



Senate Fiscal Agency  
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## BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bill 275 (as enacted)  
House Bill 4355 (as enacted)  
Sponsor: Senator Judy K. Emmons (S.B. 275)  
Representative Gary Glenn (H.B. 4355)  
Senate Committee: Judiciary  
House Committee: Law and Justice

**PUBLIC ACT 195 of 2017**  
**PUBLIC ACT 194 of 2017**

Date Completed: 1-16-19

### **RATIONALE**

The Michigan Penal Code prohibits individuals from engaging in various prostitution-related activities. The Code, however, exempts law enforcement officers from prosecution for engaging in prohibited conduct if it is done while in the performance of duties as an officer. Some contended that this exemption was used by human traffickers posing as law enforcement officers to engage in sexual acts with the traffickers' victims. Also, apparently, Michigan was the only state to have such an exemption. To address those concerns, it was suggested that the exemption should not apply if an officer engages in sexual penetration.

### **CONTENT**

**Senate Bill 275 and House Bill 4355 amended the Michigan Penal Code to remove the immunity from prosecution of a law enforcement officer for various prostitution-related offenses if the officer engaged in sexual penetration while in the course of his or her duties.**

Formerly, under Section 451a of the Code, Sections 448, 449, 449a, 450, and 451 did not apply to a law enforcement officer while in the performance of his or her duties as an officer. Under Senate Bill 275, those sections and Section 459 do not apply to a law enforcement officer while in the performance of his or her duties as an officer, except as provided under Section 451b of the Code. (Sections 448, 449, 449a, 450, 451, and 459 define various prostitution-related offenses, and prescribe the penalties for each crime. The **BACKGROUND** section below contains more information about the offenses and penalties.)

House Bill 4355 specifies that Section 451a does not apply to the officer if he or she engages in sexual penetration as that term is defined in Section 520a while in the course of his or her duties. (Section 520a states that "sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.)

The bills took effect on March 13, 2018.

MCL 750.451a (S.B. 275)  
Proposed 750.451b (H.B. 4355)

### **BACKGROUND**

Under Section 448 of the Michigan Penal Code, a person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word,

gesture, or any other means, to commit prostitution or to do any other lewd or immoral act is guilty of a crime punishable as provided in Section 451 (discussed below).

Section 449 provides that a person 16 years of age or older who receives or admits or offers to receive or admit a person into a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, or who knowingly permits a person to remain in a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, is guilty of a crime punishable as provided in Section 451.

Section 449a(1) prohibits a person from engaging or offering to engage the services of another person, who is not his or her spouse, for the purposes of prostitution. Section 449a(2) prohibits the same conduct when the person engaged is under 18 years old.

Section 450 provides that a person 16 years of age or older who aids, assists, or abets another person to commit or offer to commit an act prohibited under Section 448, 449, or 449a is guilty of a crime punishable as provided in Section 451.

Under Section 451, a person convicted of violating Section 448, 449, 449a(1), or 450 is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$500. If a person 16 years old or older has a prior conviction under any of those sections, or a substantially corresponding law of another state or of a political subdivision of this or another state, he or she is guilty of a misdemeanor punishable by imprisonment for up to one year, a maximum fine of \$1,000, or both. A person who has two or more prior convictions is guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$2,000. A person convicted of violating Section 449a(2) is guilty of a felony punishable by up to five years' imprisonment, a maximum fine of \$10,000, or both.

Section 459(1) prohibits a person from knowingly transporting or causing to be transported, or aiding or assisting in obtaining transportation for, by any means of conveyance, into, through, or across the State, any person for the purpose of prostitution or with the intent to induce, entice, or compel that person to become a prostitute. A person who violates this prohibition is guilty of a felony punishable by up to 20 years' imprisonment, a maximum fine of \$20,000, or both. Section 459(2) prohibits a person from knowingly selling or offering to sell travel services that include or facilitate travel for the purpose of engaging in what would be a violation of Chapter 67 (Prostitution) or Chapter 67A (Human Trafficking) of the Penal Code, if the violation occurred in Michigan. A person who violates Section 459(2) is guilty of a felony punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both, unless the conduct involves a minor, in which case the penalty is up to 10 years' imprisonment and/or a maximum fine of \$15,000. ("Travel services" mean transportation by air, sea, or ground, hotel or other lodging or accommodations, package tours, or the provision of vouchers or coupons to be redeemed for future travel, or accommodations for a fee, commission, or other valuable consideration.)

## **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**

There is little evidence, if any, to suggest that Michigan's law enforcement officers used the exemption from prosecution to engage in sexual activity; however, the provision had the potential to be abused by police investigating prostitution-related crimes. In addition, according to human trafficking victim advocates, there were instances in which individuals impersonated a law enforcement officer and used this provision of the law to intimidate those engaging in commercial sex in order to carry out sexual acts with them. Also, according to testimony presented at the Senate Committee on Judiciary, Michigan was the only state with this exemption for law

enforcement officers.<sup>1</sup> The bills eliminate the potential for abuse and the leverage that an imposter could use to pressure a trafficked individual for sex. The bills also make Michigan law consistent with other states' laws.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bills may have a negative fiscal impact on the State and local government. As described above, the sections of the Penal Code from which law enforcement officers are generally exempt treat violations as misdemeanors and felonies with varying penalties. The bills may lead to officers' being charged and convicted under those sections. More misdemeanor and felony arrests and convictions may increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue will increase funding to public libraries.

Fiscal Analyst: Ryan Bergan

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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.

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<sup>1</sup> Hawaii is the state that eliminated this exemption most recently. See Act 114 of 2014, Hawaii State Legislature website.