

Legislative Analysis



MAIL AND MAIL DEPOSITORY PROTECTION ACT

Phone: (517) 373-8080

<http://www.house.mi.gov/hfa>

Senate Bill 23 (S-1) as passed by the Senate

Sponsor: Sen. Jim Runestad

Analysis available at

<http://www.legislature.mi.gov>

Senate Bill 24 (S-1) as passed by the Senate

Sponsor: Sen. Peter J. Lucido

House Committee: Judiciary

Senate Committee: Judiciary and Public Safety

Complete to 3-18-19

BRIEF SUMMARY:

Senate Bill 23 would create a new act, the Mail and Mail Depository Protection Act, to do the following:

- Prohibit certain conduct regarding mail that is addressed to another person.
- Establish criminal penalties, including enhanced penalties for repeat offenses, for a violation of the act.
- Allow a person charged with a violation of the act to present an affirmative defense.

Senate Bill 24 would place the felony penalties for a violation of the new act within the sentencing guidelines.

Each bill would take effect 90 days after its enactment. Senate Bill 24 is tie-barred to SB 23, which means that it could not take effect unless SB 23 were also enacted.

DETAILED SUMMARY:

Senate Bill 23 would create the Mail and Mail Depository Protection Act to prohibit a person from doing any of the following with respect to *mail* addressed to another *person*:

- Knowingly and intentionally:
 - Removing mail from a *mail depository*.
 - Taking mail from a *mail carrier*.
 - Removing the contents of mail.
 - Taking mail left for delivery at the location specified on the mail.
 - Taking mail left for collection on or adjacent to a mail depository.
 - Destroying or damaging mail.
- Obtaining custody of mail by intentionally deceiving a mail carrier or other person who rightfully possesses or controls the mail by making a written, verbal, or electronic representation that the person knows to be false with intent to deceive and actually deceive a mail carrier or other person who possesses or controls the mail.
- Receiving, possessing, transferring, or concealing mail that the person knows or has reason to believe was obtained in violation of the act or in a manner prohibited by state or federal law.

The bill would apply whether an individual whose mail was obtained, or attempted to be obtained, was alive or deceased at the time of the violation.

Mail would mean a letter, postcard, package, bag, or other article or thing contained therein, or other sealed article addressed to a person.

Person would mean an individual, partnership, corporation, limited liability company, association, or other legal entity.

Mail depository would mean a mailbox, letter box, or mail receptacle, a post office or a station of a post office, a postal service vehicle, or any authorized depository for mail.

Mail carrier would mean a person employed to deliver and collect mail.

Affirmative defense

A person charged with a violation of the act (except obtaining custody of mail by intentionally deceiving a mail carrier or other person) could assert one or more of the following as an affirmative defense to the alleged violation:

- That the person acted with the consent of the person to whom the mail was addressed. This would not apply if the addressee gave consent knowing that the information would be used to commit an unlawful act.
- That the action taken was authorized or required by state or federal law, rule, or regulation or a court order or rule.
- That the person is the legal guardian of a child or adult and is authorized to possess the mail of either and to make decisions regarding access to that mail.

Further, it would be an affirmative defense to a prosecution that the person lawfully transferred, obtained, or attempted to obtain mail for the purpose of detecting, preventing, or deterring mail theft or another crime.

A defendant would have the burden of establishing an affirmative defense by a preponderance of the evidence.

Penalties

A violation of the act that was a first offense and that did not involve theft with the intent to commit fraud would be a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$500, or both.

A second violation would be a felony punishable by imprisonment for to five years or a fine of up to \$1,000, or both.

A third or subsequent violation would be a felony punishable by imprisonment for up to 10 years or a fine of up to \$2,000, or both.

A violation involving theft of mail with the intent to commit fraud would be a felony punishable by imprisonment for up to five years or a fine of up to \$1,000, or both.

A person could be charged with, convicted of, or sentenced for any other violation of law committed by that person using mail obtained in violation of the act or any other violation of law committed by that person while violating or attempting to violate the act.

Senate Bill 24 would amend the Code of Criminal Procedure to place the felony penalty provisions of the new act within the sentencing guidelines. Under the bill, a second offense of mail theft, or mail theft with the intent to commit fraud, would be a Class E felony against the public order with a maximum term of imprisonment of five years. A third or subsequent offense of mail theft would be a Class D felony against the public order with a 10-year maximum term of imprisonment.

MCL 777.14h

FISCAL IMPACT:

Senate Bill 23 would have an indeterminate fiscal impact on the state and on local units of government, as the bill could lead to an increase in the number of individuals convicted of misdemeanors and/or felonies. Information is not available on the number of persons who might be convicted under provisions of the bill. Any new felony convictions would result in increased costs related to state prisons and state probation supervision if the convictions result in imprisonment. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. New misdemeanor convictions would result in increased costs related to county jails and/or local misdemeanor probation supervision if the convictions result in imprisonment. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 24 is a companion bill to Senate Bill 23 and amends sentencing guidelines. The bill would have not have a direct fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.