

SENATE 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.

**HB 5186, As Passed Senate, May 30, 2000**

House Bill No. 5186

2

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:

**HB 5186, As Passed Senate, May 30, 2000**

House Bill No. 5186

3

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 UNDERLYING CRIME IS A MISDEMEANOR OR A FELONY  
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 UNDERLYING CRIME IS A MISDEMEANOR OR A FELONY  
14 WITH A MAXIMUM TERM OF IMPRISONMENT OF MORE THAN 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 UNDERLYING CRIME IS A MISDEMEANOR OR A FELONY  
19 WITH A MAXIMUM TERM OF IMPRISONMENT OF 2 YEARS OR MORE BUT LESS  
20 THAN 4 YEARS, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY  
21 IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A FINE OF NOT MORE THAN  
22 \$5,000.00, OR BOTH.

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

**HB 5186, As Passed Senate, May 30, 2000**

House Bill No. 5186

4

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

6 (F) IF THE UNDERLYING CRIME IS A FELONY PUNISHABLE BY A MAX-  
7 IMUM TERM OF IMPRISONMENT OF 20 YEARS OR MORE 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 ANY TERM OF  
13 IMPRISONMENT IMPOSED FOR CONVICTION OF THE UNDERLYING OFFENSE.

14 (5) ~~(2)~~ If the prosecuting attorney intends to seek an  
15 enhanced sentence UNDER SECTION 4 OR SECTION 5 based upon the  
16 defendant having a prior conviction, the prosecuting attorney  
17 shall include on the complaint and information a statement list-  
18 ing that prior conviction. The existence of the defendant's  
19 prior conviction shall be determined by the court, without a  
20 jury, at sentencing. The existence of a prior conviction may be  
21 established by any evidence relevant for that purpose, including,  
22 but not limited to, 1 or more of the following:

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

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

26 (c) Information contained in a presentence report.

**HB 5186, As Passed Senate, May 30, 2000**

House Bill No. 5186

5

1 (d) The defendant's statement.

2 (6) ~~(3)~~ It is a rebuttable presumption IN A PROSECUTION  
3 FOR A VIOLATION OF SECTION 5 that the person did not have autho-  
4 rization from the owner, system operator, or other person who has  
5 authority from the owner or system operator to grant permission  
6 to access the computer program, computer, computer system, or  
7 computer network or has exceeded authorization unless 1 or more  
8 of the following circumstances existed at the time of access:

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

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

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

24 (7) THE COURT MAY ORDER A PERSON CONVICTED OF VIOLATING THIS  
25 ACT TO REIMBURSE THIS STATE OR A LOCAL UNIT OF GOVERNMENT OF THIS  
26 STATE FOR EXPENSES INCURRED IN RELATION TO THE VIOLATION IN THE  
27 SAME MANNER THAT EXPENSES MAY BE ORDERED TO BE REIMBURSED UNDER

**HB 5186, As Passed Senate, May 30, 2000**

House Bill No. 5186 as amended March 15 and 30, 2000

6

1 SECTION 1F OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927  
2 PA 175, MCL 769.1F.

3 (8) AS USED IN THIS SECTION, "PRIOR CONVICTION" MEANS A VIO-  
4 LATION OR ATTEMPTED VIOLATION OF SECTION 145D OF THE MICHIGAN  
5 PENAL CODE, 1931 PA 328, MCL 750.145D, OR THIS ACT OR A SUBSTAN-  
6 TIALY SIMILAR LAW OF THE UNITED STATES, ANOTHER STATE, OR A  
7 POLITICAL SUBDIVISION OF ANOTHER STATE.

8 Enacting section 1. This amendatory act takes effect 90  
9 days after the date it is enacted.

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

13 (a) Senate Bill No. 893.

14 (b) Senate Bill No. 894.

15

16

17 (c) House Bill No. 5185.

18 (d) House Bill No. 5187.