

**SUBSTITUTE FOR
SENATE BILL NO. 927**

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 the title and sections 2, 3, 5, 6, and 7 (MCL 752.792, 752.793, 752.795, 752.796, and 752.797), the title as amended by 2004 PA 242, section 2 as amended by 2000 PA 181, sections 3 and 5 as amended by 1996 PA 326, section 6 as amended by 2000 PA 179, and section 7 as amended by 2000 PA 180.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to prohibit access to computers, computer systems, and
3 computer networks for certain fraudulent purposes; to prohibit
4 intentional and unauthorized access, alteration, damage,

1 **DISRUPTION, IMPAIRMENT**, and destruction of computers, computer
2 systems, computer networks, computer software programs, **VEHICLE**
3 **COMMUNICATIONS SYSTEMS, VEHICLE TELEMATICS SERVICES, MOTOR VEHICLE**
4 **ELECTRONIC SYSTEMS**, and data; to prohibit the sending of certain
5 electronic messages; and to prescribe penalties.

6 Sec. 2. (1) "Access" means to instruct, communicate with,
7 store data in, retrieve or intercept data from, or otherwise use
8 the resources of a computer program, computer, computer system, or
9 computer network.

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

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

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

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

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

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

16 **(8) "MECHANIC" MEANS A MOTOR VEHICLE MECHANIC, MASTER**
17 **MECHANIC, OR SPECIALTY MECHANIC AS THOSE TERMS ARE DEFINED IN**
18 **SECTION 2 OF THE MOTOR VEHICLE SERVICE AND REPAIR ACT, 1974 PA 300,**
19 **MCL 257.1302.**

20 **(9) "MOTOR VEHICLE" MEANS THAT TERM AS DEFINED IN SECTION 33**
21 **OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.33.**

22 **(10) "MOTOR VEHICLE DEALER" MEANS A DEALER AS THAT TERM IS**
23 **DEFINED IN SECTION 11 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,**
24 **MCL 257.11.**

25 **(11) "MOTOR VEHICLE ELECTRONIC SYSTEM" MEANS A COMPUTER,**
26 **COMPUTER SYSTEM, COMPUTER NETWORK, VEHICLE COMMUNICATION SYSTEM, OR**
27 **OTHER DEVICE OR SYSTEM DESIGNED TO IMPLEMENT, ASSIST, OR ENHANCE**

1 THE MANUAL OR AUTONOMOUS OPERATION OF A MOTOR VEHICLE, PROVIDE
2 VEHICLE TELEMATICS SERVICES, OR ENSURE THE SAFETY OF A MOTOR
3 VEHICLE OPERATOR OR PASSENGER.

4 (12) "MOTOR VEHICLE MANUFACTURER" MEANS A MANUFACTURER AS THAT
5 TERM IS DEFINED IN SECTION 28 OF THE MICHIGAN VEHICLE CODE, 1949 PA
6 300, MCL 257.28.

7 Sec. 3. (1) "PRIOR CONVICTION" MEANS A VIOLATION OR ATTEMPTED
8 VIOLATION OF SECTION 145D OF THE MICHIGAN PENAL CODE, 1931 PA 328,
9 MCL 750.145D, THIS ACT, OR A SUBSTANTIALLY SIMILAR LAW OF THE
10 UNITED STATES, ANOTHER STATE, OR A POLITICAL SUBDIVISION OF ANOTHER
11 STATE.

12 (2) ~~(1)~~—"Property" includes, but is not limited to,
13 intellectual property, computer data, instructions or programs in
14 either machine or human readable form, financial instruments or
15 information, medical information, restricted personal information,
16 or any other tangible or intangible item of value.

17 (3) "RESEARCHER" MEANS AN ENTITY OR AN EMPLOYEE OF AN ENTITY
18 PERFORMING DEVELOPMENTAL, OPERATIONAL, OR DIAGNOSTIC TESTING ON A
19 MOTOR VEHICLE, MOTOR VEHICLE ELECTRONIC SYSTEMS, OR VEHICLE
20 COMMUNICATIONS SYSTEMS IN THE ORDINARY COURSE OF THE ENTITY'S
21 BUSINESS.

22 (4) "SERIOUS IMPAIRMENT OF A BODY FUNCTION" MEANS THAT TERM AS
23 DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,
24 MCL 257.58C.

25 (5) ~~(2)~~—"Services" includes, but is not limited to, computer
26 time, data processing, storage functions, computer memory, or the
27 unauthorized use of a computer program, computer, computer system,

1 or computer network, or communication facilities connected or
2 related to a computer, computer system, or computer network.

3 Sec. 5. **(1)** A person shall not intentionally and without
4 authorization or by exceeding valid authorization do any of the
5 following:

6 (a) Access or cause access to be made to a computer program,
7 computer, computer system, or computer network to acquire, alter,
8 damage, delete, ~~or~~ **DISRUPT, IMPAIR**, destroy, ~~property~~ or otherwise
9 use **OR GAIN CONTROL OF** the service of a computer program, computer,
10 computer system, ~~or~~ computer network, **COMMUNICATION SYSTEM, OR**
11 **OTHER PROPERTY.**

12 (b) Insert or attach or knowingly create the opportunity for
13 an unknowing and unwanted insertion or attachment of a set of
14 instructions or a computer program into a computer program,
15 computer, computer system, or computer network, that is intended to
16 acquire, alter, damage, delete, disrupt, ~~or~~ **IMPAIR**, destroy,
17 ~~property~~ or otherwise use **OR GAIN CONTROL OF** the services of a
18 computer program, computer, computer system, or computer network,
19 **COMMUNICATIONS SYSTEM, OR OTHER PROPERTY.** This subdivision does not
20 prohibit conduct protected under section 5 of article I of the
21 state constitution of 1963 or under the first amendment of the
22 constitution of the United States.

23 **(C) ACCESS OR CAUSE ACCESS TO BE MADE TO A MOTOR VEHICLE**
24 **ELECTRONIC SYSTEM TO ALTER, DAMAGE, DELETE, DISRUPT, IMPAIR,**
25 **DESTROY, OR OTHERWISE USE OR CONTROL A MOTOR VEHICLE ELECTRONIC**
26 **SYSTEM, VEHICLE TELEMATICS SERVICES, OR VEHICLE COMMUNICATIONS**
27 **SYSTEMS IF THE PURPOSE OF THIS UNAUTHORIZED ACTION OR ACTIONS IS TO**

1 DAMAGE THE SYSTEMS OR SERVICES.

2 (D) ACCESS OR CAUSE ACCESS TO BE MADE TO A MOTOR VEHICLE
3 ELECTRONIC SYSTEM TO ALTER, DAMAGE, DELETE, DISRUPT, IMPAIR,
4 DESTROY, OR OTHERWISE USE OR CONTROL A MOTOR VEHICLE ELECTRONIC
5 SYSTEM, VEHICLE TELEMATICS SERVICES, OR VEHICLE COMMUNICATIONS
6 SYSTEMS IF THE PURPOSE OF THIS UNAUTHORIZED ACTION OR ACTIONS IS TO
7 INJURE PERSONS OR DAMAGE OTHER PROPERTY THROUGH UNAUTHORIZED
8 MOVEMENT OF A VEHICLE OR VEHICLES.

9 (2) THE FOLLOWING CONDUCT DOES NOT VIOLATE SUBSECTION (1) (C) :

10 (A) THE ACTIONS OF A MOTOR VEHICLE MANUFACTURER, A LICENSED
11 MOTOR VEHICLE DEALER, OR LICENSED MECHANICS OR THEIR EMPLOYEES OR
12 CONTRACTORS WHEN SERVICING, REPAIRING, UPDATING, OR UPGRADING A
13 MOTOR VEHICLE ELECTRONIC SYSTEM, VEHICLE COMMUNICATIONS SYSTEM, OR
14 VEHICLE TELEMATICS SERVICES IF THE PURPOSE OF THOSE ACTIONS IS NOT
15 TO INJURE THE VEHICLE OR OTHER PROPERTY OR PERSONS.

16 (B) THE ACTIONS OF A RESEARCHER IF THAT RESEARCH IS CONDUCTED
17 UNDER SAFE AND CONTROLLED CONDITIONS AND THE PURPOSE OF THE
18 RESEARCH IS TO TEST, REFINE, OR IMPROVE A MOTOR VEHICLE ELECTRONIC
19 SYSTEM, VEHICLE COMMUNICATIONS SYSTEM, OR VEHICLE TELEMATICS
20 SERVICES AND NOT TO DAMAGE THE CRITICAL HIGHWAY INFRASTRUCTURE OR
21 OTHER PROPERTY OR INJURE PEOPLE.

22 Sec. 6. (1) A person shall not use a computer program,
23 computer, computer system, ~~or~~ computer network, **COMMUNICATIONS**
24 **SYSTEM, OR MOTOR VEHICLE ELECTRONIC SYSTEM** to commit, attempt to
25 commit, conspire to commit, or solicit another person to commit a
26 crime.

27 (2) This section does not prohibit a person from being charged

1 with, convicted of, or punished for any other violation of law
2 committed by that person while violating or attempting to violate
3 this section, including the underlying offense.

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

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

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

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

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

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

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

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

1 (ii) The person has 2 prior convictions.

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

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

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

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

11 (A) IF IN VIOLATING SECTION 5, THE PERSON DID NOT, AND DID NOT
12 INTEND TO, ACQUIRE, ALTER, DAMAGE, DELETE, DISRUPT, IMPAIR,
13 DESTROY, OR OTHERWISE USE OR GAIN CONTROL OF THE SERVICE OF A
14 COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK,
15 COMMUNICATIONS SYSTEM, MOTOR VEHICLE ELECTRONIC SYSTEM, OR OTHER
16 PROPERTY, AND THE EFFECT OF THE VIOLATION CAN BE REVERSED OR CURED
17 WITHOUT INJURY OR DAMAGE, THE PERSON IS GUILTY OF A MISDEMEANOR
18 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF
19 NOT MORE THAN \$500.00, OR BOTH.

20 (B) ~~(a) Except~~ IF SUBDIVISION (A) DOES NOT APPLY AND EXCEPT as
21 provided in ~~subdivision (b)~~, SUBDIVISION (C) OR (D), the person is
22 guilty of a felony punishable by imprisonment for not more than 5
23 years or a fine of not more than \$10,000.00, or both.

24 (C) ~~(b)~~ If the person has a prior conviction OTHER THAN A
25 CONVICTION UNDER SUBDIVISION (A), OR IF THE VIOLATION RESULTED IN
26 SERIOUS IMPAIRMENT OF A BODY FUNCTION, the person is guilty of a
27 felony punishable by imprisonment for not more than 10 years or a

1 fine of not more than \$50,000.00, or both.

2 **(D) IF THE VIOLATION RESULTED IN DEATH, THE PERSON IS GUILTY**
3 **OF A FELONY PUNISHABLE BY IMPRISONMENT FOR LIFE OR ANY TERM OF**
4 **YEARS.**

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

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

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

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

21 (d) If the underlying crime is a felony with a maximum term of
22 imprisonment of 4 years or more but less than 10 years, the person
23 is guilty of a felony punishable by imprisonment for not more than
24 7 years or a fine of not more than \$5,000.00, or both.

25 (e) If the underlying crime is a felony punishable by a
26 maximum term of imprisonment of 10 years or more but less than 20
27 years, the person is guilty of a felony punishable by imprisonment

1 for not more than 10 years or a fine of not more than \$10,000.00,
2 or both.

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

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

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

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

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

21 (c) Information contained in a presentence report.

22 (d) The defendant's statement.

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

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

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

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

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

17 (7) The court may order a person convicted of violating this
18 act to reimburse this state or a local unit of government of this
19 state for expenses incurred in relation to the violation in the
20 same manner that expenses may be ordered to be reimbursed under
21 section 1f of chapter IX of the code of criminal procedure, 1927 PA
22 175, MCL 769.1f.

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

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.