

HOUSE BILL No. 5137

October 7, 2003, Introduced by Reps. Wojno, Accavitti, Tobocman, Sak, Farrah, Cheeks, Vagnozzi and Condino and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 540c (MCL 750.540c), as amended by 2002 PA
672.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 540c. (1) A person shall not assemble, develop,
2 manufacture, possess, deliver, offer to deliver, or advertise an
3 unlawful telecommunications access device or assemble, develop,
4 manufacture, possess, deliver, offer to deliver, or advertise a
5 telecommunications device intending to use those devices or to
6 allow the devices to be used to do any of the following or
7 knowing or having reason to know that the devices are intended to
8 be used to do any of the following:

9 (a) Obtain or attempt to obtain a telecommunications service
10 with the intent to avoid or aid or abet or cause another person

1 to avoid any lawful charge for the telecommunications service in
2 violation of section 219a.

3 (b) Conceal the existence or place of origin or destination
4 of any telecommunications service **with the intent to defraud any**
5 **person.**

6 (c) To receive, ~~disrupt,~~ decrypt, transmit, retransmit,
7 acquire, intercept, or facilitate the receipt, ~~disruption,~~
8 decryption, transmission, retransmission, acquisition, or
9 interception of any telecommunications service without the
10 express authority or actual consent of the telecommunications
11 service provider **and with the intent to defraud any person, or to**
12 **disrupt any telecommunications service without the express**
13 **authority or actual consent of the telecommunications service**
14 **provider.**

15 (2) A person shall not modify, alter, program, or reprogram a
16 telecommunications access device for the purposes described in
17 subsection (1).

18 (3) A person shall not deliver, offer to deliver, or
19 advertise plans, written instructions, or materials for the
20 manufacture, assembly, or development of an unlawful
21 telecommunications access device or for the manufacture,
22 assembly, or development of a telecommunications access device
23 that the person intends to be used or knows or has reason to know
24 will be used or is likely to be used to violate subsection (1).
25 As used in this subsection, "materials" includes any hardware,
26 cables, tools, data, computer software, or other information or
27 equipment used or intended for use in the manufacture, assembly,

1 or development of an unlawful telecommunications access device or
2 a telecommunications access device.

3 (4) A person who violates subsection (1), (2), or (3) is
4 guilty of a felony punishable by imprisonment for not more than 4
5 years or a fine of not more than \$2,000.00, or both. All fines
6 shall be imposed for each unlawful telecommunications access
7 device or telecommunications access device involved in the
8 offense. Each unlawful telecommunications access device or
9 telecommunications access device is considered a separate
10 violation.

11 (5) This section does not prohibit or restrict the possession
12 of radio receivers or transceivers by licensees of the federal
13 communications commission in the amateur radio service that are
14 intended primarily or exclusively for use in the amateur radio
15 service.

16 (6) Any unlawful telecommunications access device involved in
17 violation of this section is subject to forfeiture in the same
18 manner as provided in sections 4701 to 4709 of the revised
19 judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709,
20 and the court may order either of the following:

21 (a) The unlawful telecommunications access device be
22 destroyed or retained as provided under section 540d.

23 (b) The unlawful telecommunications access device be returned
24 to the telecommunications service provider if the device is owned
25 or controlled by the provider or disposed of as provided under
26 section 540d.

27 (7) The court shall order a person convicted of violating

1 subsection (1), (2), or (3) to make restitution in accordance
2 with section 1a of **chapter IX of** the code of criminal procedure,
3 1927 PA 175, MCL 769.1a.

4 (8) A violation of subsection (1), (2), or (3) is considered
5 to have occurred at the place where the person manufactures,
6 assembles, develops, or designs an unlawful telecommunications
7 access device or telecommunications access device, or the places
8 where the unlawful telecommunications access device or
9 telecommunications access device is sold or delivered to another
10 person.

11 (9) As used in this section and sections 540d, 540f, and
12 540g:

13 (a) "Deliver" means to actually or constructively sell, give,
14 loan, lease, or otherwise transfer a telecommunications access
15 device, unlawful telecommunications access device, and plans,
16 written instructions, or materials concerning the devices to
17 another person.

18 (b) "Telecommunications access device" ~~shall have the same~~
19 ~~meaning~~ **means that term as defined** in section 219a.

20 (c) "Telecommunications service" ~~shall have the same~~
21 ~~meaning~~ **means that term as defined** in section 219a.

22 (d) "Telecommunications service provider" ~~shall have the~~
23 ~~same meaning~~ **means that term as defined** in section 219a.

24 (e) "Telecommunications system" ~~shall have the same meaning~~
25 **means that term as defined** in section 219a.

26 (f) "Unlawful telecommunications access device" ~~shall have~~
27 ~~the same meaning~~ **means that term as defined** in section 219a.