

Legislative Analysis



SKIMMING DEVICES

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House Bill 5050
Public Act 212 of 2013
Sponsor: Rep. Kurt Heise

House Bill 5051
Public Act 213 of 2013
Sponsor: Rep. Kevin Cotter

House Bill 5053
Public Act 215 of 2013
Sponsor: Rep. Ellen Cogen Lipton

House Bill 5052
Public Act 214 of 2013
Sponsor: Rep. Mike Callton, D.C.

House Bill 5054
Public Act 216 of 2013
Sponsor: Rep. John Kivela

House Committee: Criminal Justice
Senate Committee: Judiciary

Complete to 8-21-14

A SUMMARY OF HOUSE BILLS 5050-5054 AS ENACTED

Together, the bills 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.
- Specify an effective date of April 1, 2014.

House Bill 5050

The bill amends 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. The prohibition does not apply to equipment or technology utilized by law enforcement officers while in the lawful performance of their duties as law enforcement officers.

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 applies 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" means 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 amends 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 also amends 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 eliminated the current misdemeanor penalty for a violation and instead provides 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 amends the Code of Criminal Procedure (MCL 777.16aa) to place the felony provisions contained 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 is a Class E felony with a 5-year maximum term of imprisonment; a second offense is a Class D felony with a 10-year maximum term of imprisonment; and a third or subsequent offense is 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 amends the Code of Criminal Procedure (MCL 762.10c). Under the code, if a person is charged with a violation of the Identity Theft Protection Act or Section 539k of the Michigan Penal Code (unlawfully using a financial transaction device to capture personal identifying information from a transaction), the offense could 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 code also says that if a person is charged with more than one violation of the Identity Theft Protection Act, 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. The bill makes this apply to more than one violation of the Identity Theft Protection Act *or Section 539k of the Michigan Penal Code*.

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 \$35,600 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 \$3,600 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.

BRIEF DISCUSSION OF THE BILLS:

A representative of the Michigan Credit Union League stated that the League requested the bills in an attempt to stem the recent rise in the use of skimmers. One skimming ring alone was able to use card skimmers attached to an ATM to defraud a credit union of \$90,000 in just a few months, affecting at least 160 members, with 85 suffering other losses. Reportedly, the Secret Service says that over \$1 billion a year is lost to skimmers. Apparently, skimmers can be easily purchased on the Internet, and can be attached to an ATM in a matter of seconds. A camera placed above the machine records a person entering the pin number, and the skimmer reads the information on an ATM or credit card's magnetic strip. The technology is rapidly evolving with some versions able to read the keys a person is touching at the ATM.

The bill would act as a deterrent by making the use of skimmers a crime, as well as selling or possessing a skimmer. These devices are used to steal from others, and supporters of the legislation say that such theft should be punished.

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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.