

# SENATE BILL No. 1315

June 22, 2004, Introduced by Senators BROWN, BISHOP, GOSCHKA, GARCIA, VAN WOERKOM, BIRKHOLZ and GEORGE and referred to the Committee on Technology and Energy.

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; and to prescribe penalties,"

by amending section 7 (MCL 752.797), as amended by 2000 PA 180, and by adding section 5a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 5a. (1) A person shall not install or attempt to  
2 install spyware into a computer program, computer, computer  
3 system, or computer network belonging to another person unless  
4 all of the following apply:

5           (a) The person provides his or her name and business address  
6 and a valid telephone number, e-mail address, or internet service  
7 provider address where he or she can be reached.

8           (b) If the spyware is to be installed on behalf of another

1 person, the person provides the name and business address and a  
2 valid telephone number, e-mail address, or internet service  
3 provider address of that other person.

4 (c) The person provides specific notice of the intent to  
5 install the spyware. The notice shall include a statement that  
6 instructions or software will be downloaded into the computer  
7 program, computer, computer system, or computer network, and how  
8 the instructions or software are intended to affect the operation  
9 of the computer program, computer, computer system, or computer  
10 network.

11 (d) If a fee is to be charged or may be incurred, the person  
12 specifically states that a fee is to be charged or may be  
13 incurred and the amount of the fee.

14 (e) If information is to be obtained from the computer  
15 program, computer, computer system, or computer network, the  
16 person specifically states the information that is to be  
17 obtained.

18 (f) If sexually explicit material will be displayed, a  
19 statement that sexually explicit material will be displayed.

20 (g) The notice provides a method by which the owner or person  
21 responsible for maintaining the computer program, computer,  
22 computer system, or computer network can refuse installation of  
23 the spyware and require that no further contact be made regarding  
24 the installation of spyware.

25 (h) The owner or person responsible for maintaining the  
26 computer program, computer, computer system, or computer network  
27 affirmatively grants the right to install the spyware.

1 (2) If the right to install spyware is authorized under this  
2 section, the person installing the spyware shall not exceed the  
3 nature or the scope of the authorization granted.

4 (3) A person shall not manufacture, create, distribute, or  
5 possess spyware to be used in violation of this section.

6 (4) A person shall not subsequently contact a person who has  
7 informed him or her under subsection (1)(g) that no further  
8 contact is to be made.

9 (5) Except as provided in subsection (6), as used in this  
10 section, "spyware" means computer instructions or software  
11 installed into a computer program, computer, computer system, or  
12 computer network for any of the following purposes:

13 (a) Monitoring the use of a computer program, computer,  
14 computer system, or computer network.

15 (b) Sending information about the use of a computer program,  
16 computer, computer system, or computer network to a remote  
17 computer or server or data collection site or point.

18 (c) Displaying an advertisement or causing an advertisement  
19 to be displayed in response to the use of a computer program,  
20 computer, computer system, or computer network.

21 (6) Spyware does not include any of the following:

22 (a) Computer instructions or software installed into a  
23 computer program, computer, computer system, or computer network  
24 by the manufacturer of the computer program, computer, computer  
25 system, or computer network and that is intended to facilitate  
26 ordinary and expected access to and use of the computer program,  
27 computer, computer system, or computer network.

1           (b) Except as otherwise provided in this section, computer  
2 instructions or software installed into a computer program,  
3 computer, computer system, or computer network by the owner of  
4 that computer program, computer, computer system, or computer  
5 network.

6           (c) Computer instructions or software installed into a  
7 computer program, computer, computer system, or computer network  
8 by a person maintaining a computer program, computer, computer  
9 system, or computer network on behalf of the owner of that  
10 computer program, computer, computer system, or computer network  
11 while acting within the scope of his or her authority.

12           (d) An internet service provider acting within the scope of  
13 his or her authority as an internet service provider.

14           (e) A person authorized by law to conduct criminal  
15 investigations while acting within the scope of his or her  
16 authority as an investigator.

17           (f) Instructions commonly known as cookies that are intended  
18 solely to facilitate recognition of the computer for internet  
19 access or internet use.

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

22           (a) If the violation involves an aggregate amount of less  
23 than \$200.00, the person is guilty of a misdemeanor punishable by  
24 imprisonment for not more than 93 days or a fine of not more than  
25 \$500.00 or 3 times the aggregate amount, whichever is greater, or  
26 both imprisonment and a fine.

27           (b) If any of the following apply, the person is guilty of a

1 misdemeanor punishable by imprisonment for not more than 1 year  
2 or a fine of not more than \$2,000.00 or 3 times the aggregate  
3 amount, whichever is greater, or both imprisonment and a fine:

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

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

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

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

14 (ii) The person has 2 prior convictions.

15 (d) If any of the following apply, the person is guilty of a  
16 felony punishable by imprisonment for not more than 10 years or a  
17 fine of not more than 3 times the aggregate amount, or both  
18 imprisonment and a fine:

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

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

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

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

27 (b) If the person has a prior conviction, the person is

1 guilty of a felony punishable by imprisonment for not more than  
2 10 years or a fine of not more than \$50,000.00, or both.

3 (3) A person who violates section 5a is guilty of a crime as  
4 follows:

5 (a) Except as provided in subdivisions (b) and (c), the  
6 person is guilty of a misdemeanor punishable by imprisonment for  
7 not more than 93 days or a fine of not more than \$1,000.00, or  
8 both.

9 (b) If the violation causes interruption of or interference  
10 to the use of the computer program, computer, computer system, or  
11 computer network, the person is guilty of a felony punishable by  
12 imprisonment for not more than 2 years or a fine of not more than  
13 \$5,000.00, or both.

14 (c) If the person has a prior conviction, the person is  
15 guilty of a felony punishable by imprisonment for not more than 4  
16 years or a fine of not more than \$10,000.00, or both.

17 (4) ~~(3)~~ A person who violates section 6 is guilty of a  
18 crime as follows:

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

23 (b) If the underlying crime is a misdemeanor or a felony with  
24 a maximum term of imprisonment of more than 1 year but less than  
25 2 years, the person is guilty of a felony punishable by  
26 imprisonment for not more than 2 years or a fine of not more than  
27 \$5,000.00, or both.

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

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

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

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

20 (5) ~~—(4)—~~ The court may order that a term of imprisonment  
21 imposed under subsection ~~—(3)—~~ (4) be served consecutively to any  
22 term of imprisonment imposed for conviction of the underlying  
23 offense.

24 (6) ~~—(5)—~~ If the prosecuting attorney intends to seek an  
25 enhanced sentence under section 4, ~~—or section—~~ 5, or 5a based  
26 upon the defendant having a prior conviction, the prosecuting  
27 attorney shall include on the complaint and information a

1 statement listing that prior conviction. The existence of the  
2 defendant's prior conviction shall be determined by the court,  
3 without a jury, at sentencing. The existence of a prior  
4 conviction may be established by any evidence relevant for that  
5 purpose, including, but not limited to, 1 or more of the  
6 following:

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

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

10 (c) Information contained in a presentence report.

11 (d) The defendant's statement.

12 (7) ~~(6)~~ It is a rebuttable presumption in a prosecution for  
13 a violation of section 5 that the person did not have  
14 authorization from the owner, system operator, or other person  
15 who has authority from the owner or system operator to grant  
16 permission to access the computer program, computer, computer  
17 system, or computer network or has exceeded authorization unless  
18 1 or more of the following circumstances existed at the time of  
19 access:

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

24 (b) The accessed computer program, computer, computer system,  
25 or computer network had a pre-programmed access procedure that  
26 would display a bulletin, command, or other message before access  
27 was achieved that a reasonable person would believe identified



1 the computer program, computer, computer system, or computer  
2 network as within the public domain.

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

8 (8) ~~—(7)—~~ The court may order a person convicted of violating  
9 this act to reimburse this state or a local unit of government of  
10 this state for expenses incurred in relation to the violation in  
11 the same manner that expenses may be ordered to be reimbursed  
12 under section 1f of chapter IX of the code of criminal procedure,  
13 1927 PA 175, MCL 769.1f.

14 (9) ~~—(8)—~~ As used in this section, "prior conviction" means a  
15 violation or attempted violation of section 145d of the Michigan  
16 penal code, 1931 PA 328, MCL 750.145d, or this act or a  
17 substantially similar law of the United States, another state, or  
18 a political subdivision of another state.