



**House
Legislative
Analysis
Section**

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**COMPUTER/TELECOMMUNICATIONS
CRIMES PACKAGE**

**House Bill 5748 (Substitute H-1)
Sponsor: Rep. Charles Perricone**

**House Bill 5749 as introduced
Sponsor: Rep. Jon Jellema**

**House Bill 5750 as introduced
Sponsor: Rep. Mike Green**

**House Bill 5751 with committee amendment
Sponsor: Rep. James Ryan**

**House Bill 5752 with committee
amendments
Sponsor: Rep. Eric Bush**

**House Bills 5753 and 5754 as introduced
Sponsor: Rep. Terry Geiger**

**House Bill 5755 with committee amendment
Sponsor: Rep. William Byl**

First Analysis (5-7-96)

Committee: Commerce

House Bills 5748-5755 (5-7-96)

THE APPARENT PROBLEM:

In 1979, Michigan enacted its first computer fraud statute (Public Act 53) to prohibit persons from intentionally and without authorization gaining access to, altering, damaging, or destroying a computer, computer systems, computer networks, computer software, or data. The act is similar to laws adopted in most other states and provides criminal penalties for various violations (embezzlement, fraudulent disposition of personal property, larceny) that involve use of a computer or computer system. However, since its enactment the use of computers and telecommunications by businesses and individuals has exploded nationwide, and many new types of high-technology equipment have been developed and are being used for collecting, storing, disseminating, and transferring information electronically or via radio waves. As technological advances have occurred, laws governing illegal activities involving computers and telecommunications have not kept pace, and some people estimate billions of dollars are stolen or destroyed nationwide each year

because law enforcement officials lack statutory authority to proceed in cases where substantial evidence exists to prove criminal activity. Some people believe Michigan laws governing computer and telecommunications crimes need to be updated both to expand the types of activities that constitute high-technology crimes and to establish more severe penalties--particularly fines--that apply to persons found engaging in them.

THE CONTENT OF THE BILLS:

Public Act 53 of 1979 currently prohibits someone from gaining access to a computer or computer system or network for fraudulent purposes, and bars use of a computer to commit various crimes specified in the Michigan Penal Code. House Bill 5748 would amend the act to expand the types of activities that would be prohibited relating to accessing or utilizing computers or computer systems, and would increase penalties that

apply to violators. House Bills 5749 - 5755 would amend other acts which govern the illegal use of telecommunications equipment and systems to revise and expand similar prohibitions, and to increase penalties for violations. The package would also provide for criminal forfeiture procedures to apply to these crimes, and would specify venue for prosecution of them. The bills would take effect April 1, 1997.

House Bill 5748 would amend Public Act 53 of 1979 (MCL 752.792 et al.), which prohibits a person from illegally using a computer system with the intent to defraud or to obtain money, or from harming a computer system. The bill would also prohibit a person from inserting or attaching or knowingly creating the opportunity for an unknowing and unwanted insertion or attachment of a set of instructions or a computer program into a computer program, computer, computer system, or computer network, that was intended to acquire, alter, damage, delete, disrupt, or destroy property or otherwise use the services of a computer program, computer, computer system, or computer network. The bill, however, specifies that it would not prohibit conduct protected under Section 5 of Article I of the State Constitution or under the First Amendment of the United States.

Penalties. Currently, a violation of the act involving \$100 or less is a misdemeanor; a violation involving more than \$100 is a felony. The act specifies penalties for the felony violation of imprisonment for up to 10 years, a fine of up to \$5,000, or both. The bill would delete these provisions and specifies the following penalties based on the aggregate amount of direct or indirect loss incurred by a victim:

* A violation involving less than \$200 would be a misdemeanor punishable by imprisonment for up to 93 days, a fine of up to \$500 (or three times the aggregate amount, whichever was greater), or both a fine and imprisonment.

* A violation involving an aggregate amount of from \$200 to \$1,000, or a second violation, would be a misdemeanor punishable by imprisonment for up to one year, a fine of up to \$2,000 (or three times the aggregate amount—whichever was greater), or both a fine and imprisonment.

* A violation involving an aggregate amount of from \$1,000 to \$20,000, or a third violation, would be a felony punishable by imprisonment for up to five years, a fine of up to \$10,000 (or three times the aggregate amount, whichever was greater), or both a fine and imprisonment.

* A violation involving an aggregate amount of \$20,000 or more, or a fourth or subsequent violation, would be a felony punishable by imprisonment for up to ten years, a fine of up to three times the aggregate amount, or both.

If the prosecutor intended to seek an enhanced sentence based upon prior convictions, such prior convictions would have to be listed on the complaint and information. The existence of a prior conviction would be determined by the court, without a jury, at sentencing. Evidence of prior convictions could include a copy of a judgment of conviction, a transcript of a prior relevant criminal proceeding, a presentence report, or the defendant's statement.

Rebuttable Presumption. Under the bill, it would be a rebuttable presumption that a person was not authorized by—or had exceeded authorization of—the owner, system operator, or another person who had authority from the owner or system operator to grant permission to gain access to a computer program, computer, computer system, or computer network, unless one or more of the following circumstances existed at the time of access:

* Written or oral permission had been granted by the owner, system operator, or someone authorized by them to grant permission for access;

* The computer program, computer, computer system or network had a pre-programmed access procedure that would display a bulletin, command, or other message before access had been achieved that a reasonable person would believe identified the computer system as within the public domain;

* Access had been achieved without the use of a set of instructions, code, or computer program that bypassed, defrauded, or otherwise circumvented a pre-programmed access procedure for the computer system.

House Bill 5754 would amend the Code of Criminal Procedure (MCL 762.10b) to specify that a violation of the provisions of House Bill 5748 that involved gaining access to a computer system in one jurisdiction from a location in another jurisdiction could be prosecuted in either jurisdiction.

House Bill 5752 would amend the Michigan Penal Code (MCL 750.219a) to revise and expand the provisions governing crimes related to the use of telecommunications equipment for fraudulent means or to avoid payment. The bill would repeal one section of the act (MCL 750.219c) that makes it a misdemeanor to obtain telephone service by fraudulent means in order to avoid payment of charges for the services. It would

also delete language that prohibits the use of false or fraudulent telephone numbers or credit cards without the permission of the person to whom the number was issued. The bill would replace these provisions as follows.

Under the bill, a person could not knowingly obtain or attempt to obtain telecommunications services with the intent to avoid paying for the services by using any of the following:

-- a "telecommunications access device" (an instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or "financial transaction device" [credit card, debit card, and the like]) without the consent of the lawful holder or a "counterfeit telecommunications access device" (one that is fraudulent, false, unlawful, invalid, expired, revoked, and so forth);

-- a "telecommunications device" (such as a computer, computer chip, telephone, cellular telephone, pager, receiver, radio, modem, and so forth) or a "counterfeit telecommunications device" (one that has been altered or programmed to intercept or otherwise use a telecommunications service without authorization, including such things as a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring the use of a telecommunications service without immediate detection); or,

-- a fraudulent or deceptive scheme, conspiracy, or any other means, including the use of false identification, or the use of a telecommunications device by a person other than the subscriber under an agreement whereby the subscriber receives anything of value in exchange.

Penalties for violations of the bill would be based on the value of the telecommunication services obtained, as follows:

* A violation involving less than \$200 would be a misdemeanor punishable by imprisonment for up to 93 days, a fine of up to \$500 (or three times the total value of the telecommunications services obtained, whichever was greater), or both a fine and imprisonment.

* A violation involving an amount of from \$200 to \$1,000, or a second violation involving less than \$200 (including a violation of the former section 219c, which the bill would replace), would be a misdemeanor punishable by imprisonment for up to one year, a fine of up to \$2,000 (or three times the total value of the

telecommunications services obtained, whichever was greater), or both a fine and imprisonment.

* A violation involving an amount of from \$1,000 to \$20,000, a violation involving less than \$200 by a person with two prior convictions, or a violation involving an amount from \$200 to \$1,000 by a person with one prior conviction, would be a felony punishable by imprisonment for up to five years, a fine of up to \$10,000 (or three times the total value of the telecommunications services obtained, whichever was greater), or both a fine and imprisonment.

* A violation involving an amount of \$20,000 or more, a violation involving less than \$200 by a person with three or more prior convictions, a violation involving an amount from \$200 to \$1,000 by a person with two or more prior convictions, or a violation involving an amount from \$1,000 to \$20,000 by a person with one prior conviction, would be a felony punishable by imprisonment for up to ten years, a fine of up to three times the total value of the telecommunications services obtained, or both.

The value of telecommunications services obtained in separate incidents under a scheme within one year could be aggregated to determine the penalties that would apply.

If the prosecutor intended to seek an enhanced sentence based upon prior convictions, such prior convictions would have to be listed on the complaint and information. The existence of a prior conviction would be determined by the court, without a jury, at sentencing. Evidence of prior convictions could include a copy of a judgment of conviction, a transcript of a prior relevant criminal proceeding, a presentence report, or the defendant's statement.

House Bill 5755 would amend the penal code (MCL 750.540f) to prohibit a person from knowingly or intentionally "publishing" (communicating orally, in writing, or by means of telecommunications, including posting on a computer bulletin board) a telecommunications access device, or a counterfeit telecommunications access device, with the intent that it be used (or knowing or having reason to know that it would be used) to violate the provisions of House Bill 5752.

A violation would be a misdemeanor punishable by up to 93 days imprisonment, a fine of up to \$100, or both. A violation by a person with a previous conviction for a violation of the provisions of House Bill 5752 or its predecessor (former section 219c), or of the provisions of House Bill 5751 (see below), would be a felony

punishable by imprisonment for up to five years, a fine of up to \$5,000, or both.

If the prosecutor intended to seek an enhanced sentence based upon prior convictions, such prior convictions would have to be listed on the complaint and information. The existence of a prior conviction would be determined by the court, without a jury, at sentencing. Evidence of prior convictions could include a copy of a judgment of conviction, a transcript of a prior relevant criminal proceeding, a presentence report, or the defendant's statement.

House Bill 5751 would amend the penal code (MCL 750.540c and 750.540d) to revise provisions that prohibit a person from making, possessing, or using equipment designed to fraudulently avoid lawful charges for telecommunications service. The bill would delete the existing provisions and replace them as follows.

The bill would prohibit the manufacture, possession, delivery, offer of delivery, or advertisement of a counterfeit telecommunications device, or of an authentic telecommunications device that a person intended to be used (or knew or had reason to know would be used) for: 1) obtaining or attempting to obtain telecommunications service with the intent to avoid (or aid or abet or cause another to avoid) any lawful charge for the service in violation of the provisions of House Bill 5752; or 2) concealing the existence or place of origin or destination of any telecommunications service. Further, the bill would prohibit the delivery, offer of delivery, or advertisement of plans, instructions, or materials for manufacture of such a device for those uses.

Penalties. A violation would be a felony, punishable by imprisonment for up to four years, a fine of up to \$2,000, or both.

House Bill 5750 would amend the penal code (MCL 750.540g) to prohibit an officer, shareholder, partner, employee, agent, or independent contractor of a telecommunications company from knowingly and without authority using or diverting telecommunications services for his or her own benefit or for the benefit of another person.

Penalties for violations of the bill would be based on the value of the telecommunication services used or diverted, as follows:

* A violation involving less than \$200 would be a misdemeanor punishable by imprisonment for up to 93 days, a fine of up to \$500 (or three times the total value of the telecommunications services used or diverted,

whichever was greater), or both a fine and imprisonment.

* A violation involving an amount of from \$200 to \$1,000, or a violation involving less than \$200 by a person with a prior conviction, would be a misdemeanor punishable by imprisonment for up to one year, a fine of up to \$2,000 (or three times the total value of the telecommunications services used or diverted, whichever was greater), or both a fine and imprisonment.

* A violation involving an amount of from \$1,000 to \$20,000, a violation involving less than \$200 by a person with two prior convictions, or a violation involving an amount from \$200 to \$1,000 by a person with one prior conviction, would be a felony punishable by imprisonment for up to five years, a fine of up to \$10,000 (or three times the total value of the telecommunications services used or diverted, whichever was greater), or both a fine and imprisonment.

* A violation involving an amount of \$20,000 or more, a violation involving less than \$200 by a person with three or more prior conviction, a violation involving an amount from \$200 to \$1,000 by a person with two or more prior convictions, or a violation involving an amount from \$1,000 to \$20,000 by a person with one prior conviction, would be a felony punishable by imprisonment for up to ten years, a fine of up to three times the total value of the telecommunications services used or diverted, or both.

The value of telecommunications services used or diverted in separate incidents under a scheme within one year could be aggregated to determine the penalties that would apply.

If the prosecutor intended to seek an enhanced sentence based upon prior convictions, such prior convictions would have to be listed on the complaint and information. The existence of a prior conviction would be determined by the court, without a jury, at sentencing. Evidence of prior convictions could include a copy of a judgment of conviction, a transcript of a prior relevant criminal proceeding, a presentence report, or the defendant's statement.

House Bill 5749 would amend the forfeiture provisions of the Revised Judicature Act (MCL 600.4701) to include the crimes created by House Bills 5748, 5750, and 5751 within the list of crimes for which the forfeiture of property alleged to be used in the crime may be sought by prosecutors.

House Bill 5753 would amend the Code of Criminal Procedure (MCL 762.10a) to specify that a violation of the provisions of House Bills 5750 or 5752 could be prosecuted in either the jurisdiction in which the telecommunication service originated or terminated, or in the jurisdiction that included the billing address for the service.

Tie-bars. All the bills are tie-barred to each other, except that House Bill 5748 is tie-barred to itself and 5749 is tie-barred to itself, but neither is tie-barred to House Bill 5752.

FISCAL IMPLICATIONS:

The House Fiscal Agency says the court costs and revenues from monetary penalties established under House Bills 5748 and 5755 are indeterminate and would depend on the number of cases of this type that were tried and convicted under these bills' provisions. In addition, correctional costs under these bills would similarly be dependent on the number of persons sentenced to prison and the lengths of those sentences. The agency says House Bills 5749, 5753, and 5754 would not affect state or local budget expenditures. Fiscal information on House Bills 5750, 5751, and 5752 is not available. (5-6-96)

ARGUMENTS:

For:

The bills would prepare Michigan for the information age in the twenty-first century by updating its laws governing criminal activities involving computers, computer systems, telecommunications devices, and other high-technology applications used widely by businesses and individuals. Current laws governing computer and telecommunications crimes were written over 15 years ago and do not reflect recent advances in technology which have transformed the way in which information is electronically collected, stored, and used--and, more frequently, become vulnerable to the tactics of criminal "hackers" and high-tech counterfeiters. In fact, persons with the right equipment and know-how are sometimes able to decipher special entry codes that provide access to private computer systems, and once inside they can steal valuable information, transfer financial assets to other accounts, or even sabotage a system by inserting a computer "virus" into it that is capable of destroying records or other data. In other instances, criminals will steal equipment used by cable or satellite television companies, phone companies, or other owners of high-technology services and manufacture counterfeit equipment that is then sold to others willing to pay a one-time fee for unlimited services. Some people estimate this type of criminal

activity costs companies billions of dollars annually in stolen assets and lost revenue. The language in the bills has been carefully drafted to ensure it would not soon become obsolete due to future advances in computer and telecommunications technology, and definitions are written so as to cover a broad range of computer and telecommunications equipment, devices, codes, and other high-technology items. In addition, the bills would address illegal activities in which the use of computers or telecommunications is merely incidental to the crimes involved, such as child pornography, tax code violations, or welfare fraud.

For:

The bills propose adopting penalties for high-tech crimes similar to the penalties that apply to crimes of a similar nature that don't involve use of computers or telecommunications. For instance, a conviction for a first-time violation that involved less than \$200 under the bills would result in a misdemeanor, punishable by up to 93 days in jail, up to the greater of a \$500 fine or three times the total amount involved in the crime, or both. As the amount of money involved with a crime or the frequency of violations increased, so would potential fines and jail terms--with the possibility for sentences involving up to ten years' imprisonment and up to three times the total amount involved or \$20,000, whichever was greater, or some combination of these. Considering the huge amounts of money often involved in high-tech crimes, the bills both would send a message of deterrence to would-be violators as well as give prosecutors and sentencing judges the ability to recoup financial losses for victims of such crimes. In addition, House Bill 5749 would subject the assets of persons suspected of involvement in such crimes to forfeiture under the Revised Judicature Act.

Against:

The bills may pose a threat to innocent users of the so-called "information superhighway," which is the network of computer and telecommunications systems that links individuals and businesses to each other the world over. For instance, under House Bill 5847 it would be a rebuttable presumption, with certain exceptions, that someone was either not authorized or had exceeded authorization from the owner or operator of a computer system to gain access to that system. This means someone could be "surfing the Net" (i.e., browsing for information on the Internet) and inadvertently find themselves inside a closed system due to some coincidental sequence of commands they made, and--before they were aware of this and could exit the system--find themselves facing a criminal charge that presumed they were doing something illegally. They would have to prove they accidentally stumbled into the system, which could be difficult and costly. Also,

House Bill 5748 could be challenged on constitutional grounds (despite language added to it in the House Commerce Committee stating that it would not prohibit First Amendment free-speech rights) since it would prohibit someone from "knowingly creating the opportunity for an unknowing and unwanted insertion or attachment" of computer-related instructions. Thus, a publication that specialized in providing computer users "inside information" about how computer systems operate could be held liable for criminal penalties simply because it made it possible for someone else to use information intended to be used for good purposes for a criminal use.

POSITIONS:

The Department of State Police supports the bills. (5-2-96)

The Michigan Computer Crime Task Force supports the bills. (5-2-96)

The Michigan Cable Telecommunications Association supports the bills. (5-3-96)

The Telephone Association of Michigan supports the bills. (5-3-96)

GTE supports the bills. (5-3-96)

Ameritech supports the bills. (5-2-96)

AT&T Wireless supports the bills. (5-3-96)

The American Civil Liberties Union has not yet taken a position on the bills. (5-2-96)

■ 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.