

[No. 180]

(HB 5186)

AN ACT 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; and to prescribe penalties," by amending section 7 (MCL 752.797), as amended by 1996 PA 326.

The People of the State of Michigan enact:

752.797 Penalties; prior convictions; presumption; reimbursement order; definition. [M.S.A. 28.529(7)]

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

(a) If the violation involves an aggregate amount of 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 aggregate amount, 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 aggregate amount, whichever is greater, or both imprisonment and a fine:

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

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

(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 aggregate amount, whichever is greater, or both imprisonment and a fine:

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

(ii) The person has 2 prior convictions.

(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 3 times the aggregate amount, or both imprisonment and a fine:

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

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

(2) A person who violates section 5 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 5 years or a fine of not more than \$10,000.00, or both.

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

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

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

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

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(c) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 2 years or more but less than 4 years, the person 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.

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

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

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

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

(5) If the prosecuting attorney intends to seek an enhanced sentence under section 4 or section 5 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.

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

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

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

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

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

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

Effective date.

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

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 90th Legislature are enacted into law:

- (a) Senate Bill No. 893.
- (b) Senate Bill No. 894.
- (c) House Bill No. 5185.
- (d) House Bill No. 5187.

This act is ordered to take immediate effect.

Approved June 20, 2000.

Filed with Secretary of State June 20, 2000.

Compiler's note: The bills referred to in enacting section 2 were enacted into law as follows:
Senate Bill No. 893 was filed with the Secretary of State June 20, 2000, and became P.A. 2000, No. 184, Eff. Sept. 18, 2000.
Senate Bill No. 894 was filed with the Secretary of State June 20, 2000, and became P.A. 2000, No. 185, Eff. Sept. 18, 2000.
House Bill No. 5185 was filed with the Secretary of State June 20, 2000, and became P.A. 2000, No. 179, Eff. Sept. 18, 2000.
House Bill No. 5187 was filed with the Secretary of State June 20, 2000, and became P.A. 2000, No. 181, Eff. Sept. 18, 2000.
