

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 358

(Delegate Petzold, *et al.*)

Judiciary

Judicial Proceedings

Crimes - Fraud - Personal Identifying Information

This bill alters provisions pertaining to the crime of fraud involving personal identifying information by: (1) expanding the definition of “personal identifying information” to include a “payment device number;” (2) including knowingly, willingly, and with fraudulent intent possessing (or aiding in possessing) personal identifying information as a crime under the prohibition against this type of fraud; (3) including knowingly and willfully assuming the identity of another to avoid identification, apprehension, or prosecution; and (4) making this type of fraud a felony, under certain circumstances, rather than a misdemeanor, and increasing the maximum incarceration penalties for the offense. The maximum monetary penalty for such offenses is not altered.

The bill eliminates the felony offense of unlawful possession, with unlawful or fraudulent intent, of a credit card or other payment device number belonging to another person or any holder’s signature.

The bill expands the authority of law enforcement officers to operate without regard to jurisdictional boundaries to investigate and enforce identity fraud provisions.

The bill also grants the District Court jurisdiction concurrent with the circuit court over the crime of fraud involving personal identifying information. The bill has prospective application.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s increased penalty provisions and expansion of the scope of identity fraud offenses. The State Police and District Court could handle the bill’s changes using existing budgeted resources.

Local Effect: Potential increase in revenues and expenditures due to the bill's penalty provisions and expansion of the scope of identity fraud offenses. Law enforcement agencies and the circuit courts could handle the bill's requirements using existing budgeted resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: This bill expands the definition of personal identifying information to include a "payment device number." A payment device number means any code, account number, or other means of account access, other than a paper instrument, that can be used to obtain anything of value or for the purpose of initiating a transfer of funds.

This bill adds possession to the definition of fraud involving personal identifying information. It provides that a person may not knowingly, willfully, and with fraudulent intent, possess, obtain, or help another to possess or obtain, personal identifying information of another person to obtain anything of value, without the consent of that person. It provides that a person may not knowingly or willfully assume the identity of another to avoid identification, apprehension, or prosecution for a crime. If a person violates this provision and the circumstances reasonably indicate that the person's intent was to manufacture, distribute, or dispense personal identifying information without the individual's consent, the violator is guilty of a felony and subject to a maximum fine of \$5,000 or imprisonment for up to five years, or both.

If a person possesses, obtains, or helps another to possess or obtain personal identifying information to get a benefit of \$500 or more, the violator is guilty of a felony and is subject to a maximum fine of \$5,000, imprisonment not exceeding five years, or both. If a person possesses, obtains, or helps another to possess or obtain personal identifying information from another to get a benefit of less than \$500, the violator is guilty of a misdemeanor and is subject to a maximum fine of \$5,000 or imprisonment for up to 18 months, or both.

A person who knowingly and willfully assumes the identity of another to avoid identification, apprehension, or prosecution for a crime is guilty of a misdemeanor and subject to a maximum fine of \$5,000, imprisonment for up to 18 months, or both.

If a violation is pursuant to a scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered one offense. The value of goods

or services may be aggregated to determine whether the violation is a felony or misdemeanor.

A violator of any of these prohibitions is also subject to a court order for restitution and paying costs related to restoring a victim's identity.

This bill expands the authority of law enforcement officers to operate without regard to jurisdictional boundaries to investigate identity fraud provisions. The authority may be exercised only if an act related to the crime was committed in the jurisdiction of an investigative agency or a complaining witness resides in an investigating agency's jurisdiction. The Department of State Police is authorized to initiate investigations throughout the State and enforce the bill's provisions. The bill authorizes the State Police to operate in municipal corporations and other political subdivisions where they do not now operate with regard to other criminal investigations. The authorities of the Maryland Transportation Authority Police, the Maryland Port Administration Police, municipal corporation police, and county police are also expanded to investigate identity fraud provisions throughout Maryland and to the same extent as an officer of the State Police. This expansion of jurisdictional authority may be exercised only in accordance with regulations adopted by the Secretary of the State Police.

Notification of an investigation must be made to appropriate law enforcement personnel. If an officer is operating in a municipal corporation or county with a county police department, notice must be provided to the chief of police or a designee. For counties without a police department, notice must be provided to the sheriff or a designee. In Baltimore City, officers operating outside of their jurisdiction to investigate identity theft must notify the police commissioner or a designee. If officers are operating on property under the control of the Maryland Transportation Authority, the Maryland Aviation Administration, or the Maryland Port Administration, notification must be provided to the appropriate chief of police or designee.

When acting to enforce this identity theft provision, a law enforcement officer enjoys the immunity from liability and the exemptions accorded to a State Police officer. The bill specifies that the grant of immunity does alter the employment status of any law enforcement officer.

The District Court has concurrent jurisdiction with the circuit court over identity theft crimes. The bill has prospective application and does not apply to any offenses committed before the effective date of the bill.

Current Law: It is unlawful for a person to possess a credit card or other payment device number belonging to another or another's signature with fraudulent or unlawful intent. "Payment device number" means any code, account number, or other means of

account access, other than a paper instrument, that can be used to obtain anything of value or for the purpose of initiating a transfer of funds. 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, or credit card number.

A person is prohibited from obtaining or helping another to obtain any personal identifying information of a person to get an item of value, without that person's consent. A person is prohibited from knowingly assuming the identity of another person to avoid criminal prosecution, to get an item of value, or to avoid payment of a debt. A person who violates this provision is guilty of a misdemeanor and subject to a maximum fine of \$5,000, imprisonment for up to one year, or both.

In addition to restitution, a person convicted may be ordered to pay the costs of restoring a victim's identity.

A person commits the crime of theft when the person willfully or knowingly uses deception to obtain control over property with the intent to deprive the owner of the property. If the value of the property is \$500 or more, a violator is guilty of a felony and on conviction, is subject to a maximum fine of \$15,000, or imprisonment for up to 15 years, or both. If the value of the property is less than \$500, a violator is guilty of a misdemeanor and on conviction is subject to a maximum fine of \$500, or imprisonment for up to 18 months, or both.

Background: Identity theft is commonly regarded as one of the fastest growing crimes in the United States. The Identity Theft Data Clearinghouse of the Federal Trade Commission (FTC) has identified 69,370 victims of this crime between the time the clearinghouse first began collecting information in November 1999 and June 2001. By far, the most common identity crime involved credit card fraud. About 30,000 of the reported crimes, nearly half of the total number, involved credit card fraud. About two-thirds of credit card identity fraud crimes involve creation of new accounts. Other types of identity fraud involve creation of new phone and utility accounts, creation of new depository accounts, and fraudulent loans.

According to the FTC, the states with the highest number of identity theft complaints between 1999 and 2001 were California, Florida, New York, and Texas. The states with the highest number of identity theft complaints per capita were California, Maryland, Nevada, New York, and Oregon. To date, 40 states have provisions related to identity theft. In 1998, the federal Identity Theft and Assumption Deterrence Act was passed. The law makes it a federal crime to knowingly transfer or use the means of identification

of another person with the intent to commit a violation of federal law or a felony under any state or local law.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court. The number of additional people who would be convicted of identity theft as a result of the bill cannot be accurately predicted, but is expected to be minimal.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs.

Generally, persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$300 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2003 are estimated to range from \$10 to \$61 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$20 to \$84 per inmate in fiscal 2003.

Additional Information

Prior Introductions: A similar bill, HB 565 of 2001, received an unfavorable report from the House Judiciary Committee.

Cross File: None. However, SB 559 is substantially identical as enrolled.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Federal Trade Commission, National Conference of State Legislatures, Department of Legislative Services

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