

Legislative Analysis



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IDENTITY THEFT

House Bill 6168

Sponsor: Rep. David Robertson

House Bill 6169

Sponsor: Rep. William Van Regenmorter

House Bill 6170

Sponsor: Rep. David Farhat

House Bill 6172

Sponsor: Matt Milosch

Committee: Criminal Justice

Complete to 9-14-04

A SUMMARY OF HOUSE BILLS 6168-6170 AND HOUSE BILL 6172 AS INTRODUCED 9-9-04

Together, the bills would make it illegal to use or attempt to use personal identifying information for unlawful purposes, establish penalties for violations, clarify the appropriate jurisdiction for prosecution of an offense, and establish a six-year statute of limitations for filing indictments for identity theft.

The bills, which are part of a multi-bill package addressing identity theft, would take effect March 1, 2005.

House Bill 6168, which is similar to Senate Bill 792, would create the Identity Theft Protection Act. The bill would define “identity theft” as engaging in an act or conduct prohibited in Section 4(1) of the bill. Section 4(1) would make it a crime to use or attempt to use personal identifying information of another person without that person’s consent – either with the intent to defraud or otherwise violate the law or by concealing, withholding, or misrepresenting the identity of the individual using or attempting to use the information to commit any unlawful act or to obtain credit, goods, services, money, property, medical records or information, or employment. “Consent” would not include authorizing use of personal identifying information if the person granting permission knew that the information would be used to commit an unlawful act.

However, the prohibition would not apply to obtaining credit, goods, services, money, property, medical records or information, or employment if the conduct were for the purpose of: a bona fide gift for the person whose personal information had been used (unless used with the intent to defraud or commit another crime); the lawful pursuit or enforcement of a person’s legal rights; acts authorized or required by state or federal law,

rule, regulation, or court order or rule; or acts committed by a person who had contracted with a person described in the preceding provisions to use personal identifying information as long as the person had certain privacy protections in place that made the information confidential.

In Section 5, the bill would also specifically prohibit a person from doing any of the following:

- Obtain or possess (or attempt to do so) personal identifying information of another person with the intent to use that information to commit identity theft or another crime.
- Sell or transfer (or attempt to do so) personal identifying information of another if he or she knew or had reason to know that the specific intended recipient would use, attempt to use, or further transfer the information to another person for the purpose of committing identity theft or another crime.
- Falsify a police report of identity theft, or knowingly create, possess, or use a false police report of identity theft, described in provisions of the Code of Criminal Procedure.

A violation of the bill's prohibitions under Sections 4 and 5 would be a felony punishable by imprisonment for not more than five years or a fine of not more than \$10,000, or both. (Under certain conditions, this penalty would not apply to a violation of a statute or rule administered by a regulatory board, commission, or an officer with authority under state or federal law as specified in the bill if the act were committed by a person subject to and regulated by that statute or rule.) Penalties for violations of Sections 4 and 5 would apply whether the victim or intended victim were dead or alive at the time of the violation. A person could still be charged with, convicted of, or sentenced for any other violation of law committed using information obtained in violation of the bill.

Sections 4 and 5 would not apply to a person who legally obtained or attempted to obtain personal identifying information of another pursuant to the discovery process in a civil or criminal action, an administrative proceeding, or an arbitration proceeding. They also would not apply to a person lawfully transferring, obtaining, or attempting to obtain the personal identifying information of another for the purpose of detecting, preventing, or deterring identity theft or another crime or funding a criminal activity.

Regarding trade or commerce, a person would be prohibited from the following:

- Denying credit or public utility service to, or reducing the credit limit of, a consumer solely because he or she had been the victim of identity theft.
- Soliciting to extend credit to a consumer without an existing line of credit, or who had not applied for a line of credit within the preceding year, via the use of an unsolicited check that included personal identifying information other than the recipient's name; address; and a partial, encoded, or truncated personal identifying number. In addition to any other penalties or remedies allowed under law, a credit card issuer, financial institution, or other lender that violated this

provision – and not the consumer – would be liable for the amount of the check and certain fees if used by an unauthorized user.

- Soliciting to extend credit to a consumer who did not have a credit card, or who had not applied for one within the preceding year, by sending the consumer a credit card. A credit card issuer, financial institution, or other lender that violated this provision would be liable for charges, interest, or finance charges if the card were used by an unauthorized person.
- Extending credit without exercising procedures to verify the identity of the consumer.

A violation of the above would be a misdemeanor punishable by imprisonment for not more than 30 days, a fine of not more than \$100, or both. This penalty would not affect the availability of any civil remedy for a violation of the bill, the Michigan Consumer Protection Act, or any other state or federal law.

If necessary to enforce the bill or prevent identity theft, a law enforcement agency, financial institution, or victim of identity theft could obtain copies of a vital record from a local registrar. However, the registrar could charge a financial institution or victim of identity theft for the actual costs of copying the requested records.

The bill would also create a five-member Identity Theft Advisory Board, establish membership of the board, and require the board to study data from identity theft cases in the state and report annually on recommendations for statutory changes to the standing committees of the Senate and the House of Representatives with jurisdiction over issues relating to identity theft.

Furthermore, the bill would repeal Section 285 of the Michigan Penal Code. Section 285 currently makes it a five-year felony to obtain personal identity information of another with the intent to unlawfully use that information.

House Bill 6169, which is similar to Senate Bill 797, would amend the Code of Criminal Procedure (MCL 777.14h and 777.16o) to specify that identity theft would have a statutory maximum term of imprisonment of five years. Obtaining, possessing, selling, or transferring personal identifying information of another or falsifying a police report with intent to commit identity theft would have a maximum term of imprisonment of four years (this would appear to be an error, as House Bill 6168 specifies that this infraction would be a five-year felony). Both would be Class E felonies against the Public Order.

Furthermore, the bill would delete the current reference to a violation of Section 750.285 of the Michigan Compiled Laws, which would be repealed by House Bill 6178. The bill would also make a technical change; a violation of MCL 750.303 would refer to gaming instead of gambling.

House Bill 6170, which is similar to Senate Bill 793, would add a new section to Chapter II of the Code of Criminal Procedure (MCL 762.10c) to specify that a violation of the Identity Theft Protection Act, or a violation committed in furtherance of or that arose from that same transaction, could be prosecuted in one of the following jurisdictions:

- Where the offense occurred.
- Where the information that had been used to commit the violation was used illegally.
- Where the victim resided.

If a person were charged with more than one violation and the violations could be prosecuted in more than one jurisdiction, than any of the above jurisdictions would be considered a proper jurisdiction for all of the violations.

House Bill 6172, which is similar to Senate Bill 803, would amend the Code of Criminal Procedure (MCL 767.24) to establish a six-year statute of limitations for identity theft. Specifically, an indictment could be found and filed within six years after an offense of identity theft or attempted identity theft had been committed. If evidence had been obtained but the individual committing the offense had not been identified, an indictment could be found and filed at any time up to six years after the person was identified.

“Identified” would mean that the individual’s legal name was known. “Identity theft” would mean conduct prohibited in Sections 4 or 5 of the Identity Theft Protection Act (created by House Bill 6168 and Senate Bill 792) or prohibited under former Section 285 of the Michigan Penal Code (which would be repealed by House Bill 6168 and Senate Bill 792).

The bill would also clarify that when an extension or tolling of the limitations period is provided for an offense, that the extension or tolling of limitations would only apply if the limitations period had not expired at the time the extension or tolling took effect.

FISCAL IMPACT:

House Bill 6168 would have an indeterminate impact on the state and local units of government; fiscal impact likely would be minimal, assuming that there was little change in the numbers of convictions or the types of sentences imposed for identity theft offenses. In 2001, there were seven felony convictions under the current identity theft law which carries the same maximum penalties (five years/\$10,000 fine) as those proposed by the bill under analogous provisions. Of those seven offenders, one offender was sentenced to state prison, five to probation, and one to jail. Costs of prison and felony probation fall to the state, while those of jail fall to the affected county. The Department of Corrections (MDOC) puts the annual cost of felony probation at \$1,820 per offender. Costs of prison incarceration depend on security level and vary widely between facilities; the MDOC reports the average annual cost per prisoner in FY 2003-04 to be \$28,455. Jail costs vary from county to county. Penal fine revenue is constitutionally dedicated to local libraries.

House Bill 6169 would amend sentencing guidelines consistent with HB 6168 (note: HB 6169 as introduced erroneously refers to a four-year felony under HB 6168, whereas that bill would create two five-year felonies).

House Bill 6170 would have no fiscal impact on the state, and an indeterminate fiscal impact on local units of government, depending on where violations were prosecuted.

House Bill 6172, by extending the statute of limitations on identity theft violations, could enable more convictions to be obtained for those violations, with accompanying costs for the state and local units of government, depending on the numbers of convictions and the penalties imposed. If additional penal fine revenues were collected, those revenues would go to local libraries.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.