

SENATE BILL No. 883

November 9, 1999, Introduced by Senators ROGERS, HAMMERSTROM, JOHNSON and EMMONS and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding section 145e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 145E. (1) A PERSON SHALL NOT USE THE INTERNET OR A
2 COMPUTER, COMPUTER PROGRAM, COMPUTER NETWORK, OR COMPUTER SYSTEM
3 TO COMMUNICATE WITH ANY PERSON FOR THE PURPOSE OF COMMITTING,
4 ATTEMPTING TO COMMIT, CONSPIRING TO COMMIT, OR SOLICITING ANOTHER
5 PERSON TO COMMIT CONDUCT PROSCRIBED UNDER SECTION 411H OR 411I.

6 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A PERSON WHO VIO-
7 LATES SUBSECTION (1) IS GUILTY OF A FELONY PUNISHABLE BY IMPRIS-
8 ONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
9 \$2,000.00, OR BOTH.

10 (3) A PERSON WHO VIOLATES SUBSECTION (1) AND WHO HAS 1 OR
11 MORE PRIOR CONVICTIONS IS GUILTY OF A FELONY PUNISHABLE BY

1 IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN
2 \$5,000.00, OR BOTH.

3 (4) THE COURT MAY ORDER THAT A TERM OF IMPRISONMENT IMPOSED
4 UNDER THIS SECTION BE SERVED CONSECUTIVELY TO AND PRECEDING ANY
5 TERM OF IMPRISONMENT IMPOSED FOR CONVICTION OF THE UNDERLYING
6 OFFENSE.

7 (5) THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING
8 CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION
9 OF LAW COMMITTED BY THAT PERSON WHILE VIOLATING OR ATTEMPTING TO
10 VIOLATE THIS SECTION, INCLUDING THE UNDERLYING OFFENSE.

11 (6) THIS SECTION APPLIES REGARDLESS OF WHETHER THE PERSON IS
12 CONVICTED OF COMMITTING, ATTEMPTING TO COMMIT, CONSPIRING TO
13 COMMIT, OR SOLICITING ANOTHER PERSON TO COMMIT THE UNDERLYING
14 OFFENSE.

15 (7) A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION
16 OCCURS IF THE COMMUNICATION ORIGINATES, TERMINATES, OR BOTH ORIG-
17 INATES AND TERMINATES IN THIS STATE.

18 (8) A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION MAY
19 BE PROSECUTED IN ANY JURISDICTION IN WHICH THE COMMUNICATION
20 ORIGINATED OR TERMINATED.

21 (9) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
22 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
23 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
24 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
25 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
26 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
27 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE

1 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE
2 ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING,
3 BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

4 (A) A COPY OF THE JUDGMENT OF CONVICTION.

5 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
6 SENTENCING.

7 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

8 (D) THE DEFENDANT'S STATEMENT.

9 (10) AS USED IN THIS SECTION:

10 (A) "COMPUTER" MEANS ANY CONNECTED, DIRECTLY INTEROPERABLE
11 OR INTERACTIVE DEVICE, EQUIPMENT, OR FACILITY THAT USES A COM-
12 PUTER PROGRAM OR OTHER INSTRUCTIONS TO PERFORM SPECIFIC OPERA-
13 TIONS INCLUDING LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS WITH OR
14 ON COMPUTER DATA OR A COMPUTER PROGRAM AND THAT CAN STORE,
15 RETRIEVE, ALTER, OR COMMUNICATE THE RESULTS OF THE OPERATIONS TO
16 A PERSON, COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COM-
17 PUTER NETWORK.

18 (B) "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF HARDWIRE
19 OR WIRELESS COMMUNICATION LINES WITH A COMPUTER THROUGH REMOTE
20 TERMINALS, OR A COMPLEX CONSISTING OF 2 OR MORE INTERCONNECTED
21 COMPUTERS.

22 (C) "COMPUTER PROGRAM" MEANS A SERIES OF INTERNAL OR EXTER-
23 NAL INSTRUCTIONS COMMUNICATED IN A FORM ACCEPTABLE TO A COMPUTER
24 THAT DIRECTS THE FUNCTIONING OF A COMPUTER, COMPUTER SYSTEM, OR
25 COMPUTER NETWORK IN A MANNER DESIGNED TO PROVIDE OR PRODUCE PRO-
26 DUCTS OR RESULTS FROM THE COMPUTER, COMPUTER SYSTEM, OR COMPUTER
27 NETWORK.

1 (D) "COMPUTER SYSTEM" MEANS A SET OF RELATED, CONNECTED OR
2 UNCONNECTED, COMPUTER EQUIPMENT, DEVICES, SOFTWARE, OR HARDWARE.

3 (E) "DEVICE" INCLUDES, BUT IS NOT LIMITED TO, AN ELECTRONIC,
4 MAGNETIC, ELECTROCHEMICAL, BIOCHEMICAL, HYDRAULIC, OPTICAL, OR
5 ORGANIC OBJECT THAT PERFORMS INPUT, OUTPUT, OR STORAGE FUNCTIONS
6 BY THE MANIPULATION OF ELECTRONIC, MAGNETIC, OR OTHER IMPULSES.

7 (F) "INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF
8 TITLE II OF THE COMMUNICATIONS ACT OF 1934, CHAPTER 652, 110
9 STAT. 137, 47 U.S.C. 230.

10 (G) "MINOR" MEANS AN INDIVIDUAL WHO IS LESS THAN 18 YEARS OF
11 AGE.

12 (H) "PRIOR CONVICTION" MEANS A CONVICTION FOR A VIOLATION OR
13 ATTEMPTED VIOLATION OF SUBSECTION (1) OR A LAW OF THE UNITED
14 STATES OR ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO SUBSECTION
15 (1).