

Act No. 557
Public Acts of 1996
Approved by the Governor
January 15, 1997
Filed with the Secretary of State
January 16, 1997

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

Introduced by Senator Schuette

ENROLLED SENATE BILL No. 981

AN ACT to amend section 540c of 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 by Act No. 329 of the Public Acts of 1996, being section 750.540c of the Michigan Compiled Laws; and to add section 540h.

The People of the State of Michigan enact:

Section 1. Section 540c of Act No. 328 of the Public Acts of 1931, as amended by Act No. 329 of the Public Acts of 1996, being section 750.540c of the Michigan Compiled Laws, is amended and section 540h is added to read as follows:

Sec. 540c. (1) A person shall not manufacture, possess, deliver, offer to deliver, or advertise a counterfeit telecommunications device or manufacture, possess, deliver, offer to deliver, or advertise a telecommunications device intending to use the telecommunications device or allow the telecommunications device to be used to do any of the following or knowing or having reason to know that the telecommunications device is intended to be used to do any of the following:

(a) Obtain or attempt to obtain telecommunications service with the intent to avoid or aid or abet or cause another person to avoid any lawful charge for telecommunications service in violation of section 219a.

(b) Conceal the existence or place of origin or destination of any telecommunications service.

(2) A person shall not deliver, offer to deliver, or advertise plans, written instructions, or materials for manufacture of a counterfeit telecommunications device or for manufacture of a telecommunications device that the person intends to be used or knows or has reason to know will be used or is likely to be used to violate subsection (1).

(3) A person who violates subsection (1) or (2) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

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

(5) A counterfeit telecommunications device used in violation of this section is subject to forfeiture in the same manner as provided in sections 4701 to 4709 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.4701 to 600.4709 of the Michigan Compiled Laws, and the court may order either of the following:

(a) The counterfeit telecommunications device be destroyed.

(b) The counterfeit telecommunications device be returned to the telecommunications service provider if the device is owned or controlled by the provider.

(6) As used in this section and sections 540d, 540f, and 540g:

(a) "Counterfeit telecommunications device" means a telecommunications device alone or with another telecommunications device that has been altered or programmed to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service without the authority or consent of the telecommunications service provider. Counterfeit telecommunications device includes but is not limited to a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of a telecommunications service without immediate detection.

(b) "Deliver" means to actually or constructively sell, give, loan, or otherwise transfer a telecommunications device, counterfeit telecommunications device, plans, written instructions, or materials to another person.

(c) "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method including but not limited to electronic, magnetic, optical, digital, or analog.

(d) "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications. Telecommunications device includes but is not limited to a computer, computer chip or circuit, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem or device that enables use of a modem, cables, converters, decoders, descramblers, satellite equipment, or other devices and equipment.

(e) "Telecommunications service" means providing, allowing, facilitating, or generating any form of telecommunications through the use of telecommunications devices or telecommunications access devices over a telecommunications system.

(f) "Unauthorized receipt of a telecommunications service" means the interception or receipt by any means of a telecommunications service without the specific authorization of the telecommunications service provider.

Sec. 540h. (1) Evidence of 1 or more of the following facts shall give rise to a rebuttable presumption that the conduct that violated section 540c was engaged in knowingly by the defendant with the intent to permit or obtain the unauthorized receipt of a telecommunications service:

(a) The presence on the defendant's property or in the actual possession of the defendant of 1 or more counterfeit telecommunications devices.

(b) The defendant installed an unauthorized connection or provided written instructions on such connection to another. An unauthorized connection does not include any of the following:

(i) An internal connection made by a person within his or her residence for the purpose of receiving authorized cable or satellite television service.

(ii) The physical connection of a cable or other device by a person located within his or her residence which was initially placed there by the cable or satellite television service provider.

(iii) The physical connection of a cable or other device by a person located within his or her residence which the person had reason to believe was an authorized connection.

(c) The telecommunications service provider placed written warning labels on its telecommunications devices explaining that tampering with a telecommunications device is a violation of law and a telecommunications device in the defendant's possession has been tampered with, altered, or modified to permit the unauthorized receipt of a telecommunications service.

(d) The defendant has published or advertised for sale a plan for a counterfeit telecommunications device and the publication or advertisement states or implies that the plan will enable the unauthorized receipt of a telecommunications service.

(e) The defendant has advertised for the sale of a counterfeit telecommunications device or kit for a counterfeit telecommunications device and the advertisement states or implies that the counterfeit telecommunications device or kit will permit the unauthorized receipt of a telecommunications service.

(f) The defendant has sold, leased, or offered for sale or lease a counterfeit telecommunications device, plan, or kit for a counterfeit telecommunications device and during the course of the transaction for sale or lease, the defendant stated or implied to the buyer that the counterfeit telecommunications device will permit the unauthorized receipt of a telecommunications service.

This act did not receive immediate effect and will take effect 90 days after final adjournment of the Legislature.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.