

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931
Chapter LXXXII
TELEGRAPH AND TELEPHONE

750.539 Divulging contents of messages.

Sec. 539.

Divulging contents of messages—Any person connected with a telegraph, telephone or messenger company, incorporated or unincorporated, operating a line of telegraph or telephone, or engaged in the business of receiving and delivering messages in this state, in any capacity, who wilfully divulges the contents or the nature of the contents of a communication entrusted to him for transmission or delivery, or who wilfully refuses or neglects to transmit or deliver the same, or who wilfully delays the transmission or delivery of the same, or who wilfully forges the name of the receiver to any receipt for any such message or communication or article of value entrusted to him by such company, with a view to injure, deceive or defraud the sender or intended receiver thereof, or any such telephone, telegraph or messenger company or to benefit himself or any other person, shall be guilty of a misdemeanor.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.539

Former Law: See section 1 of Act 68 of 1853, being CL 1857, § 5912; CL 1871, § 7768; How., § 9357; CL 1897, § 11386; CL 1915, § 15104; CL 1929, § 17047; and Act 187 of 1901.

750.539a Definitions.

Sec. 539a.

As used in sections 539a to 539i:

(1) "Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance but does not include a place to which the public or substantial group of the public has access.

(2) "Eavesdrop" or "eavesdropping" means to overhear, record, amplify or transmit any part of the private discourse of others without the permission of all persons engaged in the discourse. Neither this definition or any other provision of this act shall modify or affect any law or regulation concerning interception, divulgence or recording of messages transmitted by communications common carriers.

(3) "Surveillance" means to secretly observe the activities of another person for the purpose of spying upon and invading the privacy of the person observed.

(4) "Person" means any individual, partnership, corporation or association.

History: Add. 1966, Act 319, Eff. Mar. 10, 1967

750.539b Trespassing for purpose of eavesdropping or surveillance.

Sec. 539b.

A person who trespasses on property owned or under the control of any other person, to subject that person to eavesdropping or surveillance is guilty of a misdemeanor.

History: Add. 1966, Act 319, Eff. Mar. 10, 1967

750.539c Eavesdropping upon private conversation.

Sec. 539c.

Any person who is present or who is not present during a private conversation and who wilfully uses any device to eavesdrop upon the conversation without the consent of all parties thereto, or who knowingly aids, employs or procures another person to do the same in violation of this section, is guilty of a felony punishable by imprisonment in a state prison for not more than 2 years or by a fine of not more than \$2,000.00, or both.

History: Add. 1966, Act 319, Eff. Mar. 10, 1967

750.539d Installation, placement, or use of device for observing, recording, transmitting, photographing or eavesdropping in private place.

Sec. 539d.

(1) Except as otherwise provided in this section, a person shall not do either of the following:

(a) Install, place, or use in any private place, without the consent of the person or persons entitled to privacy in that place, any device for observing, recording, transmitting, photographing, or eavesdropping upon the sounds or events in that place.

(b) Distribute, disseminate, or transmit for access by any other person a recording, photograph, or visual image the person knows or has reason to know was obtained in violation of this section.

(2) This section does not prohibit security monitoring in a residence if conducted by or at the direction of the owner or principal occupant of that residence unless conducted for a lewd or lascivious purpose.

(3) A person who violates or attempts to violate this section is guilty of a crime as follows:

(a) For a violation or attempted violation of subsection (1)(a):

(i) Except as provided in subparagraph (ii), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(ii) If the person was previously convicted of violating or attempting to violate this section, the person 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.

(b) For a violation or attempted violation of subsection (1)(b), the person 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.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate subsection (1)(a) or (b).

History: Add. 1966, Act 319, Eff. Mar. 10, 1967 ;-- Am. 2004, Act 156, Eff. Sept. 1, 2004

750.539e Use or divulgence of information unlawfully obtained.

Sec. 539e.

Any person who uses or divulges any information which he knows or reasonably should know was obtained in violation of sections 539b, 539c or 539d is guilty of a felony, punishable by imprisonment in a state prison not more than 2 years, or by a fine of not more than \$2,000.00.

History: Add. 1966, Act 319, Eff. Mar. 10, 1967

750.539f Unlawful manufacture, possession or transfer of eavesdropping devices.

Sec. 539f.

Any person who manufactures, possesses or transfers to another any device, contrivance, machine or apparatus designed or commonly used for eavesdropping with the intent to unlawfully use or employ or allow the same to be so used or employed for eavesdropping, and knowing the same is intended to be so used, is guilty of a felony, punishable by imprisonment in a state prison not more than 2 years, or by a fine of not more than \$2,000.00, or both.

History: Add. 1966, Act 319, Eff. Mar. 10, 1967

750.539g Exceptions.

Sec. 539g.

Sections 539a to 539f do not prohibit any of the following:

(a) Eavesdropping or surveillance not otherwise prohibited by law by a peace officer of this state or of the federal government, or the officer's agent, while in the performance of the officer's duties.

(b) Hearing a communication transmitted by common carrier facilities by an employee of a communications common carrier when acting in the course of his or her employment.

(c) The recording by a public utility of telephone communications to it requesting service or registering a complaint by a customer, if a record of the communications is required for legitimate business purposes and the agents, servants, and employees of the public utility are aware of the practice or surveillance by an employee safeguarding property owned by, or in custody of, his or her employer on his or her employer's property.

(d) The routine monitoring, including recording, by employees of the department of corrections of telephone communications on telephones available for use by prisoners in state correctional facilities, if the monitoring is conducted in the manner prescribed by section 70 of Act No. 232 of the Public Acts of 1953, being section 791.270 of the Michigan Compiled Laws, and rules promulgated under that section.

History: Add. 1966, Act 319, Eff. Mar. 10, 1967 ;-- Am. 1993, Act 227, Eff. Nov. 22, 1993

750.539h Civil remedies.

Sec. 539h.

Any parties to any conversation upon which eavesdropping is practiced contrary to this act shall be entitled to the following civil remedies:

(a) An injunction by a court of record prohibiting further eavesdropping.

(b) All actual damages against the person who eavesdrops.

(c) Punitive damages as determined by the court or by a jury.

History: Add. 1966, Act 319, Eff. Mar. 10, 1967

750.539i Proof of installation of device as prima facie evidence of violation.

Sec. 539i.

In any criminal or civil action, proof of the installation in any private place of any device which may be used for the purposes of violating the provisions of this act shall be prima facie evidence of a violation of section 539d.

History: Add. 1966, Act 319, Eff. Mar. 10, 1967

750.539j Surveillance of or distribution, dissemination, or transmission of recording, photograph, or visual image of individual having reasonable expectation of privacy; prohibited conduct; violation as felony; penalty; exceptions; "surveil" defined.

Sec. 539j.

(1) A person shall not do any of the following:

(a) Surveil another individual who is clad only in his or her undergarments, the unclad genitalia or buttocks of another individual, or the unclad breasts of a female individual under circumstances in which the individual would have a reasonable expectation of privacy.

(b) Photograph, or otherwise capture or record, the visual image of the undergarments worn by another individual, the unclad genitalia or buttocks of another individual, or the unclad breasts of a female individual under circumstances in which the individual would have a reasonable expectation of privacy.

(c) Distribute, disseminate, or transmit for access by any other person a recording, photograph, or visual image the person knows or has reason to know was obtained in violation of this section.

(2) A person who violates or attempts to violate this section is guilty of a crime as follows:

(a) For a violation or attempted violation of subsection (1)(a):

(i) Except as provided in subparagraph (ii), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(ii) If the person was previously convicted of violating or attempting to violate subsection (1)(a), the person 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.

(b) For a violation or attempted violation of subsection (1)(b) or (c), the person 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) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate subsection (1)(a) to (c).

(4) This section does not prohibit security monitoring in a residence if conducted by or at the direction of the owner or principal occupant of that residence unless conducted for a lewd or lascivious purpose.

(5) This section does not apply to a peace officer of this state or of the federal government, or the officer's agent, while in the performance of the officer's duties.

(6) As used in this section, "surveil" means to subject an individual to surveillance as that term is defined in section 539a.

History: Add. 2004, Act 155, Eff. Sept. 1, 2004

750.539k Personal identifying information; prohibited conduct; exception; violation as felony; penalty; definitions.

Sec. 539k.

(1) A person who is not a party to a transaction that involves the use of a financial transaction device shall not secretly or surreptitiously photograph, or otherwise capture or record, electronically or by any other means, or distribute, disseminate, or transmit, electronically or by any other means, personal identifying information from the transaction without the consent of the individual.

(2) This section does not prohibit the capture or transmission of personal identifying information in the ordinary and lawful course of business.

(3) This section does not apply to a peace officer of this state, or of the federal government, or the officer's agent, while in the lawful performance of the officer's duties.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.

(5) A person who violates this section is guilty of a felony punishable by imprisonment as follows:

(a) Except as otherwise provided in subdivisions (b) and (c), by imprisonment for not more than 5 years or a fine of not more than \$25,000.00, or both.

(b) If the violation is a second violation of subsection (1), by imprisonment for not more than 10 years or a fine of not more than \$50,000.00, or both.

(c) If the violation is a third or subsequent violation of subsection (1), by imprisonment for not more than 15 years or a fine of not more than \$75,000.00, or both.

(6) As used in this section:

(a) "Financial transaction device" means that term as defined in section 157m.

(b) "Personal identifying information" means that term as defined in section 3 of the identity theft protection act, 2004 PA 452, MCL 445.63.

History: Add. 2004, Act 460, Eff. Mar. 1, 2005 ;-- Am. 2013, Act 213, Eff. Apr. 1, 2014

750.539l Tracking device; placement or installment on motor vehicle without consent; violation as misdemeanor; penalty; exemptions; inapplicability of subsection (2)(j); liability for damages; definitions.

Sec. 539l.

(1) A person who does any of the following is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:

(a) Installs or places a tracking device, or causes a tracking device to be installed or placed, in or on a motor vehicle without the knowledge and consent of the owner of that motor vehicle or, if the motor vehicle is leased, the lessee of that motor vehicle.

(b) Tracks the location of a motor vehicle with a tracking device without the knowledge and consent of either the owner or the authorized operator of that motor vehicle or, if the motor vehicle is leased, either the lessee or the authorized operator of that motor vehicle.

(c) While being the restrained party under a protective order, tracks the location of a motor vehicle operated or occupied by an individual protected under that order with a tracking device.

(d) While on probation or parole for an assaultive crime or a violation of section 81(3) or (4) or section 81a(2) or (3), tracks the location of a motor vehicle operated or occupied by a victim of that crime or by a family member of the victim of that crime without the knowledge and consent of that victim or family member.

(2) Subsection (1) does not apply to any of the following:

(a) The installation or use of any device that provides vehicle tracking for purposes of providing mechanical, operational, directional, navigation, weather, or traffic information to the operator of the vehicle.

(b) The installation or use of any device for providing emergency assistance to the operator or passengers of the vehicle under the terms and conditions of a subscription service, including any trial period of that subscription service.

(c) The installation or use of any device for providing missing vehicle assistance for the benefit of the owner or operator of the vehicle.

(d) The installation or use of any device to provide diagnostic services regarding the mechanical operation of a vehicle under the terms and conditions of a subscription service, including any trial period of the subscription service.

(e) The installation or use of any device or service that provides the lessee of the vehicle with clear notice that the vehicle may be tracked. For a lessor who installs a tracking device subsequent to the original vehicle manufacture, the notice shall be provided in writing with an acknowledgment signed by the lessee, regardless of whether the tracking device is original equipment, a retrofit, or an aftermarket product. The requirement for written acknowledgment placed upon the lessor is not imposed upon the manufacturer of the tracking device or the manufacturer of the vehicle.

(f) The installation or use of any tracking device by the parent or guardian of a minor on any vehicle owned or leased by that parent or guardian or the minor, and operated by the minor.

(g) The installation or use of a tracking device by a police officer while lawfully performing his or her duties as a police officer.

(h) The installation or use of a tracking device by a court officer appointed under section 8321 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8321, while lawfully performing his or her duties as a court officer.

(i) The installation or use of a tracking device by a person lawfully performing his or her duties as a bail agent as authorized under section 167b or as an employee or contractor of that bail agent lawfully performing his or her duties as an employee or contractor of a bail agent.

(j) Except as provided in subsection (3), the installation or use of a tracking device by a professional investigator or an employee of a professional investigator lawfully performing his or her duties as a professional investigator or employee of a professional investigator for the purpose of obtaining information with reference to any of the following:

- (i) Securing evidence to be used before a court, board, officer, or investigating committee.
- (ii) Crimes or wrongs done, threatened, or suspected against the United States or a state or territory of the United States or any other person or legal entity.
- (iii) Locating an individual known to be a fugitive from justice.
- (iv) Locating lost or stolen property or other assets that have been awarded by the court.
- (3) The exemption under subsection (2)(j) does not apply if either of the following applies:
 - (a) The professional investigator or the employee of the professional investigator is working on behalf of a client who is the restrained party under a protective order.
 - (b) The professional investigator or the employee of the professional investigator knows or has reason to know that the person seeking his or her investigative services, including the installation or use of a tracking device, is doing so to aid in the commission of a crime or wrong.
- (4) A person who illegally installs or uses a tracking device or a person described in subsection (2)(i) or (j) who installs or uses a tracking device is liable for all damages incurred by the owner or lessee of the motor vehicle caused by the installation or use of the tracking device.
- (5) As used in this section:
 - (a) "Assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.
 - (b) "Minor" means an individual less than 18 years of age.
 - (c) "Motor vehicle" means that term as defined in section 412.
 - (d) "Professional investigator" means a person licensed under the professional investigator licensure act, 1965 PA 285, MCL 338.821 to 338.851.
 - (e) "Protective order" means both of the following:
 - (i) An order entered under section 2950, 2950a, or 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950, 600.2950a, and 600.2950h, or under section 6b of chapter V or section 3(2)(o) of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 765.6b and 771.3, or under section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a, or under section 36(16) of the corrections code of 1953, 1953 PA 232, MCL 791.236.
 - (ii) A foreign protection order as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.
 - (f) "Tracking device" means any electronic device that is designed or intended to be used to track the location of a motor vehicle regardless of whether that information is recorded.

History: Add. 2010, Act 107, Eff. Aug. 1, 2010

750.540 Use of electronic medium of communication; prohibited conduct; violation as felony; penalty; definitions.

Sec. 540.

- (1) A person shall not willfully and maliciously cut, break, disconnect, interrupt, tap, or make any unauthorized connection with any electronic medium of communication, including the internet or a computer, computer program, computer system, or computer network, or a telephone.
- (2) A person shall not willfully and maliciously read or copy any message from any telegraph, telephone line, wire, cable, computer network, computer program, or computer system, or telephone or other electronic medium of communication that the person accessed without authorization.
- (3) A person shall not willfully and maliciously make unauthorized use of any electronic medium of communication, including the internet or a computer, computer program, computer system, or computer network, or telephone.
- (4) A person shall not willfully and maliciously prevent, obstruct, or delay by any means the sending, conveyance, or delivery of any authorized communication, by or through any telegraph or telephone line, cable, wire, or any electronic medium of communication, including the internet or a computer, computer program, computer system, or computer network.
- (5) A person who violates this section is guilty of a crime as follows:
 - (a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$1,000.00, or both.
 - (b) If the incident to be reported results in injury to or the death of any person, the person violating this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or

both.

(6) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Internet" means that term as defined in section 230 of title II of the communications act of 1934, 47 USC 230, and includes voice over internet protocol services.

(7) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.540 ;-- Am. 2006, Act 60, Eff. June 1, 2006 ;-- Am. 2006, Act 61, Eff. June 1, 2006

Former Law: See section 1 of Act 113 of 1893, being CL 1897, § 11637; CL 1915, § 15403; and CL 1929, § 17046.

750.540a Party line, emergency, defined; refusal to yield or surrender use of line; pretext; penalty.

Sec. 540a.

"Party line" as used in this section means a subscribers' line telephone circuit, consisting of 2 or more main telephone stations connected therewith, each station with a distinctive ring or telephone number. "Emergency" as used in this section means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

Any person who shall wilfully refuse to yield or surrender the use of a party line to another person for the purpose of permitting such other person to report a fire or summon police, medical or other aid in case of emergency, shall be deemed guilty of a misdemeanor.

Any person who shall ask for or request the use of a party line on pretext that an emergency exists, knowing that no emergency in fact exists, shall be deemed guilty of a misdemeanor.

History: Add. 1952, Act 56, Eff. Sept. 18, 1952

750.540b Notice contained in telephone directory, printing; exception.

Sec. 540b.

On and after the ninetieth day following the effective date of this amendment, every telephone directory thereafter distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offense provided for in section 540a, such notice to be printed in type which is not smaller than any other type on the same page and to be preceded by the word "warning" printed in type at least as large as the largest type on the same page: Provided, That the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories, nor to any telephone directory first distributed to the general public prior to the date specified above. Any person, firm or corporation providing telephone service which distributes or causes to be distributed in this state 1 or more copies of a telephone directory which is subject to the provisions of this section and which does not contain the notice herein provided for shall be guilty of a misdemeanor.

History: Add. 1952, Act 56, Eff. Sept. 18, 1952

750.540c Prohibited conduct with regard to telecommunications access device; "materials" defined; violation as felony; penalty; amateur radio service; forfeiture; order; definitions.

Sec. 540c.

(1) A person shall not assemble, develop, manufacture, possess, deliver, or use any type telecommunications access device with the intent to defraud by doing, but not limited to, any of the following:

- (a) Obtain or attempt to obtain a telecommunications service in violation of section 219a.
- (b) Conceal the existence or place of origin or destination of any telecommunications service.
- (c) To receive, disrupt, decrypt, transmit, retransmit, acquire, or intercept any telecommunications service without the express authority of the telecommunications service provider.

(2) A person shall not modify, alter, program, or reprogram a telecommunications access device to commit an act prohibited under subsection (1).

(3) A person shall not deliver or advertise plans, written instructions, or materials for the manufacture, assembly, or development of an unlawful telecommunications access device. As used in this subsection, "materials" includes any hardware, cables, tools, data, computer software, or other information or equipment used or intended for use in the manufacture, assembly, or development of any type of a telecommunications access device.

(4) A person who violates subsection (1), (2), or (3) 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. Each unlawful telecommunications access device or telecommunications access device is considered a separate violation.

(5) 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.

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

- (a) Destroyed or retained as provided under section 540d.
- (b) Returned to the telecommunications service provider if the device is owned or controlled by the provider or disposed of as provided under section 540d.

(7) The court shall order a person convicted of violating subsection (1), (2), or (3) to make restitution in accordance with section 1a of the code of criminal procedure, 1927 PA 175, MCL 769.1a.

(8) A violation of subsection (1), (2), or (3) is considered to have occurred at the place where the person manufactures, assembles, develops, or designs any type of telecommunications access device, or the places where the device is sold or delivered to another person.

(9) As used in this section and sections 540f and 540g:

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

(b) "Telecommunications access device" shall have the same meaning as in section 219a.

(c) "Telecommunications service" shall have the same meaning as in section 219a.

(d) "Telecommunications service provider" shall have the same meaning as in section 219a.

(e) "Telecommunications system" shall have the same meaning as in section 219a.

(f) "Unlawful telecommunications access device" shall have the same meaning as in section 219a.

History: Add. 1966, Act 75, Eff. Mar. 10, 1967 ;-- Am. 1982, Act 287, Imd. Eff. Oct. 7, 1982 ;-- Am. 1984, Act 375, Eff. Mar. 29, 1985 ;-- Am. 1996, Act 329, Eff. Apr. 1, 1997 ;-- Am. 1996, Act 557, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 672, Eff. Mar. 31, 2003 ;-- Am. 2004, Act 1, Imd. Eff. Feb. 12, 2004

750.540d Seizure of devices, plans, instructions, or materials.

Sec. 540d.

Any telecommunications access device, unlawful telecommunications access device, plans, instructions, or materials described in section 540c may be seized under warrant or incident to a lawful arrest. Upon conviction of a person for violation of section 540c, all of the following apply to the telecommunications device, counterfeit telecommunications device, plans, instructions, or materials involved in the violation that are seized under this section:

(a) The telecommunications access device or materials shall be returned to the lawful owner of that device or materials unless he or she was convicted of the violation or had prior actual knowledge of and consented to the violation or unless the lawful owner cannot be determined or located.

(b) The unlawful telecommunications access device, plans, or instructions and any telecommunications access device or materials not required to be returned to the lawful owner under subdivision (a) may be destroyed as contraband by the seizing law enforcement agency or retained and used by the seizing law enforcement agency for law enforcement purposes.

(c) Any telecommunications access device or materials not required to be returned to the lawful owner under subdivision (a) may be turned over by the seizing law enforcement agency to the telecommunications service provider in the territory in which the seizure occurred.

History: Add. 1966, Act 75, Eff. Mar. 10, 1967 ;-- Am. 1996, Act 329, Eff. Apr. 1, 1997 ;-- Am. 2002, Act 672, Eff. Mar. 31, 2003

750.540e Malicious use of service provided by telecommunications service provider.

Sec. 540e.

(1) A person who maliciously uses any service provided by a telecommunications service provider with intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy another person, or to disturb the peace and quiet of another person by doing any of the following is guilty of a misdemeanor:

(a) Threatening physical harm or damage to any person or property in the course of a conversation or message through the use of a telecommunications service or device.

(b) Falsely and deliberately reporting by message through the use of a telecommunications service or device that a person has been injured, has suddenly taken ill, has suffered death, or has been the victim of a crime or an accident.

(c) Deliberately refusing or failing to disengage a connection between a telecommunications device and another telecommunications device or between a telecommunications device and other equipment provided for the transmission of messages through the use of a telecommunications service or device.

(d) Using vulgar, indecent, obscene, or offensive language or suggesting any lewd or lascivious act in the course of a conversation or message through the use of a telecommunications service or device.

(e) Repeatedly initiating a telephone call and, without speaking, deliberately hanging up or breaking the telephone connection as or after the telephone call is answered.

(f) Making an unsolicited commercial telephone call that is received between the hours of 9 p.m. and 9 a.m. As used in this subdivision, "an unsolicited commercial telephone call" means a call made by a person or recording device, on behalf of a person, corporation, or other entity, soliciting business or contributions.

(g) Deliberately engaging or causing to engage the use of a telecommunications service or device of another person in a repetitive manner that causes interruption in telecommunications service or prevents the person from utilizing the person's telecommunications service or device.

(h) Engaging in any of the conduct prohibited under subdivisions (a) to (g) if the person and the other person are spouses or former spouses, have or have had a dating relationship, have or have had a child in common, or are residents or former residents of the same household. As used in this subdivision, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(2) A person who violates this section may be imprisoned for not more than 6 months or fined not more than \$1,000.00, or both. An offense is committed under this section if the communication either originates or terminates in this state and may be prosecuted at the place of origination or termination.

(3) As used in this section, "telecommunications service" and "telecommunications device" mean those terms as defined in section 540c.

History: Add. 1969, Act 328, Eff. Mar. 20, 1970 ;-- Am. 1988, Act 395, Eff. Mar. 30, 1989 ;-- Am. 2002, Act 577, Eff. Nov. 1, 2002 ;--

750.540f Telecommunications access device; use in violation of MCL 750.219a; misdemeanor; violation of subsection (1) and previous conviction as felony; prior conviction; definitions.

Sec. 540f.

(1) Except as provided in subsection (2), a person who knowingly or intentionally publishes a telecommunications access device or unlawful 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 \$500.00, 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. For purposes of imposing fines under this section for a repeat offender, the fines shall be imposed for each telecommunications access device and unlawful telecommunications access device involved in the violation.

(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) "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.

(b) "Telecommunications access device" shall have the same meaning as in section 219a.

(c) "Unlawful telecommunications access device" shall have the same meaning as in section 219a.

History: Add. 1996, Act 333, Eff. Apr. 1, 1997 ;-- Am. 2002, Act 672, Eff. Mar. 31, 2003

750.540g Telecommunications service; unauthorized use by officer, shareholder, partner, employee, agent, or independent contractor; use in separate incidents pursuant to scheme or course of conduct; enhanced sentence based on prior convictions.

Sec. 540g.

(1) An officer, shareholder, partner, employee, agent, or independent contractor of a telecommunications service provider who knowingly and without authority uses or diverts telecommunications services for his or her own benefit or to the benefit of another person is guilty of a crime as follows:

(a) If the total value of the telecommunications service used or diverted is less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the total value of the telecommunications service used or diverted, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the total value of the telecommunications service used or diverted, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service used or diverted is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or a local ordinance substantially corresponding to this section.

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the total value of the telecommunications service used or diverted, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service used or diverted is \$1,000.00 or more but less than \$20,000.00.

(ii) The person violates subdivision (b)(i) and has 1 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(ii).

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the telecommunications service used or diverted, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service used or diverted is \$20,000.00 or more.

(ii) The person violates subdivision (c)(i) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(ii).

(2) The values of telecommunications service used or diverted in separate incidents under a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of the telecommunications service used or diverted. The courts shall also include the value of all telecommunications services made available to the violator and others as a result of the violation.

(3) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before 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) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

History: Add. 1996, Act 328, Eff. Apr. 1, 1997 ;-- Am. 1998, Act 311, Eff. Jan. 1, 1999 ;-- Am. 2002, Act 672, Eff. Mar. 31, 2003

750.540h Intent to permit or obtain unauthorized receipt of telecommunications service.

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, acquisition, interception, disruption, decryption, transmission, or retransmission of a telecommunications service:

(a) The presence on the defendant's property or in the actual possession of the defendant of 1 or more unlawful telecommunications access 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 an authorized telecommunications 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 telecommunications 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 access 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, acquisition, interception, disruption, decryption, transmission, or retransmission of a telecommunications

service.

(d) The defendant has published or advertised for sale a plan for an unlawful telecommunications access device and the publication or advertisement states or implies that the plan will enable the unauthorized receipt, acquisition, interception, disruption, decryption, transmission, or retransmission of a telecommunications service.

(e) The defendant has advertised for the sale of an unlawful telecommunications access device or kit for an unlawful telecommunications access device and the advertisement states or implies that the unlawful telecommunications access device or kit will permit the unauthorized receipt, acquisition, interception, disruption, decryption, transmission, or retransmission of a telecommunications service.

(f) The defendant has sold, leased, or offered for sale or lease an unlawful telecommunications access device, plan, or kit for an unlawful telecommunications access device and during the course of the transaction for sale or lease, the defendant stated or implied to the buyer that the unlawful telecommunications access device will permit the unauthorized receipt, acquisition, interception, disruption, decryption, transmission, or retransmission of a telecommunications service.

(g) As used in this section, "unauthorized receipt, acquisition, interception, disruption, decryption, transmission, or retransmission of a telecommunications service" means to do any of those acts without the express authority of the telecommunications service provider.

History: Add. 1996, Act 557, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 672, Eff. Mar. 31, 2003