



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bills 5050 through 5054 (as reported by the Committee of the Whole)

Sponsor: Representative Kurt Heise (H.B. 5050)
Representative Kevin Cotter (H.B. 5051)
Representative Mike Callton (H.B. 5052)
Representative Ellen Cogen Lipton (H.B. 5053)
Representative John Kivela (H.B. 5054)

House Committee: Criminal Justice

Senate Committee: Judiciary

CONTENT

House Bill 5050 would amend the Michigan Penal Code to include a "skimming device" in a prohibition against knowingly selling, purchasing, installing, transferring, or possessing any automated sales suppression device or zapper, or phantom-ware. A violation is a felony requiring imprisonment for not less than one year or more than five years. An offender also may be fined up to \$100,000.

Under the bill, the prohibition would not apply to equipment or technology used by a law enforcement officer while he or she was in the lawful performance of his or her duties.

The bill would define "skimming device" as any combination of devices or methods that are 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.

House Bill 5051 would amend the Michigan Penal Code to increase the penalty for illegally using personal identifying information from a transaction without consent. Section 539k of the Penal Code prohibits a person who is not a party to a transaction involving the use of a financial transaction device from secretly or surreptitiously photographing, or otherwise capturing or recording, electronically or by any other means, or distributing, disseminating, or transmitting personal identifying information from the transaction without the individual's consent.

A violation of Section 539k is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. Under the bill, a violation instead would be a felony punishable up to five years' imprisonment and/or a maximum fine of \$25,000. 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.

House Bill 5052 would amend the Code of Criminal Procedure to include in the sentencing guidelines the penalties proposed by House Bill 5051. A first offense would be a Class E property felony with a statutory maximum penalty of five years' imprisonment; a second offense would be a Class D property felony with a statutory maximum penalty of 10 years'

imprisonment; and a third or subsequent offense would be a Class C property felony with a statutory maximum penalty of 15 years' imprisonment.

The bill is tie-barred to House Bill 5051.

House Bill 5053 would amend the Code of Criminal Procedure to provide that, if a person were charged with more than one violation of Section 539k of the Penal Code and those violations could be prosecuted in more than one jurisdiction, any of those jurisdictions would be a proper jurisdiction for all of the violations. (The same provision currently applies to multiple violations of the Identity Theft Protection Act.)

House Bill 5054 would amend the Code of Criminal Procedure to include selling or possessing a skimming device in the sentencing guideline designation for selling or possessing an automated sales suppression device, zapper, or phantom-ware. The offense is a Class E public order felony with a statutory maximum penalty of five years' imprisonment. The bill is tie-barred to House Bill 5050.

All of the bills would take effect on April 1, 2014.

MCL 750.411w (H.B. 5050)
750.539k (H.B. 5051)
777.16aa (H.B. 5052)
762.10c (H.B. 5053)
777.16t (H.B. 5054)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would extend felony penalties for zappers and phantom-ware to skimming devices, and increase the penalties for recording personal financial information without consent. The expanded scope and increased penalties could result in a greater number of convictions and/or lengthened average sentences for those who would be convicted. Both of these factors could cause an indeterminate increase in the costs of incarceration and community supervision. Any increase in penal fine revenue would benefit public libraries.

Date Completed: 12-12-13

Fiscal Analyst: Dan O'Connor

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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.