

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

Senate Bill 97 (Senator Kelley, *et al.*)
 Judicial Proceedings

Identity Fraud Crimes - Restitution

This bill expands the circumstances under which a court is authorized to enter a judgment of restitution with respect to a victim of identity fraud, clarifies that specified expenses incurred by a victim of identity fraud are considered eligible for restitution, and sets forth procedures with respect to claims for restitution made by identity fraud victims.

Fiscal Summary

State Effect: General fund expenditures increase by \$37,600 in FY 2012 for the Office of the Attorney General to comply with the provisions of the bill. Out-years reflect annualization and assume a stable case load. The Judiciary can comply with the bills requirements with existing resources. Revenues are not affected.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	37,600	45,200	47,400	49,800	52,300
Net Effect	(\$37,600)	(\$45,200)	(\$47,400)	(\$49,800)	(\$52,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Although the bill may increase the workload of State’s Attorneys offices, it is assumed that the bill’s requirements can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill expands the circumstances under which a court is authorized to enter a judgment of restitution to include (1) detrimental alteration of a victim’s

consumer report as a direct result of an identity fraud offense; and (2) “financial damage or loss” incurred by the victim as a direct result of identity fraud. The bill specifies that the following items are considered financial damage or loss for purposes of restitution: (1) lost wages due to efforts by the victim to restore financial accounts and remediate the victim’s consumer report; (2) the monetary value of time reasonably spent by the victim to remediate the victim’s consumer report, restore financial accounts, or satisfy any other financial obligation resulting from an identity fraud offense; and (3) any other expenses, including reasonable attorney’s fees, that reasonably may be shown to have been incurred by the victim as a result of the identity fraud offense.

The bill also authorizes a court to accept an “identity fraud restitution affidavit” as competent evidence of financial damage or loss that is eligible for restitution. The bill requires the Office of the Attorney General (OAG) to develop an identity theft restitution affidavit form. An “identity fraud restitution affidavit” is defined as a form developed by OAG that documents the financial damage or loss incurred by an identity fraud victim. In the case of a victim of identity fraud, each State’s Attorney must consult with OAG to provide advice about making, preparing, and enforcing a restitution claim. OAG may provide to an identity fraud victim, in conjunction with the already established administration of identity theft passports, information and assistance on recovery from financial damage or loss and making valid claims for restitution. This assistance may include establishing a monetary value for identity fraud financial damages or loss. OAG may develop regulations to carry out these responsibilities.

Current Law: A court is authorized to order a defendant or child respondent to make restitution for a variety of expenses incurred or property losses sustained by a victim, including loss of earnings. This restitution is in addition to any penalties for the commission of a crime or delinquent act. A victim is presumed to have a right of restitution if the victim or the State makes a request to the court and the court is presented with competent evidence of the claimed loss/expense.

The term “personal identifying information” means a name, address, telephone number, driver’s license number, Social Security number, place of employment, employee identification number, mother’s maiden name, bank or other financial institution account number, date of birth, personal identification number, credit card number, or other payment device number. A “consumer report” is any written or oral communication of any information by a consumer reporting agency that reflects a consumer credit worthiness, standing, capacity or other characteristics that indicate eligibility for credit, insurance, employment, or other purposes, as specified.

A person may not knowingly, willfully, and with fraudulent intent possess, obtain, or help another to possess or obtain any individual’s personal identifying information without the consent of that individual to use, sell, or transfer the information to get a

benefit, credit, good, service, or other thing of value in the name of that individual. A person may not knowingly and willfully assume the identity of another to avoid identification, apprehension, or prosecution for a crime or with fraudulent intent to get a benefit, credit, good, service, or other thing of value or to avoid payment of debts or other legal obligations. A person may not knowingly and willfully claim to represent another person without the knowledge and consent of that person, with the intent to solicit, request, or take any action to otherwise induce another person to provide personal identifying information or a payment device number.

If the benefit, credit, good, service, or other thing that is the subject of the crime is valued at \$500 or more, then a person who violates this identity fraud provision is guilty of a felony and is subject to maximum penalties of 15 years imprisonment and/or a fine of \$25,000. If the benefit or other thing has a value of less than \$500, or if a person knowingly and willfully assumes the identity of another to avoid identification, apprehension, or prosecution for a crime, then the violator is guilty of a misdemeanor and is subject to maximum penalties of 18 months imprisonment and/or a fine of \$5,000.

If circumstances reasonably indicate that a person's intent was to manufacture, distribute, or dispense another individual's personal identifying information without the individual's consent, the violator is guilty of a felony and is subject to imprisonment for up to 15 years and/or a fine up to \$25,000. If the violation is committed pursuant to a scheme or continuing course of conduct, the conduct may be considered one offense. The value of goods or services may be combined to determine whether the violation is a felony or misdemeanor.

Background: The Identity Theft Data Clearinghouse, sponsored by the Federal Trade Commission (FTC) and the Consumer Sentinel, a consortium of national and international law enforcement and private security entities, released *Identity Theft Victim Complaint Data* for calendar 2007 (the latest information available). In calendar 2007, FTC received 258,427 identity theft complaints. In calendar 2006, the number of identity theft complaints was 246,124. In Maryland, residents reported 4,821 instances of identity theft in 2007, or 85.8 complaints per 100,000 population, ranking Maryland tenth in the nation for identity theft. As has been the case for the last several years, the most common type of identity theft was credit card fraud, which comprised 28% of all complaints. The second most prevalent type of identity fraud involved the opening of new accounts for wireless devices, utilities and the telephone, at 19% of all complaints.

In November 2007, FTC released a national survey, *The 2006 Identity Theft Survey Report*. FTC reports that the survey suggests that 8.5 million United States adults discovered that they were victimized by some form of identity theft in calendar 2005.

In September 2006, FTC announced that the President's Identity Theft Task Force adopted interim recommendations designed to address identity theft. One of the adopted measures recommended that Congress amend federal criminal restitution statutes to allow identity theft victims to recover for the value of the time that they spend attempting to make themselves financially whole, including rectifying credit reports and resolving fraudulent accounts with creditors. The legislation, part of the Identity Theft Enforcement and Restitution Act of 2008, was signed into law in September 2008.

According to the National Conference of State Legislatures, 25 states and the District of Columbia authorize restitution for victims of identity theft/fraud.

Baltimore County advises that there were 162 convictions for identity theft offenses in the county in calendar 2010.

State Expenditures: General fund expenditures increase by \$37,578 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate reflects the cost of hiring one part-time assistant Attorney General to develop an identity theft restitution affidavit form, consult with State's Attorneys on restitution for identity theft victims, and assist in developing regulations. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	0.5
Salaries and Fringe Benefits	\$32,979
Operating Expenses	<u>4,599</u>
Total FY 2012 State Expenditures	\$37,578

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: SB 211 of 2010 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 787, its cross file, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Office of the Attorney General, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, National Conference of State Legislatures, Federal Trade Commission, Office of State's Attorney, Baltimore County, *The Washington Post*, The White House, Department of Legislative Services

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