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SFA



BILL ANALYSIS

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Senate Bill 120 (as enrolled)
Senate Bill 885 (as enrolled)
Sponsor: Senator Glenn D. Steil
Senate Committee: Judiciary
House Committee: Criminal Law and Corrections

PUBLIC ACT 386 of 2000
PUBLIC ACT 389 of 2000

Date Completed: 1-25-01

RATIONALE

The practice of identity theft appears to be increasing nationwide. Reportedly, the Federal government estimates that there are nearly 400,000 victims of identity theft per year, and the number is rising. This statistic apparently reflects a 16-fold increase between 1992 and 1997. There may be numerous variations of this type of fraud, in which an offender uses bits and pieces of information about an individual to represent himself or herself as that person. By obtaining a person's Social Security number, for example, an identity thief could obtain credit cards and loans in that person's name, open utility accounts, rent an apartment or house, secure cellular telephone service, purchase a car or home, or conduct any number of personal and business transactions without the knowledge of the person whose name and identity information were used. The increased incidence of this type of crime may have been fostered by a thriving, competitive credit market. In today's economy, credit is readily available from numerous lenders eager to expand their customer base. In addition, with recent rapid advances in the area of information technology, it has become easier to gain information about individuals, making it simpler for criminals to pose as others. Further, because of the "white collar" nature of this type of crime, it may not receive the same kind of exposure as more violent crimes do, so law enforcement may be more lax and the public may be less aware.

Although the fraudulent acts committed by those who obtain others' personal identity information are unlawful, there apparently has been no State law specifically prohibiting the act of obtaining or attempting to obtain that information. Some people advocated that a statutory proscription against identity theft, plus criminal penalties, be enacted to provide a mechanism to increase public awareness of this invasive activity and serve as a deterrent and punishment to those who may pursue this type of fraud.

CONTENT

Senate Bills 120 and 885 amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to create the felony of obtaining personal identity information and include that offense in sentencing guidelines. The bills will take effect on April 1, 2001. Senate Bill 885 was tied to Senate Bill 120.

Senate Bill 120

The bill prohibits a person from obtaining or attempting to obtain "personal identity information" of another person with the intent to use that information unlawfully, without the person's authorization, for any of the following purposes:

- Obtaining financial credit.
- Purchasing or otherwise obtaining or leasing any real or personal property.
- Obtaining employment.
- Obtaining access to medical records or information contained in them.
- Committing any illegal act.

A violation of the bill is a felony, punishable by up to five years' imprisonment, a maximum fine of \$10,000, or both. The bill does not prohibit an offender from being charged with, convicted of, or sentenced for any other violation of law committed by that person using information obtained in violation of the bill.

The bill does not apply to a person who obtains or attempts to obtain another person's personal identity information pursuant to the discovery process of a civil action, an administrative proceeding, or an arbitration proceeding.

"Personal identity information" means any of the following information of another person:

- A Social Security number.
- A driver's license number or State personal identification card number.
- Employment information.
- Information regarding any financial account held by another person, including a saving or checking account number, a financial transaction device account number, a stock or other security certificate or account number, and a personal information number for any of those accounts.

Senate Bill 885

The bill includes in the sentencing guidelines provisions the felony of obtaining personal identity information without authorization, as enacted by Senate Bill 120. The offense is categorized as a Class E property felony with a statutory maximum sentence of five years' imprisonment.

MCL 750.285 (S.B. 120)
777.16o (S.B. 885)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Although the bills are not a panacea for the increasingly frequent problem of identity theft, they send a message that the protection of personal privacy is a priority in Michigan. By creating a new felony and establishing strict penalties for those who prey on others by using their identities for nefarious purposes, the bills will give prosecutors a needed tool to battle this problem. Identity fraud most often takes the form of obtaining credit or making purchases in another person's name. While individual victims of these financial scams may not be liable for the debt accumulated by imposters, people and businesses are victimized nonetheless: Individuals may suffer from bad credit ratings, as well as the frustration, anxiety, and time lost in repairing the damage to their records, while financial institutions and other creditors (and, ultimately, consumers) may suffer when they cannot collect on an imposter's debt. Personal identity theft and its consequences are serious problems, and this legislation assigns appropriate penalties for those violations.

Response: Public Acts 164 and 166 of 1999 enacted similar provisions in regard to application for credit. Those Acts provide protection from prosecution for businesses and their employees who

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unwittingly participate in fraudulent schemes or pass along false applications, devices, and instruments as part of efforts to uncover crimes. Senate Bill 120 should have included similar protections.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 120

The bill will have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many people might be convicted of obtaining personal identity information of another person for the prohibited purposes enumerated in the bill. The bill makes these acts a felony punishable by a maximum sentence of five years and/or a fine of \$10,000. The minimum sentence, which is indicative of the cost of incarceration, is not specified, so the fiscal impact is indeterminate.

Senate Bill 885

The bill will have an indeterminate fiscal impact on State and local government.

The bill places the crime of obtaining personal identity information without authorization in the sentencing guidelines. The crime includes a five-year maximum penalty and uses the "E" sentencing guideline grid in order to determine the minimum sentence range. Minimum sentences on the "E" grid vary from 0-3 months to 24-38 months.

There are no available data that indicate how many people might be convicted of obtaining personal identity information without authorization. However, assuming that 10 offenders a year would be convicted of this crime and serve a minimum sentence in a State facility of 38 months, given the average annual cost of incarceration of \$22,000, the cost to incarcerate these offenders would be \$697,000 in the long run. Assuming that offenders were given a minimum sentence in the lower range of the grid, they would be subject to local incarceration or intermediate sanctions. Costs vary for local incarceration and intermediate sanctions among the counties and programs.

Fiscal Analyst: K. Firestone