

**SUBSTITUTE FOR
HOUSE BILL NO. 5186**

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; and to prescribe penalties,"

by amending section 7 (MCL 752.797), as amended by 1996 PA 326.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) A person who violates ~~this act~~ SECTION 4 is
2 guilty of a crime as follows:

3 (a) If the violation involves an aggregate amount of less
4 than \$200.00, the person is guilty of a misdemeanor punishable by
5 imprisonment for not more than 93 days or a fine of not more than
6 \$500.00 or 3 times the aggregate amount, whichever is greater, or
7 both imprisonment and a fine.

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

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

7 (ii) The person violates this act and has a prior
8 conviction. ~~for committing or attempting to commit a violation~~
9 ~~of this act.~~

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

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

16 (ii) The person ~~violates this act and~~ has 2 prior
17 convictions. ~~for violating this act.~~

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

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

24 (ii) The person ~~violates this act and~~ has 3 or more prior
25 convictions. ~~for violating this act.~~

26 (2) A PERSON WHO VIOLATES SECTION 5 IS GUILTY OF A CRIME AS
27 FOLLOWS:

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1 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), THE PERSON IS
2 GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5
3 YEARS OR A FINE OF NOT MORE THAN \$10,000.00, OR BOTH.

4 (B) IF THE PERSON HAS A PRIOR CONVICTION, THE PERSON IS
5 GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN
6 10 YEARS OR A FINE OF NOT MORE THAN \$50,000.00, OR BOTH.

7 (3) A PERSON WHO VIOLATES SECTION 6 IS GUILTY OF A CRIME AS
8 FOLLOWS:

9 (A) IF THE CRIME COMMITTED OR ATTEMPTED IS A MISDEMEANOR
10 WITH A MAXIMUM TERM OF IMPRISONMENT OF 1 YEAR OR LESS, THE PERSON
11 IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT
12 MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$5,000.00, OR BOTH.

13 (B) IF THE CRIME COMMITTED OR ATTEMPTED IS A MISDEMEANOR
14 WITH A MAXIMUM TERM OF IMPRISONMENT OF AT LEAST 1 YEAR BUT LESS
15 THAN 2 YEARS, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY
16 IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
17 \$5,000.00, OR BOTH.

18 (C) IF THE CRIME COMMITTED OR ATTEMPTED IS A FELONY WITH A
19 MAXIMUM TERM OF IMPRISONMENT OF AT LEAST 2 YEARS BUT LESS THAN 4
20 YEARS, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISON-
21 MENT FOR NOT MORE THAN 4 YEARS OR A FINE OF NOT MORE THAN
22 \$5,000.00, OR BOTH.

23 (D) IF THE CRIME COMMITTED OR ATTEMPTED IS A FELONY WITH A
24 MAXIMUM TERM OF IMPRISONMENT OF AT LEAST 4 YEARS BUT LESS THAN 10
25 YEARS, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISON-
26 MENT FOR NOT MORE THAN 7 YEARS OR A FINE OF NOT MORE THAN
27 \$5,000.00, OR BOTH.

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1 (E) IF THE CRIME COMMITTED IS A FELONY PUNISHABLE BY A
2 MAXIMUM TERM OF IMPRISONMENT OF AT LEAST 10 YEARS BUT LESS THAN
3 20 YEARS, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRIS-
4 ONMENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN
5 \$10,000.00, OR BOTH.

6 (F) IF THE CRIME COMMITTED IS A FELONY PUNISHABLE BY A MAXI-
7 MUM TERM OF IMPRISONMENT OF AT LEAST 20 YEARS OR FOR LIFE, THE
8 PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
9 MORE THAN 20 YEARS OR A FINE OF NOT MORE THAN \$20,000.00, OR
10 BOTH.

11 (4) THE COURT MAY ORDER THAT A TERM OF IMPRISONMENT IMPOSED
12 UNDER SUBSECTION (3) BE SERVED CONSECUTIVELY TO AND PRECEDING ANY
13 TERM OF IMPRISONMENT IMPOSED FOR CONVICTION OF THE UNDERLYING
14 OFFENSE.

15 (5) ~~(2)~~ If the prosecuting attorney intends to seek an
16 enhanced sentence UNDER SECTION 4 OR SECTION 5 based upon the
17 defendant having a prior conviction, the prosecuting attorney
18 shall include on the complaint and information a statement list-
19 ing that prior conviction. The existence of the defendant's
20 prior conviction shall be determined by the court, without a
21 jury, at sentencing. The existence of a prior conviction may be
22 established by any evidence relevant for that purpose, including,
23 but not limited to, 1 or more of the following:

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

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

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1 (c) Information contained in a presentence report.

2 (d) The defendant's statement.

3 (3) It is a rebuttable presumption IN A PROSECUTION FOR A
4 VIOLATION OF SECTION 5 that the person did not have authorization
5 from the owner, system operator, or other person who has author-
6 ity from the owner or system operator to grant permission to
7 access the computer program, computer, computer system, or com-
8 puter network or has exceeded authorization unless 1 or more of
9 the following circumstances existed at the time of access:

10 (a) Written or oral permission was granted by the owner,
11 system operator, or other person who has authority from the owner
12 or system operator to grant permission of the accessed computer
13 program, computer, computer system, or computer network.

14 (b) The accessed computer program, computer, computer
15 system, or computer network had a pre-programmed access procedure
16 that would display a bulletin, command, or other message before
17 access was achieved that a reasonable person would believe iden-
18 tified the computer program, computer, computer system, or com-
19 puter network as within the public domain.

20 (c) Access was achieved without the use of a set of instruc-
21 tions, code, or computer program that bypasses, defrauds, or oth-
22 erwise circumvents the pre-programmed access procedure for the
23 computer program, computer, computer system, or computer
24 network.

25 (6) AS USED IN THIS SECTION, "PRIOR CONVICTION" MEANS A VIO-
26 LATION OR ATTEMPTED VIOLATION OF THIS ACT OR A SUBSTANTIALLY

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1 SIMILAR LAW OF THE UNITED STATES, ANOTHER STATE, OR A POLITICAL
2 SUBDIVISION OF ANOTHER STATE.

3 Enacting section 1. This amendatory act takes effect July
4 1, 2000.

5 Enacting section 2. This amendatory act does not take
6 effect unless all of the following bills of the 90th Legislature
7 are enacted into law:

8 (a) House Bill No. 5184.

9 (b) House Bill No. 5185.

10 (c) House Bill No. 5187.