



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 945 (Substitute S-1)
Senate Bill 1191 (as introduced 3-6-08)
Sponsor: Senator Bruce Patterson (S.B. 945)
 Senator Mike Prusi (S.B. 1191)
Committee: Judiciary

Date Completed: 3-11-08

CONTENT

Senate Bill 945 (S-1) would amend the Identity Theft Protection Act to do all of the following:

- **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 or without the intent to commit identity theft or another crime.**
- **Increase the criminal penalty for certain violations and apply that penalty to a violation described above that included intent to commit identity theft or another crime.**
- **Allow the Attorney General, or an interactive computer service provider, to bring a civil action against a person who committed a violation described above without intent to commit identity theft or another crime.**
- **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".**

Senate Bill 1191 would amend the Code of Criminal Procedure to revise the sentencing guidelines classification of certain identity theft violations.

Senate Bill 945 (S-1) would take effect 90 days after its enactment. Senate Bill 1191 is tie-barred to Senate Bill 945.

Senate Bill 945 (S-1)

"Personal identifying information" means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including a person's name, address, telephone number, driver license or State personal identification card number, Social Security number, place of employment,

employee ID number, employer or taxpayer ID number, government passport number, health insurance ID number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number, or the person's account password, stock or other security certificate or account number, credit card number, vital record, or medical records or information.

Under the bill, "personal identifying information" also would include any other 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.

Criminal Prohibitions

The Act prohibits a person from doing any of the following:

- Obtaining or possessing, or attempting to obtain or possess, personal identifying information of another person with the intent to use it to commit identity theft or another crime.
- Selling or transferring, or attempting to sell or transfer, someone else's personal identifying information if the person knows or has reason to know that the specific intended recipient will use, attempt to use, or further transfer the information to another person for the purpose of committing identity theft or another crime.
- Falsifying a police report of identity theft, or knowingly creating, possessing, or using a false police report of identity theft.

A violation is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$25,000.

The bill also would prohibit a person from doing any of the following:

- Making any electronic mail or other communication under false pretenses purporting to be by or on behalf of a business, without its authority or approval, and using that electronic mail or other communication to induce, request, or solicit any individual to provide personal identifying information, with the intent to use that information to commit identity theft or another crime.
- Creating or operating a webpage that represented itself as belonging to or being associated with a business, without the business's authority or approval, and inducing, requesting or soliciting any user of the internet to provide personal identifying information, with the intent to use the information to commit identity theft or another crime.
- Altering a setting on a user's computer or similar device or software program through which the user could search the internet and causing the internet user to view a communication that represented itself as belonging to or being associated with a business, and that had been created or was operated without the authority or approval of that business, and inducing, requesting, or soliciting any internet user to provide personal identifying information, with the intent to use it to commit identity theft or another crime.

A violation of the current and proposed prohibitions would be punishable by up to 10 years' imprisonment and/or a fine of not less than \$5,000 or more than \$500,000.

Under the bill, "false pretenses" would mean the representation of a fact or circumstance that is not true and is calculated to mislead.

"Webpage" would mean a location that has a uniform resource locator or URL with respect to the world wide web or another location that can be accessed on the internet.

"Interactive computer service" would mean an information service or system that enables computer access by multiple users to a computer server, including a service or system that provides access to the internet or to software services available on a server.

Civil Action

The bill would prohibit a person from taking an action that would be a criminal offense under the bill, but would not require intent to use the information to commit identity theft or another crime.

The Attorney General or an interactive computer service provider harmed by a violation could bring a civil action against a person who violated the prohibition. A person bringing an action could recover one of the following:

- Actual damages, including reasonable attorney fees.
- In lieu of actual damages, reasonable attorney fees plus the lesser of \$5,000 per violation or \$250,000 for each day that a violation occurred.

The prohibition would not apply to a law enforcement officer engaged in the performance of his or her official duties or any other individual authorized to conduct lawful investigations, while engaged in a lawful investigation.

Any damages collected by the Attorney General would be credited to him or her for the costs of investigating, enforcing, and defending the Act.

Attorney General Investigation

If the Attorney General had reason to believe that a person had committed one of the proposed violations, with or without intent to commit identity theft or another crime, he or she could investigate the person's business transactions. The Attorney General could require the person to appear, at a reasonable time and place, to give information under oath and to produce documents and evidence necessary to determine whether the person was in compliance with the requirements.

Liability Exemption

Under the bill, an interactive computer service provider could not be held liable under any provision of Michigan law for removing or disabling access to an internet domain name controlled or operated by the registrar or by the provider, or to content that resided on an internet website or other online location controlled or operated by the provider, that the provider believed in good faith was used to engage in a violation the Act.

The bill specifies that the Act would not apply to a telecommunications provider's or internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, personal identifying information.

Senate Bill 1191

Currently, a violation of Section 7 of the Identity Theft Protection Act (which provides for the criminal offense described in Senate Bill 945 (S-1)) 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 Code describes the offense as to obtain, possess, sell, or transfer personal identifying information of another or falsify a police report with intent to commit identity theft. The bill also would refer to "solicit".

MCL 445.63 et al. (S.B. 945)
777.14h (S.B. 1191)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 945 (S-1) 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 by any damages collected by the Attorney General's office.

Senate Bills 945 (S-1) and 1191 would have an indeterminate fiscal impact on State and local government. In 2005, 92 offenders were convicted under the Identity Theft Protection Act. Of these offenders, 16 were sentenced to prison, 65 were sentenced to probation, eight were sentenced to jail, and three were sentenced to 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 bill 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 \$33,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Joe Carrasco
Lindsay Hollander

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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.