

House Bill 4802
Sponsor: Rep. James Koetje
Committee: Criminal Justice

Complete to 6-17-03

A SUMMARY OF HOUSE BILL 4802 AS INTRODUCED 6-3-03

The bill would amend the Michigan Penal Code to revise several provisions that pertain to prohibited conduct with regard to telecommunications access and to delete several redundant passages.

Under the bill, several references to “an unlawful telecommunications access device” would be changed to “any type of” telecommunications access device. The terms “unlawful telecommunications device” and “telecommunications access device” are defined in the code. The full definitions can be found at the end of the summary.

Further, a provision specifying prohibited conduct would be revised by deleting language that prohibits the offer to deliver or advertise an unlawful telecommunications access device or assemble, develop, manufacture, possess, deliver, offer to deliver, or advertise a telecommunications device intending to use those devices or to allow the devices to be used to do several listed unlawful actions. Instead, the bill would prohibit the assembly, development, manufacture, possession, delivery, or use of any type of telecommunications access device with the intent to defraud by doing any of the following (but not limited to these) actions:

- Obtain or attempt to obtain a telecommunications service in violation of the code’s provisions in Section 219a, which pertains to obtaining telecommunications services with the intent to avoid charge. (The bill would delete a phrase that included in the action the intent to avoid or aid or abet or cause another person to avoid any lawful charge for the telecommunications service.)

- Conceal the existence or place of origin or destination of any telecommunications service. (This provision is unchanged by the bill.)

- Receive, disrupt, decrypt, transmit, retransmit, acquire, or intercept any telecommunications service without the express authority of the telecommunications service provider. (The bill would delete the element of facilitating the receipt, disruption, decryption, transmission, retransmission, acquisition, or interception of the services, and would delete needing to have the actual consent of the telecommunications service provider.)

It is currently prohibited to deliver, offer to deliver, or advertise plans, written instructions, or materials for the manufacture, assembly, or development of an unlawful telecommunications access device. The bill would delete “offer to deliver”. The bill would also delete language from this provision that specifically prohibits the manufacture, assembly, or development of a

telecommunications access 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 the ban on using such devices unlawfully.

Currently, a person who violates this section of law is guilty of a felony punishable by imprisonment, a fine, or both, and the use of each telecommunications access device or unlawful telecommunications access device is considered a separate offense. However, the bill would strike a provision that specifies that all fines must be imposed for each unlawful telecommunications access device or telecommunications access device involved in the offense.

[The act defines “telecommunications access device” as any of the following:

- any instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or “financial transaction device” that alone or with another device can acquire, transmit, intercept, provide, receive, use, or otherwise facilitate the use, acquisition, interception, provision, reception, and transmission of any telecommunications service; or

- any type of instrument, device, machine, equipment, technology, or software that facilitates telecommunications or which is capable of transmitting, acquiring, intercepting, decrypting, or receiving any telephonic, electronic, data, Internet access, audio, video, microwave, or radio transmissions, signals, telecommunications, or services, including the receipt, acquisition, interception, transmission, retransmission, or decryption of all telecommunications, transmissions, signals, or services provided by or through any cable television, fiber optic, telephone, satellite, microwave, data transmission, radio, Internet based or wireless distribution network, system, or facility, or security module, smart card, software, computer chip, pager, cellular telephone, personal communications device, transponder, receiver, modem, electronic mechanism or other component, accessory, or part of any other device that is capable of facilitating the interception, transmission, retransmission, decryption, acquisition, or reception of any telecommunications, transmissions, signals, or services.

The act defines “unlawful telecommunications access device” as any of the following:

- a telecommunications access device that is false, fraudulent, unlawful, not issued to a legitimate telecommunications access device subscriber account, or otherwise invalid or that is expired, suspended, revoked, canceled, or otherwise terminated if notice of the expiration, suspension, revocation, cancellation, or termination has been sent to the telecommunications access device subscriber;

- any phones altered to obtain service without the express authority or actual consent of the telecommunications service provider, a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use, acquisition, interception, or receipt of a telecommunications service without the express authority or actual consent of the telecommunications service provider;

- any telecommunications access device that has been manufactured, assembled, altered, designed, modified, programmed, or reprogrammed, alone or in conjunction with another device, so as to be capable of facilitating the disruption, acquisition, interception, receipt, transmission,

retransmission, or decryption of a telecommunications service without the actual consent or express authorization of the telecommunications service provider, including any device, technology, product, service, equipment, computer software, or component or part, primarily distributed, sold, designed, assembled, manufactured, modified, programmed, reprogrammed, or used for the purpose of providing the unauthorized receipt of, transmission of, interception of, disruption of, decryption of, access to, or acquisition of any telecommunications service provided by any telecommunications service provider; or

- any type of instrument, device, machine, equipment, technology, or software that is primarily designed, assembled, developed, manufactured, sold, distributed, possessed, used, or offered, promoted, or advertised, for the purpose of defeating or circumventing any technology, device, or software, or any component or part, used by the provider, owner, or licensee of any telecommunications service or of any data, audio, or video programs or transmissions, to protect any such telecommunications, data, audio, or video services, programs, or transmissions from unauthorized receipt, acquisition, interception, access, decryption, disclosure, communication, transmission, or retransmission.]

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