

SENATE BILL No. 927

April 28, 2016, Introduced by Senators KOWALL, HORN, SCHMIDT and WARREN and referred to the Committee on Judiciary.

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 sections 4 and 7 (MCL 752.794 and 752.797), section 4 as amended by 1996 PA 326 and section 7 as amended by 2000 PA 180.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) A person shall not intentionally access or cause
2 access to be made to a computer program, computer, computer system,
3 or computer network to devise or execute a scheme or artifice with
4 the intent to defraud or to obtain money, property, or a service by
5 a false or fraudulent pretense, representation, or promise.

1 (2) A PERSON SHALL NOT INTENTIONALLY ACCESS OR CAUSE ACCESS TO
2 BE MADE TO AN ELECTRONIC SYSTEM OF A MOTOR VEHICLE TO WILLFULLY
3 DESTROY, DAMAGE, IMPAIR, ALTER, OR GAIN UNAUTHORIZED CONTROL OF THE
4 MOTOR VEHICLE.

5 Sec. 7. (1) A person who violates section ~~4-4~~(1) is guilty of
6 a crime as follows:

7 (a) If the violation involves an aggregate amount of less than
8 \$200.00, the person is guilty of a misdemeanor punishable by
9 imprisonment for not more than 93 days or a fine of not more than
10 \$500.00 or 3 times the aggregate amount, whichever is greater, or
11 both imprisonment and a fine.

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

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

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

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

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

25 (ii) The person has 2 prior convictions.

26 (d) If any of the following apply, 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 3 times the aggregate amount, or both
2 imprisonment and a fine:

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

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

6 **(E) A PERSON WHO VIOLATES SECTION 4(2) IS GUILTY OF A FELONY**
7 **PUNISHABLE BY IMPRISONMENT FOR LIFE OR ANY TERM OF YEARS.**

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

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

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

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

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

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

27 (c) If the underlying crime is a misdemeanor or a felony with

1 a maximum term of imprisonment of 2 years or more but less than 4
2 years, the person is guilty of a felony punishable by imprisonment
3 for not more than 4 years or a fine of not more than \$5,000.00, or
4 both.

5 (d) If the underlying crime is a felony with a maximum term of
6 imprisonment of 4 years or more but less than 10 years, the person
7 is guilty of a felony punishable by imprisonment for not more than
8 7 years or a fine of not more than \$5,000.00, or both.

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

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

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

21 (5) If the prosecuting attorney intends to seek an enhanced
22 sentence under section 4 or section 5 based upon the defendant
23 having a prior conviction, the prosecuting attorney shall include
24 on the complaint and information a statement listing that prior
25 conviction. The existence of the defendant's prior conviction shall
26 be determined by the court, without a jury, at sentencing. The
27 existence of a prior conviction may be established by any evidence

1 relevant for that purpose, including, but not limited to, 1 or more
2 of the following:

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

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

5 (c) Information contained in a presentence report.

6 (d) The defendant's statement.

7 (6) It is a rebuttable presumption in a prosecution for a
8 violation of section 5 that the person did not have authorization
9 from the owner, system operator, or other person who has authority
10 from the owner or system operator to grant permission to access the
11 computer program, computer, computer system, or computer network or
12 has exceeded authorization unless 1 or more of the following
13 circumstances existed at the time of access:

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

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

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

1 (7) The court may order a person convicted of violating this
2 act to reimburse this state or a local unit of government of this
3 state for expenses incurred in relation to the violation in the
4 same manner that expenses may be ordered to be reimbursed under
5 section 1f of chapter IX of the code of criminal procedure, 1927 PA
6 175, MCL 769.1f.

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

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