

Legislative Analysis



IDENTITY THEFT AMENDMENTS

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House Bill 6096
Sponsor: Rep. Brian Palmer

House Bill 6101
Sponsor: Rep. Marc Corriveau

House Bill 6097
Sponsor: Rep. Rick Shaffer

House Bill 6102
Sponsor: Rep. Mary Valentine

House Bill 6098
Sponsor: Rep. Martin Griffin

House Bill 6103
Sponsor: Rep. Bert Johnson

House Bill 6099
Sponsor: Rep. Kathy Angerer

House Bill 6104
Sponsor: Rep. Brian Palmer

House Bill 6100
Sponsor: Rep. Terry Brown

House Bill 6105
Sponsor: Rep. Robert Dean

Committee: Judiciary

Complete to 5-20-08

A SUMMARY OF HOUSE BILLS 6096-6105 AS INTRODUCED 5-8-08

Public Act 452 of 2004 created the Identity Theft Protection Act, which among other things made it a felony to use personal identifying information to obtain goods and services without consent. House Bills 6099 and 6101-6105 each amends the Identity Theft Protection Act. The other bills amend different acts to address matters directly related to identity theft.

House Bills 6099-6105 are tie-barred to each other and to two related bills assigned to the House Committee on Banking and Financial Services, House Bills 6106 and 6107.

Restitution

House Bills 6096-6098 each amends a different act to require courts to order restitution in cases where the victims are victims of identity theft. Restitution would be in an amount that compensates the victim in full for the work done by the victim or the victim's attorney, or both, to correct financial records and vital records and to ameliorate the effects of the identity theft on the victim's financial affairs, including credit history.

House Bill 6096 would amend the Code of Criminal Procedure (MCL 869.1a). House Bill 6097 would amend the William Van Regenmorter Crime Victim Rights Act (MCL 780.754a et al.). House Bill 6098 would amend Chapter XIIA of the Probate Code,

which deals with juvenile offenses (MCL 712A.30 et al.). The three bills are tie-barred to one another.

Model Police Report

House Bill 6096 would also specify in the Code of Criminal Procedure that a bona fide victim of identity theft is entitled to file a police report with a law enforcement agency in a jurisdiction where the alleged violation may be prosecuted and would require the Department of State Police to develop a model form of police report of identity theft and make it available to law enforcement agencies and victims of identity theft. House Bill 6100 would amend the William Van Regenmorter Crime Victim Rights Act to include the same requirement about a model form to be developed by the State Police.

Civil Action for Damages

House Bill 6099 would amend the Identity Theft Protection Act to allow a victim of identity theft to file a civil action for damages and recover all of the following: actual damages, reasonable attorney fees, and court costs; reimbursement for notifying third parties of the identity theft, reporting identity theft to law enforcement, and correcting personal identifying information or providing other information to third parties required because of the identity theft; and restitution, in an amount that compensates the victim in full for the work done by the victim or the victim's attorney, or both, to correct financial records and vital records and to ameliorate the effects of the identity theft on the victim's financial affairs, including credit history, credit rating, or credit score.

Misleading Law Enforcement/Courts

House Bill 6101 would make it an offense to use or attempt to use the personal identifying information of another person to mislead a law enforcement agency or court concerning the identity of an individual under criminal investigation or a criminal defendant. The bill would also rewrite a current provision to prohibit engaging in criminal activity or other violations of law by using or attempting to use the personal identifying information of another person.

Notification of Transfer of Information

House Bill 6102 would require a person or agency maintaining a database that sells or transfers any personal identifying information about a state resident to another person or agency to provide a notice to that resident indicating the information being transferred and the reason for the transfer, and identifying the transferee of the information. The notice would also have to include a telephone number or other contact information for the person or agency making the transfer for the resident to use in notifying the person or agency about errors in the personal information or to request removal of personal identifying information from the database.

Notice could be sent by mail to the recipient's postal address; electronically, if the recipient has consented to electronic notice, the person or agency has an existing electronic mail relationship with the recipient, or the person or agency conducts its business primarily through Internet account transactions or on the Internet; or by telephone, if the notice is not given by means of recorded message and the recipient has consented to notification by phone (or if the recipient has not expressly consented to notification by phone, the person or agency also provides notice by postal mail or electronic mail if the notice by telephone does not result in a live conversation within three business days). A notice would have to be written in clear and conspicuous manner or, for a telephone notification, be clearly communicated to the recipient of the phone call.

Knowingly failing to provide the required notice could result in a civil fine of up to \$250 for each failure to provide notice. The attorney general or a local prosecutor could bring actions to recover a civil fine. The aggregate liability in civil fines from multiple violations from the same transfer or information could not exceed \$750,000.

House Bill 6103 would require a person or agency that receives personal identifying information to provide the same kind of notices as described above for the sending person or agency.

Identity Theft Protection Commission

House Bill 6104 would establish a seven-member Identity Theft Protection Commission in the Department of Attorney General. The attorney general, or a designee, would serve as chair. Other members would be the director of the Department of State Police (or a designee), the commissioner of the Office of Financial and Insurance Regulation (or a designee), three members of the general public, and a designated representative of the East Central Region of the Federal Trade Commission, if the commission elects to participate. The three public members would be appointed to two-year terms, one each by the governor, the Speaker of the House of Representatives, and the Majority Leader of the Senate.

Among other functions, the new commission would: review and provide recommendations to the governor about state rules, guidelines, and procedures related to identity theft protection and prevention; review and provide recommendations about legislation to the legislature and to the U.S. Congress; provide recommendations to the public about business practices; review and compile a list of state agencies and departments that collect or retain Social Security numbers and provide recommendations to the Department of Management and Budget on reducing the use of such numbers; act as a liaison between the federal government and the state; and establish a process for recognizing those with exemplary business practices in identity theft protection and prevention.

Destruction of Data

House Bill 6105 would amend provisions regarding the destruction of data in a database that includes personal information on multiple individuals. Currently, data containing personal identifying information on an individual is to be destroyed when that data is removed from the database and the person or agency is not retaining the data elsewhere for another purpose. The bill would retain that language but would add a second condition so as to require data to be destroyed when the data has remained in the database for a period of two years or any longer period agreed to by an individual in writing or required or authorized by state or federal law. (Destruction of data would be required when the earlier of the two conditions existed.)

BACKGROUND INFORMATION:

In 2004, a package of legislation was enacted on the issue of identity theft. Taken together, the legislation:

- Created the Identity Theft Protection Act to make it a felony to use personal identifying information to obtain goods and services without consent.
- Prohibited businesses from denying credit or public utility service to victims of identity theft and establish penalties for violations.
- Clarified the jurisdiction where ID thefts could be prosecuted.
- Extended the statute of limitations for ID thefts to six years after the crime was committed or the identity of the thief was established.
- Created the Social Security Number Privacy Act to prohibit certain uses of SSNs, establish penalties for violations, and provide remedies.
- Established the right of a victim of ID theft to obtain a police report.
- Listed ID theft as an unlawful practice of trade or commerce.
- Prohibited—as an unlawful practice of trade or commerce—issuing receipts containing more than the last four digits of a credit card account.
- Prohibited requiring a consumer to provide an SSN as a condition for doing business.
- Prohibited and created penalties for photographing, recording, or electronically transmitting personal identifying information taken, without consent, from credit, debit, and ATM cards and other devices.

FISCAL IMPACT:

There would be an indeterminate and likely negligible impact on the judiciary; any fiscal impact would come from increased complexity in the caseload brought under the bills.

The bills would have no impact on the Department of State Police since they have already produced a model identity theft police report form.

House Bill 6104 would establish a new commission, the Identity Theft Protection Commission, within the Department of Attorney General. The bill requires the department to reimburse commission members for their actual and necessary expenses

and provide the commission with staff assistance as well. These requirements would result in additional costs to the department. The amount of the increase would depend upon a variety of factors, including the scope and magnitude of the commission's activity, the expenses they incur, and the amount of staffing the commission will need to carry out their duties.

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■ 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.