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 BILL ANALYSIS

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Senate Bills 223 through 226 (as introduced 2-12-09)
Sponsor: Senator Raymond E. Basham
Committee: Judiciary

Date Completed: 11-3-10

CONTENT

Senate Bill 223 would amend the Identity Theft Protection Act to do all of the following:

- Specify graduated penalties for second, third, and subsequent violations of the Act.
- Increase the maximum term of imprisonment for certain misdemeanor violations.
- Subject certain property to seizure and forfeiture, and outline forfeiture proceedings for seized property.

Senate Bill 224 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.

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

Senate Bill 223

Graduated Penalties

Personal Identifying Information. The Identity Theft Protection Act prohibits a

person from using or attempting to use another person's personal identifying information, with the intent to defraud or violate the law, in order to obtain credit, goods, services, money, property, a vital record, medical records or information, or employment, or to commit another unlawful act. The Act also prohibits a person from using or attempting to use another person's personal identifying information by concealing, withholding, or misrepresenting the user's identity, for this purpose. A violation of these prohibitions constitutes identity theft.

It is a felony, punishable by up to five years' imprisonment and/or a maximum fine of \$25,000, 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.

Trade or Commerce Prohibitions. The Act prohibits a person from doing any of the following in the conduct of trade or commerce:

- Denying credit or public utility service to, or reducing the credit limit of a consumer, solely because he or she was a victim of identity theft, if the person knew that the consumer was an identity theft victim

- Soliciting to extend credit to a consumer who does not have an existing line of credit, or has not had or applied for a line of credit within the preceding year, through the use of an unsolicited check that includes personal identifying information other than the recipient's name, address, and a personal identifying number.
- Soliciting to extend credit to a consumer who does not have a current credit card, or has not had or applied for a credit card within the preceding year, through the use of an unsolicited credit card sent to the consumer.
- Extending credit to a consumer without exercising reasonable procedures to verify his or her identity.

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 up to \$3,000 for a third or subsequent violation.

Security Breach Violations. The Act requires a person or agency that owns or licenses data included in a database to notify certain people in the event of a security breach.

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 of imprisonment to 93 days for a first or subsequent violation.

In addition, the bill would increase the maximum fine to \$500 for a second violation, and to \$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' imprisonment and/or a maximum fine of \$1,000 for each violation. 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 to \$3,000 for a third or subsequent violation.

Seizure & Forfeiture

Under the bill, the following property would be subject to forfeiture:

- Any personal or real property that had been used, possessed, or acquired in violation of the Act.
- Except as otherwise provided, a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to transport, or to facilitate the transportation of, personal or real property used, possessed, or acquired in violation of the Act.
- Books, records, computers, electronic equipment, and research products and materials, including microfilm, digital media, tapes, and data, used or intended for use in violation of the Act.

Any money, negotiable instruments, securities, or any other thing of value that was found in close proximity to any property subject to forfeiture would be presumed to be subject to forfeiture. The presumption could be rebutted by clear and convincing evidence.

Property subject to forfeiture could be seized upon process issued by the circuit court. Seizure without process could be made under the following circumstances:

- The property was seized incident to a lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant.
- The property was the subject of a prior judgment in favor of the State in an injunction or forfeiture proceeding under the Act.
- There was probable cause to believe that the property was directly or indirectly dangerous to health or safety.
- There was probable cause to believe that the property was used or was intended to be used in violation of the Act.

- There was probable cause to believe that the property was the proceeds from activity in violation of the Act.

If property were seized, the bill would require forfeiture proceedings to be instituted promptly. The bill specifies procedures that would apply if the property were seized without process and its total value did not exceed \$50,000.

Property taken or detained under the bill would not be subject to an action to recover personal property, but would be considered to be in the custody of the seizing agency subject only to these provisions or an order and judgment of the court having jurisdiction over the forfeiture proceedings.

When property was seized, the seizing agency could do any of the following:

- Place the property under seal.
- Remove the property to a place designated by the court.
- Require the administrator to take custody of the property and remove it to an appropriate location for disposition in accordance with law.
- Deposit seized money into an interest-bearing account in a financial institution.

When property was forfeited, the local unit that seized it could do any of the following or, if the property were seized by or in the custody of the State, the State could do any of the following:

- Retain it for official use.
- Sell that which was not required to be destroyed by law and was not harmful to the public.
- Require the administrator to take custody of the property and remove it for disposition in accordance with law.

If a court entered an order of forfeiture, the court could order a person who claimed an interest in the forfeited property to pay the expenses of the forfeiture proceedings to the entity having budgetary authority over the seizing agency.

Senate Bill 224

The bill would include a violation of the Identity Theft Protection Act as a predicate offense in the Penal Code's definition of "racketeering".

Under the Penal Code, "racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit, for financial gain, an offense listed in the definition. The bill would include a violation of the Identity Theft Protection Act among those violations.

(A person who commits a pattern of racketeering activity (two or more incidents of racketeering to which certain characteristics apply) is guilty of a felony punishable by up to 20 years' imprisonment and/or a maximum fine of \$100,000. The sentencing court also may order the person to pay court costs and/or to pay to the State or local law enforcement agency the costs of the investigation and prosecution.)

Senate Bill 225

Under the Code of Criminal Procedure, conduct prohibited under former Section 285 of the Michigan Penal Code (obtaining personal identifying information without authorization), a violation of the Identity Theft Protection Act, or a violation of law committed in furtherance of or arising from the same transaction as such a violation or conduct, may be prosecuted in the jurisdiction in which the offense occurred, the jurisdiction in which the information used to commit the violation was illegally used, or the jurisdiction in which the victim lives.

Under the bill, a violation of the Identity Theft Protection Act, former Section 285 of the Penal Code, or any of the following violations, and conduct in furtherance of or arising from the same transaction, could be prosecuted in any of those jurisdictions:

- Intentionally reproducing, altering, counterfeiting, forging, or duplicating an official State personal ID card or driver license, with criminal intent (MCL 28.295 or 257.310(7)).
- Committing a violation concerning criminal use of a financial transaction device (MCL 750.157n-750.157r, 750.157v, & 750.157w).
- Using false pretenses with intent to defraud (750.218).
- Obtaining telecommunications services with intent to avoid charge for the services (MCL 750.219a).

- Altering, forging, or counterfeiting a public record; uttering and publishing a false, forged, altered, or counterfeit financial transaction device; or forging records and other instruments (MCL 750.248, 750.248a, & 750.249).
- Committing larceny by conversion or larceny by false personation (MCL 750.362 or 750.363).
- Capturing personal identifying information by a person who is not a party to a transaction that involves the use of a financial transaction device (MCL 750.539k).

Senate Bill 226

The bill would include felony penalties proposed by Senate Bill 223 in the sentencing guidelines, as shown in Table 1.

Table 1

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

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 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.

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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.