



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 223 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bill 224 (Substitute S-1 as reported by the Committee of the Whole)
Senate Bills 225 and 226 (as reported without amendment)
Sponsor: Senator Raymond E. Basham
Committee: Judiciary

CONTENT

Senate Bill 223 (S-2) would amend the Identity Theft Protection Act to:

- Specify graduated penalties for second and third or subsequent violations of the Act that are felonies.
- Increase the maximum term of imprisonment to 93 days for certain misdemeanor violations, and specify increased fines for second and third or subsequent misdemeanor violations.
- Subject certain property to seizure and forfeiture, and outline forfeiture proceedings for seized property.

The Act makes it a felony, punishable by up to five years' imprisonment and/or a maximum fine of \$25,000, to commit identity theft; to obtain, possess, sell, or transfer another person's personal identifying information for the purpose of committing identity theft; or to falsify a police report concerning identity theft. Under the bill, a second violation would be punishable by up to 10 years' imprisonment and/or a maximum fine of \$50,000. A third or subsequent violation would be punishable by up to 15 years' imprisonment and/or a maximum fine of \$75,000.

The Act also prohibits certain conduct in the practice of trade or commerce. A knowing or intentional violation of these prohibitions is a misdemeanor punishable by up to 30 days' imprisonment and/or a maximum fine of \$1,000. The bill would increase the maximum term of imprisonment to 93 days for a first or subsequent violation. In addition, the bill would increase the maximum fine to \$2,000 for a second violation, and \$3,000 for a third or subsequent violation.

Currently, providing notice of a security breach when a security breach has not occurred, with the intent to defraud, is a misdemeanor punishable by up to 30 days' imprisonment and/or a maximum fine of \$250 for each violation. The bill would increase the maximum term to 93 days, and would increase the maximum fine to \$500 for a second violation, and \$750 for a third or subsequent violation.

The Act prohibits distributing an advertisement or making any other solicitation that misrepresents the occurrence of a security breach that may affect the recipient. A violation is a misdemeanor punishable by up to 30 days and/or \$1,000 for each violation. The bill would increase the maximum term to 93 days, and would increase the maximum fine to \$2,000 for a second violation, and \$3,000 for a third or subsequent violation.

Senate Bill 224 (S-1) would amend the Michigan Penal Code to add a violation of the Identity Theft Protection Act to the predicate offenses that constitute racketeering, if committed for financial gain.

Senate Bill 225 would amend the Code of Criminal Procedure to expand the violations that may be prosecuted in the jurisdiction in which the offense occurred, in which the information used to commit the violation was illegally used, or in which the victim lives.

Senate Bill 226 would amend the Code of Criminal Procedure to include felony penalties proposed by Senate Bill 223 in the sentencing guidelines, as shown in the following table.

Violation	Felony Class & Category	Stat. Max. Penalty
Identity theft – second offense	D – Public Order	10 years
Identity theft – third or subsequent offense	C – Public Order	15 years
Obtaining, possessing, or transferring personal identifying info/falsifying police report with intent to commit identity theft – second offense	D – Public Order	10 years
Obtaining, possessing, or transferring personal identifying info/falsifying police report with intent to commit identity theft – third or subsequent offense	C – Public Order	15 years

Each of the bills is tie-barred to all of the others.

MCL 445.69 et al. (S.B. 223)
 750.159g (S.B. 224)
 762.10c (S.B. 225)
 777.14h (S.B. 226)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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 repeated violations of the Identity Theft Protection Act. An offender convicted of the Class C offenses under the bills would receive a sentencing guidelines minimum sentence range of 0-11 months to 62-114 months, with a statutory maximum of 15 years. An offender convicted of the Class D offenses under the bills would receive a sentencing guidelines minimum sentence range of 0-6 months to 43-76 months, with a statutory maximum of 10 years. There are also no data to indicate how many offenders would be convicted of a pattern of racketeering activity due to the inclusion of identify theft violations as a predicate offense.

Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Because the bills also would increase the upper limits on penal fines associated with identity theft-related crimes, the State could collect additional penal fine revenue; this revenue would benefit public libraries.

Senate Bill 223 (S-2) also would result in additional revenue to units of government that seized property under the bill, in an amount that cannot be determined at this time.

Date Completed: 11-10-10

Fiscal Analyst: Bruce Baker
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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.