FRAUDULENT ACCESS TO COMPUTERS, COMPUTER SYSTEMS, AND COMPUTER NETWORKS

Act 53 of 1979

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.

History: 1979, Act 53, Eff. Mar. 27, 1980 ;-- Am. 2004, Act 242, Imd. Eff. July 21, 2004

The People of the State of Michigan enact:

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752.791 Meanings of words and phrases.

Sec. 1.

For the purposes of this act, the words and phrases defined in sections 2 and 3 have the meanings ascribed to them in those sections.

History: 1979, Act 53, Eff. Mar. 27, 1980

752.792 Definitions; A to D.

Sec. 2.

(1) "Access" means to instruct, communicate with, store data in, retrieve or intercept data from, or otherwise use the resources of a computer program, computer, computer system, or computer network.

(2) "Aggregate amount" means any direct or indirect loss incurred by a victim or group of victims including, but not limited to, the value of any money, property or service lost, stolen, or rendered unrecoverable by the offense, or any actual expenditure incurred by the victim or group of victims to verify that a computer program, computer, computer system, or computer network was not altered, acquired, damaged, deleted, disrupted, or destroyed by the access. The direct or indirect losses incurred in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of the loss involved in the violation of this act.

(3) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(4) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(5) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(6) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(7) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

History: 1979, Act 53, Eff. Mar. 27, 1980 ;-- Am. 1996, Act 326, Eff. Apr. 1, 1997 ;-- Am. 2000, Act 181, Eff. Sept. 18, 2000

752.793 Definitions; P to S.

Sec. 3.

(1) "Property" includes, but is not limited to, intellectual property, computer data, instructions or programs in either machine or human readable form, financial instruments or information, medical information, restricted personal information, or any other tangible or intangible item of value.

(2) "Services" includes, but is not limited to, computer time, data processing, storage functions, computer memory, or the unauthorized use of a computer program, computer, computer system, or computer network, or communication facilities connected or related to a computer, computer system, or computer network.

History: 1979, Act 53, Eff. Mar. 27, 1980 ;-- Am. 1996, Act 326, Eff. Apr. 1, 1997

752.794 Prohibited access to computer program, computer, computer system, or computer network.

Sec. 4.

A person shall not intentionally access or cause access to be made to a computer program, computer, computer system, or computer network to devise or execute a scheme or artifice with the intent to defraud or to obtain money, property, or a service by a false or fraudulent pretense, representation, or promise.

History: 1979, Act 53, Eff. Mar. 27, 1980 ;-- Am. 1996, Act 326, Eff. Apr. 1, 1997

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752.795 Prohibited conduct.

Sec. 5.

A person shall not intentionally and without authorization or by exceeding valid authorization do any of the following:

(a) Access or cause access to be made to a computer program, computer, computer system, or computer network to acquire, alter, damage, delete, or destroy property or otherwise use the service of a computer program, computer, computer system, or computer network.

(b) Insert or attach or knowingly create 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 is 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. This subdivision does not prohibit conduct protected under section 5 of article I of the state constitution of 1963 or under the first amendment of the constitution of the United States.

History: 1979, Act 53, Eff. Mar. 27, 1980 ;-- Am. 1996, Act 326, Eff. Apr. 1, 1997

752.795a Michigan children's protection registry act; violation.

Sec. 5a.

A violation of the Michigan children's protection registry act is a violation of this act.

History: Add. 2004, Act 242, Imd. Eff. July 21, 2004

752.796 Use of computer program, computer, computer system, or computer network to commit crime.

Sec. 6.

(1) A person shall not use a computer program, computer, computer system, or computer network to commit, attempt to commit, conspire to commit, or solicit another person to commit a crime.

(2) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.

(3) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

History: 1979, Act 53, Eff. Mar. 27, 1980 ;-- Am. 1996, Act 326, Eff. Apr. 1, 1997 ;-- Am. 2000, Act 179, Eff. Sept. 18, 2000

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752.796a Violation of MCL 752.795a; penalties; exception; defense; burden of proof; effective date of section.

Sec. 6a.

(1) A person who violates section 5a is guilty of the following:

(a) For the first violation, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $10,000.00, or both.

(b) For the second violation, a felony punishable by imprisonment for not more than 2 years or a fine of not more than $20,000.00, or both.

(c) For the third and any subsequent violation, a felony punishable by imprisonment for not more than 3 years or a fine of not more than $30,000.00, or both.

(2) A person does not violate section 5a because the person is an intermediary between the sender and recipient in the transmission of an electronic message that violates section 5a or unknowingly provides transmission of electronic messages over the person's computer network or facilities that violate section 5a.

(3) It is a defense to an action brought under this section that the communication was transmitted accidentally. The burden of proving that the communication was transmitted accidentally is on the sender.

(4) This section does not take effect until July 1, 2005.

History: Add. 2004, Act 242, Eff. July 1, 2005

752.796b Money, income, and property subject to seizure and forfeiture.

Sec. 6b.

All money and other income, including all proceeds earned but not yet received by a defendant from a third party as a result of the defendant's violations of this act, and all computer equipment, all computer software, and all personal property used in connection with any violation of this act known by the owner to have been used in violation of this act are subject to lawful seizure and forfeiture in the same manner as provided under sections 4701 to 4709 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

History: Add. 2004, Act 242, Imd. Eff. July 21, 2004

752.797 Penalties; prior convictions; presumption; reimbursement order; definition.

Sec. 7.

(1) A person who violates section 4 is guilty of a crime as follows:

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

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

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

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

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

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

(ii) The person has 2 prior convictions.

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

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

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

(2) A person who violates section 5 is guilty of a crime as follows:

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

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

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

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

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

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

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

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

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

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

(5) If the prosecuting attorney intends to seek an enhanced sentence under section 4 or section 5 based upon the defendant having a prior conviction, the prosecuting attorney shall include on the complaint and information a statement listing that prior conviction. The existence of the defendant's prior conviction shall be determined by the court, without a jury, at sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

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

(c) Information contained in a presentence report.

(d) The defendant's statement.

(6) It is a rebuttable presumption in a prosecution for a violation of section 5 that the person did not have authorization from the owner, system operator, or other person who has authority from the owner or system operator to grant permission to access the computer program, computer, computer system, or computer network

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or has exceeded authorization unless 1 or more of the following circumstances existed at the time of access:

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

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

(c) Access was achieved without the use of a set of instructions, code, or computer program that bypasses, defrauds, or otherwise circumvents the pre-programmed access procedure for the computer program, computer, computer system, or computer network.

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

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

History: 1979, Act 53, Eff. Mar. 27, 1980 ;-- Am. 1996, Act 326, Eff. Apr. 1, 1997 ;-- Am. 2000, Act 180, Eff. Sept. 18, 2000

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