



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 792, 793, 794, 796, 797, and 798 (as introduced 10-23-03)

Sponsor: Senator Michael D. Bishop (Senate Bill 792)
Senator Gerald Van Woerkom (Senate Bill 793)
Senator Laura M. Toy (Senate Bill 794)
Senator Tony Stamas (Senate Bill 796)
Senator Tom George (Senate Bill 797)
Senator Alan Sanborn (Senate Bill 798)

Committee: Judiciary

Date Completed: 10-28-03

CONTENT

Senate Bill 792 would create the "Identity Theft Protection Act" to do all of the following:

- Prescribe a criminal penalty for committing identity theft or obtaining or attempting to obtain another person's personal identifying information in order to commit identity theft or another illegal act.
- Prohibit denying credit to, or reducing the credit limit of, a person because he or she was a victim of identity theft.
- Prohibit certain practices regarding offering or extending credit.
- Allow a law enforcement agency, financial institution, or other person to request copies of a vital record in order to enforce the proposed Act or investigate or prevent identity theft.
- Allow an identity theft victim to request that the Secretary of State suppress information.
- Create an Identity Theft Advisory Board to study data from identity theft cases in Michigan.
- Repeal a prohibition against obtaining another's personal identity information for certain purposes with the intent to use that information unlawfully.

Senate Bill 793 would amend the Code of Criminal Procedure to designate the jurisdictions in which an identity theft offender could be prosecuted.

Senate Bill 794 would amend the Code of Criminal Procedure to allow an identity theft victim to apply to the county

prosecuting attorney or the Attorney General for a certificate stating that he or she was the victim of identity theft; allow the prosecuting attorney or the Attorney General to issue such a certificate; and provide for the revocation of a certificate.

Senate Bill 796 would create a new act to require the Department of State Police to establish and maintain a database of identity theft victims.

Senate Bill 797 would amend the Code of Criminal Procedure to include a violation of the proposed Identity Theft Protection Act in the sentencing guidelines.

Senate Bill 798 would amend the Michigan Consumer Protection Act to prohibit as an unfair trade practice denying credit to, or reducing the credit limit of, a consumer because his or her personal identity information had been obtained illegally.

Under Senate Bill 792, "identity theft" would mean any unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, property, or employment to commit any illegal act. "Personal identifying information" would mean a person's name, address, telephone number, driver's license number, Social Security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, credit card number, or medical records or information.

Senate Bill 792

Identity Theft Penalty

The bill would prohibit a person from committing identity theft or obtaining or attempting to obtain another person's identifying information with the intent to use the information to commit identity theft or another illegal act. A violation would be a felony punishable by up to five years' imprisonment, a maximum fine of \$10,000, or both. The bill states that it would not prohibit a person from being charged with, convicted of, or sentenced for any other violation committed by using information obtained in violation of the bill.

This offense would not apply to a person who obtained or attempted to obtain personal identifying information pursuant to the discovery process of a civil action, an administrative proceeding, or an arbitration proceeding.

Prohibited Practices

The bill would prohibit a person from doing any of the following in the conduct of trade or commerce:

- Denying credit to or reducing the credit limit of a consumer solely because he or she was a victim of identity theft.
- Soliciting to extend credit to a consumer through the use of an unsolicited check, unsolicited convenience check, or other unsolicited negotiable instrument sent to the consumer by a credit card issuer, financial institution, or other lender.
- Soliciting to extend credit to a consumer through the use of an unsolicited credit card sent to the consumer by a credit card issuer, financial institution, or other lender.
- Failing to verify the identity of an individual applying for credit, by at least examining three pieces of identification, including at least one that contained the individual's photograph and signature.

A knowing violation of these prohibitions would be a misdemeanor punishable by up to 30 days' imprisonment, a maximum fine of \$100, or both. The bill states that this penalty would not affect the availability of any civil remedy for a violation of those prohibitions, the proposed Act, the Michigan Consumer Protection Act, or any other State or Federal law.

In addition to any other penalty or remedy under the bill or the Michigan Consumer Protection Act, a credit card issuer, financial institution, or lender that solicited to extend credit through the use of an unsolicited check, convenience check, other negotiable instrument, or credit card would be liable for the amount of the check or instrument, any insufficient funds fees, and any credit card charges and interest or finance charges. The consumer would not be liable for those amounts, fees, and charges.

Vital Records & Secretary of State Information

The bill would allow a law enforcement agency or a financial institution or other person to request copies of a vital record from a local registrar, if necessary to enforce the proposed Act or investigate or prevent identity theft.

An individual who had reasonable cause to believe that he or she was the victim of identity theft could submit a request for suppression of any record maintained by the Secretary of State under the Michigan Vehicle Code.

Advisory Board

The bill would create an Identity Theft Advisory Board. The board's five members would be the Governor, the Attorney General, the Secretary of State, the Senate Majority Leader, and the Speaker of the House; or the designee of one of those individuals. The Attorney General would serve as the board's chairperson. The board annually would have to report to the Senate and House standing committees with jurisdiction over issues relating to identity theft, with any recommendations for statutory changes. The board would have to study data from identity theft cases in Michigan.

Repealer

The bill would repeal Section 285 of the Michigan Penal Code (MCL 750.285). That section prohibits a person from obtaining or attempting to obtain personal identity information of another person with the intent to use it unlawfully, without the person's authorization, for any of the following purposes:

- Obtaining financial credit.
- Purchasing or otherwise obtaining or leasing any real or personal property.

- Obtaining employment.
- Obtaining access to medical records or information contained in them.
- Committing any illegal act.

A violation is a felony, punishable by up to five years' imprisonment, a maximum fine of \$10,000, or both.

The prohibition does not apply to a person who obtains or attempts to obtain another person's personal identity information pursuant to the discovery process of a civil action, an administrative proceeding, or an arbitration proceeding.

Under Section 285, "personal identity information" means any of the following information of another person:

- A Social Security number.
- A driver's license number or State personal identification card number.
- Employment information.
- Information regarding any financial account held by another person, including a saving or checking account number, a financial transaction device account number, a stock or other security certificate or account number, and a personal information number for any of those accounts.

Tie-Bar

The bill is tie-barred to Senate Bills 793, 796, 797, and 798 and to three bills that have not yet been introduced.

Senate Bill 793

The bill provides that a violation of the proposed Identity Theft Protection Act could be prosecuted in one of the following jurisdictions:

- The jurisdiction in which the offense occurred.
- The jurisdiction in which the information used to commit the violation was illegally used.
- The jurisdiction in which the victim lived.

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

The bill is tie-barred to Senate Bill 792.

Senate Bill 794

Certificate Application & Issuance

An individual who was the victim of identity theft could apply to the county prosecuting attorney of the county in which he or she lived, or to the Attorney General, for a certificate stating that he or she was a victim of identity theft. The application would have to be in writing, under oath, setting forth the circumstances of the theft as known by the applicant or upon information and belief by any other person.

If an individual properly submitted an application for a certificate, the prosecuting attorney or Attorney General could issue a certificate. The prosecuting attorney or Attorney General could investigate the grounds for issuing the certificate before one was issued. A certificate would have to be on a form prescribed by the Department of State Police and be provided free of charge to prosecuting attorneys and the Attorney General.

A certificate would have to contain all of the following information:

- The name of the individual.
- The name of the prosecuting authority issuing the certificate.
- A statement that the individual had been determined to be a victim of identity theft.
- The date on which the identity theft occurred or, if the date were not known, the approximate date.

Neither a prosecuting attorney nor the Attorney General could charge a fee for issuing a certificate. A prosecuting attorney and the Attorney General would have to maintain the application on file for two years.

A certificate issued under the bill would be an official State record. An individual who knowingly made a material false statement on an application would be guilty of perjury.

Revocation

A prosecuting attorney or the Attorney General could revoke a certificate issued under the bill by filing a written notice of revocation with the applicant. The notice would have to be sent by first-class mail to the applicant's last known address. A certificate would be revoked upon receipt of the notice.

An applicant who was notified that his or her certificate had been revoked would have to return the certificate within 14 days after receiving the notice. Knowingly failing to return a revoked certificate would be a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$500, or both.

Senate Bill 796

The bill would require the Department of State Police to establish and maintain a database of identity theft victims. Each of the following could gain access to the database:

- A law enforcement agency.
- A victim of identity theft, or his or her authorized representative, to establish that he or she was a victim of identity theft.

The Department would have to establish and maintain a toll-free telephone number to provide access to the database for identity theft victims.

An identity theft victim would have to submit to the Department a copy of any police report, a full set of fingerprints, and any other relevant information required by the Department for inclusion in the database. The Department would have to verify the identity of the victim by examining a driver license or other identification issued by the Secretary of State.

The bill is tie-barred to Senate Bill 792.

Senate Bill 797

The bill would include in the sentencing guidelines a violation of the proposed Identity Theft Protection Act. Identity theft would be a Class E felony against the public order, with a statutory maximum penalty of five years' imprisonment.

The bill also would delete from the sentencing guidelines obtaining personal identification information without authorization. That offense (which Senate Bill 792 would repeal) is a Class E property felony, with a statutory maximum penalty of five years' imprisonment.

The bill is tie-barred to Senate Bill 792.

Senate Bill 798

The Michigan Consumer Protection Act

provides that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful, and includes a list of such practices. The bill instead, would prohibit a person from committing any those unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce, and would include in the list denying credit to a person or reducing his or her credit limit solely because he or she was a victim of a violation of Section 285 of the Michigan Penal Code. (That section, which Senate Bill 792 would repeal, is described above.)

- Proposed MCL 762.10c (S.B. 793)
- Proposed MCL 776.23 (S.B. 794)
- MCL 777.14h & 777.16o (S.B. 797)
- MCL 445.903 (S.B. 798)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bills 792 and 797

The bills would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many offenders would be convicted of a misdemeanor offense for committing certain prohibited trade practices, including denying or reducing credit to victims of identity theft, soliciting to extend credit through an unsolicited check or credit card, and failing to verify the identity of an individual applying for credit before providing credit to that person. Offenders would receive probation, imprisonment for up to 30 days in a local facility, and/or a fine of up to \$100. Local units would incur the costs of both misdemeanor probation and incarceration which vary by county.

The proposed felony offense of identity theft would replace the felony offense for obtaining personal identification information without authorization and with intent to use the information unlawfully. According to the Department of Corrections Statistical Report, in 2001 seven people were convicted of the existing offense. Of those, one offender received incarceration in a State prison, one received incarceration in a local jail, and five received probation. Local units pay for incarceration in local facilities, the cost of which varies by county. The State incurs the cost of felony probation at an average annual

cost of \$1,750, as well as the cost of incarceration in a State facility at an average annual cost of \$27,000. If one assumes that the number of offenders and types of sentences received would be similar for the proposed offense as the existing offense, the change would have no fiscal impact.

Senate Bill 793

The bill would have no fiscal impact on the State and an indeterminate fiscal impact on local units of government. To the extent that the bill would increase the number of cases prosecuted, it would increase local court costs.

Senate Bill 794

The bill would have an indeterminate fiscal impact on the Department of State Police. The Department would be required to provide certificate forms to county prosecuting attorneys and the Attorney General. The number of certificates to be provided under the bill cannot be determined at this time.

The bill would result in an indeterminate financial cost for local prosecutors and the Department of Attorney General, depending on the number of applications they would receive for certificates of identity theft.

Senate Bill 796

The bill would have an indeterminate, yet minimal, fiscal impact on the Department of State Police. The bill would require the Department to establish and maintain a database (along with a toll-free telephone service) for individuals who had been the victim of identify theft. The costs could mostly be absorbed by existing Department resources.

Senate Bill 798

Enforcement costs and fine revenue would depend on the number of violations.

Fiscal Analyst: Bruce Baker
Bill Bowerman
Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.