

## UNAUTHORIZED USE OF A COMPUTER: REVISE TO ALLOW SPOUSE OR PARENT ACCESS

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**House Bill 4532**

**Sponsor: Rep. Tom McMillin**

**Committee: Judiciary**

**Complete to 1-18-12**

### **A SUMMARY OF HOUSE BILL 4532 AS INTRODUCED 4-12-11**

The bill would revise a provision that prohibits the unauthorized use of a computer, a computer program, or an email service so that it would not prohibit a person from using a computer, computer program, or email service of a spouse under certain conditions or accessing or using a computer, computer program, or email service of a child for whom the person has full or shared legal custody. The bill would apply retroactively to any criminal prosecution that had not yet resulted in a conviction as of the bill's effective date.

In general, computer hacking is illegal. With narrow exceptions, current law prohibits a person from intentionally and without authorization, or by exceeding valid authorization, accessing a 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. The law also prohibits a person from inserting or attaching or knowingly creating 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 intended to acquire, alter, damage, delete, destroy, property or otherwise use the services of a computer program.

House Bill 4532 would amend Section 5 of Public Act 53 of 1979 to specifically state that the above provision would not prohibit a person from accessing or using a computer, computer program, or electronic mail service of a spouse if all of the following conditions apply:

- The person and the spouse live in the same residence and the computer is not the property of a school, business, or other entity not owned by the person or the spouse.
- Force or coercion is not used to access the computer, computer program, or email service.
- The person does not damage, delete, or destroy the computer, computer program, email, or any email message.

In addition, the bill would say that the general prohibition against computer hacking would not prohibit a person from accessing or using a computer, computer program, or email service of his or her child if the person had full or shared legal custody of the child.

"Child" would be defined as the person's biological child, stepchild, or foster child who is less than 18 years of age.

The bill would specify that it was remedial and must be retroactively applied to any criminal prosecution under Section 5 that has not resulted in a conviction as of the bill's effective date.

MCL 752.795

#### **BACKGROUND INFORMATION:**

In 2010, a Rochester Hill's resident was charged with a felony under Section 5 of Public Act 53 of 1979 for reading his wife's emails on a computer in their home. The defendant subsequently filed appeals regarding the circuit court's order denying his motion to stay circuit court proceedings and an order denying his motion to quash the information and dismiss the case. Recently, the state Court of Appeals ruled that the criminal case could proceed at the trial court level. *People of the State of Michigan v Leon Jermane Walker*, Docket No. 304593 and 304702 (December 27, 2011)

#### **FISCAL IMPACT:**

To the extent that the bill's exemptions result in fewer felony convictions related to unauthorized computer access under MCL 752.795, it could reduce costs on state and local correctional systems. However, these impacts are likely to be negligible. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local incarceration in a county jail varies by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,200 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

As background, during calendar years 2008, 2009, and 2010, Michigan Department of Corrections statistical reports indicate there were a total of 16 felony convictions for violations or attempts to violate MCL 752.795. Eight of these resulted in felony probation sentences, three resulted in local jail sentences, and five resulted in some other sanction (e.g. delayed or suspended sentence). None of these convictions resulted in a sentence to the state prison system.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.