

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 120 (as enrolled)
Senate Bill 885 (as enrolled)
Sponsor: Senator Glenn D. Steil
Committee: Judiciary

Date Completed: 11-17-99

RATIONALE

The practice of identity theft appears to be increasing nationwide. Reportedly, the Federal government estimates that there are nearly 400,000 victims of identity theft per year, and the number is rising. This statistic apparently reflects a 16-fold increase between 1992 and 1997. There may be numerous variations of this type of fraud, in which an offender uses bits and pieces of information about an individual to represent himself or herself as that person. By obtaining a person's Social Security number, for example, an identity thief could obtain credit cards and loans in that person's name, open utility accounts, rent an apartment or house, secure cellular telephone service, purchase a car or home, or conduct any number of personal and business transactions without the knowledge of the person whose name and identity information were used. The increased incidence of this type of crime may have been fostered by a thriving, competitive credit market. In today's economy, credit is readily available from numerous lenders eager to expand their customer base. In addition, with recent rapid advances in the area of information technology, it has become easier to gain information about individuals, making it simpler for criminals to pose as others. Further, because of the "white collar" nature of this type of crime, it may not receive the same kind of exposure as more violent crimes do, so law enforcement may be more lax and the public may be less aware.

Although the fraudulent acts committed by those who obtain others' personal identity information are unlawful, there apparently is no State law specifically prohibiting the act of obtaining or attempting to obtain that information. Some people believe that a statutory proscription against identity theft, plus criminal penalties, could both provide a mechanism to increase public awareness of this invasive activity and serve as a deterrent and punishment to those who may pursue this type of fraud.

CONTENT

Senate Bills 120 (S-1) and 885 (S-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to create the felony of obtaining personal identity information and include that offense in sentencing guidelines. The bills would take effect 90 days after their enactment, and Senate Bill 885 (S-1) is tie-barred to Senate Bill 120.

Senate Bill 120 (S-1)

The bill would prohibit a person from obtaining or attempting to obtain "personal identity information" of another person with the intent to use that information, without the person's authorization, to do any of the following:

- Obtain financial credit.
- Purchase or otherwise obtain or lease any real or personal property.
- Obtain employment.
- Obtain access to medical records or information contained in medical records.
- Commit any illegal act.

A violation of the bill would be a felony, punishable by up to five years' imprisonment, a maximum fine of \$10,000, or both. The bill would not prohibit an offender from being charged with, convicted of, or sentenced for any other violation of law committed by that person using information obtained in violation of the bill.

"Personal identity information" would mean 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, but not limited to, 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.

Legislative Analyst: P. Affholter

Senate Bill 885 (S-1)

The bill would include in the sentencing guidelines provisions the felony of obtaining personal identity information without authorization, as proposed by Senate Bill 120. The offense would be categorized as a Class E property felony with a statutory maximum sentence of five years' imprisonment.

Proposed MCL 750.285 (S.B. 120)
MCL 777.16o (S.B. 885)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Although the bills are not a panacea for the increasingly frequent problem of identity theft, they would send a message that the protection of personal privacy is a priority in Michigan. By creating a new felony and establishing strict penalties for those who would prey on others by using their identities for nefarious purposes, the proposals would give prosecutors a needed tool to battle this problem. Identity fraud most often takes the form of obtaining credit or making purchases in another person's name. While individual victims of these financial scams may not be liable for the bills accumulated by imposters, people and businesses are victimized nonetheless: Individuals may suffer from bad credit ratings, as well as the frustration, anxiety, and time lost in repairing the damage to their records, while financial institutions and other creditors (and, ultimately, consumers) may suffer when they cannot collect on an imposter's debt. Personal identity theft and its consequences are serious problems, and this legislation would assign appropriate penalties for those violations.

Response: House Bills 4413 (H-4) and 4598 (H-2) propose similar provisions in regard to application for credit. These bills would provide protection from prosecution for businesses and their employees who unwittingly participated in fraudulent schemes or passed along false applications, devices, and instruments as part of efforts to uncover crimes. Senate Bill 120 (S-1) should include similar protections.

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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.

FISCAL IMPACT

Senate Bill 120 (S-1) would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many people could be convicted of obtaining personal identity information of another person for the prohibited purposes enumerated in the bill. The bill would make these acts a felony punishable by a maximum sentence of five years and/or a fine of \$10,000. The minimum sentence, which is indicative of the cost of incarceration, is not specified, so that the fiscal impact is indeterminate.

Senate Bill 885 (S-1) would have an indeterminate fiscal impact on State and local government.

The bill would establish the crime of obtaining personal identity information without authorization in the sentencing guidelines. The crime would require a five-year maximum penalty and use the "E" sentencing guideline grid in order to determine the minimum sentence range. Minimum sentences on the "E" grid vary from 0-3 months to 24-38 months.

There are no available data that indicate how many people could be convicted of obtaining personal identity information without authorization. However, assuming that 10 offenders a year would be convicted of this crime and serve a minimum sentence in a State facility of 38 months, given the average annual cost of incarceration of \$22,000, the cost to incarcerate these offenders would be \$697,000 in the long run. Assuming that offenders were given a minimum sentence in the lower range of the grid, the offenders would be subject to local incarceration or intermediate sanctions. Costs vary for local incarceration and intermediate sanctions among the counties and programs.

Fiscal Analyst: K. Firestone