

Act No. 333
Public Acts of 1996
Approved by the Governor
June 25, 1996
Filed with the Secretary of State
June 26, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Byl, Dalman, Goschka, Walberg, Horton, Hammerstrom, Bodem, Voorhees, Law, Jellema and Perricone

ENROLLED HOUSE BILL No. 5755

AN ACT to amend Act No. 328 of the Public Acts of 1931, entitled as amended "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," as amended, being sections 750.1 to 750.568 of the Michigan Compiled Laws, by adding section 540f.

The People of the State of Michigan enact:

Section 1. Act No. 328 of the Public Acts of 1931, as amended, being sections 750.1 to 750.568 of the Michigan Compiled Laws, is amended by adding section 540f to read as follows:

Sec. 540f. (1) Except as provided in subsection (2), a person who knowingly or intentionally publishes a telecommunications access device or counterfeit telecommunications access device with the intent that it be used or knowing or having reason to know that it will be used or is likely to be used to violate section 219a is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

(2) A person who violates subsection (1) and has a previous conviction for a violation of section 219a or 540c or former section 219c is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.

(3) If the prosecuting attorney intends to seek an enhanced sentence 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.
- (4) As used in this section:

(a) "Counterfeit telecommunications access device" means a telecommunications access device that is false, fraudulent, unlawful, not issued to a legitimate telecommunications access device subscriber account, or otherwise

invalid or that is expired, suspended, revoked, canceled, or otherwise terminated if notice of the expiration, suspension, revocation, cancellation, or termination has been sent to the telecommunications access device subscriber.

(b) "Publish" means to communicate information or make information available to 1 or more persons orally, in writing, or by means of any telecommunications. Publish includes but is not limited to communicating information on a computer bulletin board or similar system.

(c) "Telecommunications access device" means 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 as defined in section 157m that alone or with another telecommunications access device can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.

Section 2. This amendatory act shall take effect April 1, 1997.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) House Bill No. 5752.
- (b) House Bill No. 5753.
- (c) House Bill No. 5748.
- (d) House Bill No. 5749.
- (e) House Bill No. 5751.
- (f) House Bill No. 5754.
- (g) House Bill No. 5750.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.