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CREDIT IDENTITY THEFT

**House Bill 4413 as enrolled
Public Act 164 of 1999
Sponsor: Rep. Bob Brown**

**House Bill 4598 as enrolled
Public Act 166 of 1999
Sponsor: Rep. Stephen Ehardt**

**House Committee: Insurance and Financial
Services
First Senate Committee: Financial Services
Second Senate Committee: Banking and
Financial Institutions**

**House Bill 4670 as enrolled
Public Act 165 of 1999
Sponsor: Rep. Samuel Thomas III**

**House Committee: Criminal Law and
Corrections
First Senate Committee: Financial Services
Second Senate Committee: Banking and
Financial Institutions**

Second Analysis (1-11-00)

THE APPARENT PROBLEM:

With the increase in the availability and use of credit, the crime of fraudulently applying for and/or using credit by assuming the identity of another person is also increasing. Typically, a thief gets access to a person's credit card numbers, ATM card, driver's license, Social Security number, or similar identifier, and then pretends to be that person while either applying for credit in that name or tapping into already available credit. The thief then can run up large amounts of debt before the victim is aware of what has happened. Even though a victim is not usually required to pay the thief's bills, he or she can be left with a bad credit record, with a lack of available credit, and other credit problems that can take months or longer of wasted time and energy to repair. (Sometimes, reportedly, people engage in identity theft to harass others rather than simply to steal.) Current criminal statutes are said to be inadequate to address these kinds of crimes directly.

Legislation has been introduced that would create new felonies, with stiff penalties, aimed at deterring and punishing credit-related identity theft.

THE CONTENT OF THE BILLS:

House Bills 4413 and 4598 would amend the Michigan Penal Code (MCL 750.219e and 750.219f) to create new felonies related to the application for credit made in another person's name without authorization and the use of instruments and devices (e.g., credit cards and bank cards) of another without authorization. House Bill 4670 would amend the statutory sentencing guidelines in the Code of Criminal Procedure to include these new felonies.

House Bill 4413 would prohibit:

House Bills 4413, 4598 and 4670 (1-11-00)

-- Preparing or submitting an application for a loan or other extension of credit in another person's name without authorization from that person;

-- Receiving or possessing an application for a loan or other extension of credit knowing or having reason to know the application was made in another's name without authorization; and

-- Receiving or possessing any instrument or device for accessing the proceeds of a loan or other extension of credit knowing or having reason to know that the instrument was obtained in another's name without authorization.

A violation would be a felony punishable by imprisonment for not more than four years or a fine of not more than \$2,500, or both.

House Bill 4598 would prohibit:

-- Receiving with the intent to forward, possessing with the intent to forward, or forwarding an application for a loan or other extension of credit on behalf of a person to another person knowing or having reason to know the application was submitted in violation of the provisions of House Bill 4413; and

-- Receiving with the intent to forward, possessing with the intent to forward, or forwarding any instrument or device for accessing the proceeds of a loan or other extension of credit knowing or having reason to know the instrument or device was obtained in violation of House Bill 4413.

A violation of House Bill 4598 would be a felony punishable by imprisonment for not more than four years or a fine of not more than \$100,000, or both.

The bills would not apply to a financial institution or an affiliate, licensee, or franchisee of a financial institution or to a director, officer, or employee of a financial institution or an affiliate, licensee, or franchisee who:

-- Prepared or submitted an application in another person's name without actual prior knowledge that the application was in violation; or received with the intent to forward, possessed with the intent to forward, or forwarded an application in another's name without prior actual knowledge the application was in violation;

-- Submitted or forwarded an application prepared in another's name to a federal, state, or local law enforcement agency or regulatory agency;

-- Submitted or forwarded an application prepared in another's name to a credit reporting bureau or other person to determine whether a violation had occurred;

-- Received or possessed an application prepared in another's name without prior actual knowledge that the application was prepared in violation;

-- Received or possessed an instrument or device obtained as a result of a violation without actual prior knowledge that the instrument or device was obtained as a result of a violation; or received with intent to forward, possessed with intent to forward, or forwarded an instrument or device without prior actual knowledge the instrument or device was obtained in violation.

The term "financial institution" as used in the bills would refer to: a regulated lender under the Credit Reform Act; a person licensed under the Michigan Bidco Act; a person licensed or registered under the Mortgage Brokers, Lenders, and Servicers Licensing Act; a person licensed or registered under the Secondary Mortgage Loan Act; a person subject to the Retail Installment Sales Act; a person subject to the Motor Vehicle Sales Finance Act; and a person chartered or regulated by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve, or the Office of Thrift Management.

House Bill 4670 would amend that statutory sentencing guidelines provisions of the Code of Criminal Procedure (MCL 777.161) to include the crimes created in House Bills 4413 and 4598. Receiving, possessing, preparing, or submitting an unauthorized credit application or receiving or possessing proceeds from an unauthorized credit application would be categorized as a Class F felony against property, with a statutory maximum penalty of four years' imprisonment. Receiving or possessing with intent to forward, or forwarding an unauthorized credit application or proceeds from an unauthorized credit application, to another person would be categorized as a Class F felony against property, with a statutory maximum penalty of four years' imprisonment. The bill would take effect 90 days after enactment.

House Bills 4413 and 4598 are tie-barred to one another. House Bill 4670 is tie-barred to each of the other bills.

FISCAL IMPLICATION:

According to the House Fiscal Agency, to the extent that the bills led to state or local sanctions that were

stiffer than those that could or would otherwise be imposed, they could increase state and local costs. (5-13-99) The Senate Fiscal Agency says that if ten people each year were found guilty of the new offense and sentenced to prison for a minimum of 30 months, the cost of incarcerating the offenders would be \$550,000 per year (based on the average annual cost of incarceration of \$22,000). If the sentence was in the lower minimum range, says SFA, incarceration costs would be borne by local units of government. (SFA floor analysis dated 10-12-99)

ARGUMENTS:

For:

The bills would give prosecutors the tools they need to prosecute credit identity theft. They would create new felonies aimed both at those who steal the identity of others to obtain credit or to use existing credit (such as credit card fraud) and at the clearinghouses that help thieves do this or mastermind such activity. Supporters of the legislation say that current statutes and penalties are inadequate. These bills provide stiff penalties for those who would prey on others by stealing their credit and their peace of mind. Individual victims suffer bad credit ratings, as well as frustration, anxiety, and time lost in repairing the damage. Financial institutions suffer when they cannot collect on the debt. The bills also address those who attempt to commit identity theft even though they do not succeed. These are serious crimes and should be treated as such. At the same time, the bills protect financial institutions and their employees who unwittingly participate in fraud schemes or pass along fraudulent applications, devices, and instruments as part of efforts to uncover crimes.

Analyst: C. Couch

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