Legislative Analysis

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SKIMMING DEVICES

House Bill 5050
Sponsor: Rep. Kurt Heise

House Bill 5051
Sponsor: Rep. Kevin Cotter

House Bill 5052
Sponsor: Rep. Mike Callton, D.C.

House Bill 5053
Sponsor: Rep. Ellen Cogen Lipton

House Bill 5054
Sponsor: Rep. John Kivela

Committee: Criminal Justice
Complete to 10-22-13

A SUMMARY OF HOUSE BILLS 5050-5054 AS INTRODUCED 10-3-13

Together, the bills would do the following:

- Prohibit the use of "skimmers" to obtain personal information or personal identifiers of another that would allow access to that person's financial accounts.
- Subject the user of a skimmer to the same criminal and tax penalties in place for those using zappers or phantom ware.
- Change the penalty structure for unlawfully using financial transaction devices to capture personal identifying information from a transaction.
- Allow multiple violations of unlawfully using a financial transaction device to be prosecuted in any jurisdiction where one of the crimes occurred.
- Place the new penalties in the sentencing guidelines.

House Bill 5050
The bill would amend Section 411w of the Michigan Penal Code to prohibit the sale, purchase, installation, transfer, or possession of a skimming device and provide penalties for violations.

Section 411w was added by Public Act 146 of 2012 to prohibit the sale, purchase, installation, transfer, or possession of automated sales suppression devices, or zappers, and phantom ware. Automated sales suppression devices, sometimes known as "zappers,", and computer software known as "phantom-ware," are high-tech mechanisms for artificially reducing a business's sales record. Zappers and phantom-ware manipulate the record of point-of-sale cash receipts on an electronic cash register to show fewer or less-expensive sales than actually occurred. Using the devices enables a business to pay less in taxes to a state or other taxing jurisdiction than the amount that legally is due.

The bill would apply the same penalty in place for a violation involving a zapper or phantom-ware to skimmers—a felony punishable by imprisonment for at least one year but not more than five years; a fine of not more than $100,000 may also be added. In addition, a person unlawfully using a zapper or phantom ware is liable for all taxes and penalties due to the state as the result of the fraudulent use of the device. A person who unlawfully used a skimmer would also be liable under this provision.

"Skimming device" would mean any combination of devices or methods designed or adapted to be placed on the physical property of another person and to obtain the personal information or personal identifying information of another, or any other information that allows access to a person's financial accounts, from a financial transaction device without the permission of the owner of the financial transaction device.

"Financial transaction device" is defined in Section 157m of the Michigan Penal Code and includes an electronic funds transfer card; credit card; debit card; point-of-sale card; and various cards, plates, codes, account numbers, personal identification numbers, driver's license numbers, etc., used to obtain money, credit, goods, services, or providing access to a deposit account.

"Personal identifying information" and "personal information" are defined in Section 3 of the Identity and Theft Protection Act.

House Bill 5054
The bill would amend the Code of Criminal Procedure (MCL 777.16t) to include in the sentencing guidelines the five-year maximum term of imprisonment for selling or possessing a skimming device and to designate the crime as a Class E felony against the public order. The bill is tie-barred to House Bill 5050, meaning that it could not take effect unless House Bill 5050 is also enacted.

House Bill 5051
The bill would also amend the Michigan Penal Code (750.539k). Currently, the code prohibits a person from photographing, digitally capturing or recording, or electronically transmitting personal identifying information gleaned from a financial transaction device (e.g., credit or debit cards or ATM cards) without the consent of the individual. A violation is a misdemeanor punishable by imprisonment for up to one year, a fine of not more than $1,000, or both. (The capture or transmission of personal identifying information in the ordinary and lawful course of business is not prohibited.)

The bill would eliminate the current penalty for a violation and instead provide the following penalties:

- For a first offense: imprisonment for not more than 5 years and/or a fine of not more than $25,000.
- For a second offense: imprisonment for not more than 10 years and/or a fine of not more than $50,000.
- For a third or subsequent offense: imprisonment for not more than 15 years and/or a fine of not more than $75,000.

House Bill 5052
The bill would amend the Code of Criminal Procedure (MCL 777.16aa) to place the felony provisions within House Bill 5051 into the sentencing guidelines. All three new penalties would be property crimes. Illegally recording personal identifying information from a financial transaction device in a transaction would be a Class E felony with a 5-year maximum term of imprisonment; a second offense would be a Class D felony with a 10-year maximum term of imprisonment; and a third or subsequent offense would be a Class C felony with a maximum term of imprisonment of 15 years. The bill is tie-barred to House Bill 5051, which means that it would not take effect unless House Bill 5051 was also enacted.

House Bill 5053
House Bill 5053 would amend the Code of Criminal Procedure (MCL 762.10c). Currently, if a person is charged with a violation of Section 539k of the Michigan Penal Code (unlawfully using a financial transaction device to capture personal identifying information from a transaction), the offense may be prosecuted in either 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 resides.

The bill would specify that if a person was charged with more than one violation, and those violations could be prosecuted in more than one jurisdiction, then any of those jurisdictions would be a proper jurisdiction for all of the violations. Currently, only multiple charges of violations of the Identify Theft Protection Act may be so prosecuted.

FISCAL IMPACT:

To the extent that the bills result in a greater number of convictions, they could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under these provisions. Felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. Misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly $35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about $3,000 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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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.