



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

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 149 (as reported by the Committee of the Whole)
Senate Bill 150 (Substitute S-1 as reported)
Sponsor: Senator Bruce Patterson
Committee: Judiciary

CONTENT

Senate Bill 149 would amend the Identity Theft Protection Act to:

- Prohibit communicating under false pretenses to request personal identifying information, creating or operating an unauthorized webpage to solicit personal identifying information, or altering a computer or software setting to solicit personal identifying information, with the intent to commit identity theft or another crime; and prohibit the same activities without the element of intent.
- Prescribe a penalty of up to 10 years' imprisonment and/or a fine of not less than \$5,000 or more than \$500,000, rather than up to five years and/or a maximum fine of \$25,000, for violations of current identity theft prohibitions; and extend the penalty to violations of the bill committed with intent to commit identify theft or another crime.
- Allow the Attorney General, or an interactive computer service provider, to bring a civil action against a person who violated the proposed prohibition that would not include the element of intent.
- Exempt a law enforcement officer engaged in his or her official duties, or any other investigator engaged in a lawful investigation, from the proposed prohibition that would not include intent to commit identity theft or another crime.
- Exempt an interactive computer service provider from liability under the Act for certain actions.
- Expand the definition of "personal identifying information" to include any account password in combination with sufficient information to identify and gain access to a person's financial account, and a person's automated or electronic signature or biometrics.

"False pretenses" would include "a false, misleading, or fraudulent representation, writing, communication, statement, or message, communicated by any means to another person, that the maker of the representation, writing, communication, statement, or message knows or should have known is false or fraudulent". The false pretense could be a representation regarding a past or existing fact or circumstance or a representation regarding the intention to perform a future event or to have a future event performed.

Senate Bill 150 (S-1) would amend the Code of Criminal Procedure to revise the sentencing guidelines classification of certain identity theft violations. Currently, a violation of Section 7 of the Identity Theft Protection Act (which provides for the criminal offenses referred to above) is a Class E felony against the public order, with a statutory maximum sentence of five years' imprisonment. Under the bill, the offense would be a Class D felony against the public order, with a statutory maximum sentence of 10 years' imprisonment.

The bills would take effect 90 days after their enactment. Senate Bill 150 (S-1) is tie-barred to Senate Bill 149.

MCL 445.63 et al. (S.B. 149)
777.14h (S.B. 150)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 149 would result in some staffing costs to the Office of Attorney General associated with bringing civil actions against and/or investigating the business transactions of people violating the proposed prohibitions. The majority of these costs, however, would be recovered through any damages awarded to the Attorney General's office.

Senate Bills 149 and 150 (S-1) would have an indeterminate fiscal impact on State and local government. In 2006, 420 offenders were sentenced under the Identity Theft Protection Act. Of these offenders, 118 were sentenced to prison, 246 were sentenced to probation, 38 were sentenced to jail, and 18 received other types of sentences such as delayed and suspended sentences or Holmes Youthful Trainee Act probation. An offender convicted of the Class D offense under the bills would receive a sentencing guidelines minimum sentence range of 0-6 months to 43-76 months. Currently, an offender convicted of the Class E offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. To the extent that the bills would result in increased convictions or incarceration time, 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 annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue would benefit public libraries.

Date Completed: 4-23-09

Fiscal Analyst: Joe Carrasco
Lindsay Hollander

floor\sb149

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.