALLED  
8 IN VIOLATION OF THIS SECTION.

9 Sec. 7. (1) A person who violates section 4 is guilty of a  
10 crime as follows:

11 (a) If the violation involves an aggregate amount of less than  
12 \$200.00, the person is guilty of a misdemeanor punishable by  
13 imprisonment for not more than 93 days or a fine of not more than  
14 \$500.00 or 3 times the aggregate amount, whichever is greater, or  
15 both imprisonment and a fine.

16 (b) If any of the following apply, the person is guilty of a  
17 misdemeanor punishable by imprisonment for not more than 1 year or  
18 a fine of not more than \$2,000.00 or 3 times the aggregate amount,  
19 whichever is greater, or both imprisonment and a fine:

20 (i) The violation involves an aggregate amount of \$200.00 or  
21 more but less than \$1,000.00.

22 (ii) The person violates this act and has a prior conviction.

23 (c) If any of the following apply, the person is guilty of a  
24 felony punishable by imprisonment for not more than 5 years or a  
25 fine of not more than \$10,000.00 or 3 times the aggregate amount,  
26 whichever is greater, or both imprisonment and a fine:

27 (i) The violation involves an aggregate amount of \$1,000.00 or

1 more but less than \$20,000.00.

2 (ii) The person has 2 prior convictions.

3 (d) If any of the following apply, the person is guilty of a  
4 felony punishable by imprisonment for not more than 10 years or a  
5 fine of not more than 3 times the aggregate amount, or both  
6 imprisonment and a fine:

7 (i) The violation involves an aggregate amount of \$20,000.00 or  
8 more.

9 (ii) The person has 3 or more prior convictions.

10 (2) A person who violates section 5 **OR 5B** is guilty of a crime  
11 as follows:

12 (a) Except as provided in subdivision (b), the person is  
13 guilty of a felony punishable by imprisonment for not more than 5  
14 years or a fine of not more than \$10,000.00, or both.

15 (b) If the person has a prior conviction, the person is guilty  
16 of a felony punishable by imprisonment for not more than 10 years  
17 or a fine of not more than \$50,000.00, or both.

18 (3) A person who violates section 6 is guilty of a crime as  
19 follows:

20 (a) If the underlying crime is a misdemeanor or a felony with  
21 a maximum term of imprisonment of 1 year or less, the person is  
22 guilty of a misdemeanor punishable by imprisonment for not more  
23 than 1 year or a fine of not more than \$5,000.00, or both.

24 (b) If the underlying crime is a misdemeanor or a felony with  
25 a maximum term of imprisonment of more than 1 year but less than 2  
26 years, the person is guilty of a felony punishable by imprisonment  
27 for not more than 2 years or a fine of not more than \$5,000.00, or

1 both.

2 (c) If the underlying crime is a misdemeanor or a felony with  
3 a maximum term of imprisonment of 2 years or more but less than 4  
4 years, the person is guilty of a felony punishable by imprisonment  
5 for not more than 4 years or a fine of not more than \$5,000.00, or  
6 both.

7 (d) If the underlying crime is a felony with a maximum term of  
8 imprisonment of 4 years or more but less than 10 years, the person  
9 is guilty of a felony punishable by imprisonment for not more than  
10 7 years or a fine of not more than \$5,000.00, or both.

11 (e) If the underlying crime is a felony punishable by a  
12 maximum term of imprisonment of 10 years or more but less than 20  
13 years, the person is guilty of a felony punishable by imprisonment  
14 for not more than 10 years or a fine of not more than \$10,000.00,  
15 or both.

16 (f) If the underlying crime is a felony punishable by a  
17 maximum term of imprisonment of 20 years or more or for life, the  
18 person is guilty of a felony punishable by imprisonment for not  
19 more than 20 years or a fine of not more than \$20,000.00, or both.

20 (4) The court may order that a term of imprisonment imposed  
21 under subsection (3) be served consecutively to any term of  
22 imprisonment imposed for conviction of the underlying offense.

23 (5) If the prosecuting attorney intends to seek an enhanced  
24 sentence under section 4 or section 5 based upon the defendant  
25 having a prior conviction, the prosecuting attorney shall include  
26 on the complaint and information a statement listing that prior  
27 conviction. The existence of the defendant's prior conviction shall

1 be determined by the court, without a jury, at sentencing. The  
2 existence of a prior conviction may be established by any evidence  
3 relevant for that purpose, including, but not limited to, 1 or more  
4 of the following:

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

6 (b) A transcript of a prior trial, plea-taking, or sentencing.

7 (c) Information contained in a presentence report.

8 (d) The defendant's statement.

9 (6) It is a rebuttable presumption in a prosecution for a  
10 violation of section 5 that the person did not have authorization  
11 from the owner, system operator, or other person who has authority  
12 from the owner or system operator to grant permission to access the  
13 computer program, computer, computer system, or computer network or  
14 has exceeded authorization unless 1 or more of the following  
15 circumstances existed at the time of access:

16 (a) Written or oral permission was granted by the owner,  
17 system operator, or other person who has authority from the owner  
18 or system operator to grant permission of the accessed computer  
19 program, computer, computer system, or computer network.

20 (b) The accessed computer program, computer, computer system,  
21 or computer network had a pre-programmed access procedure that  
22 would display a bulletin, command, or other message before access  
23 was achieved that a reasonable person would believe identified the  
24 computer program, computer, computer system, or computer network as  
25 within the public domain.

26 (c) Access was achieved without the use of a set of  
27 instructions, code, or computer program that bypasses, defrauds, or

1 otherwise circumvents the pre-programmed access procedure for the  
2 computer program, computer, computer system, or computer network.

3 (7) The court may order a person convicted of violating this  
4 act to reimburse this state or a local unit of government of this  
5 state for expenses incurred in relation to the violation in the  
6 same manner that expenses may be ordered to be reimbursed under  
7 section 1f of chapter IX of the code of criminal procedure, 1927 PA  
8 175, MCL 769.1f.

9 (8) As used in this section, "prior conviction" means a  
10 violation or attempted violation of section 145d of the Michigan  
11 penal code, 1931 PA 328, MCL 750.145d, or this act, or a  
12 substantially similar law of the United States, another state, or a  
13 political subdivision of another state.