

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 598
Judiciary

(Delegate Lee, *et al.*)

Judicial Proceedings

Criminal Law - Identity Fraud – Penalties

This bill increases the maximum fine for felony identity fraud from \$5,000 to \$25,000.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's penalty provisions.

Local Effect: Potential minimal increase in revenues due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: 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, in order 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 the payment of debts or other legal obligations.

A person who violates this identity fraud prohibition is guilty of a felony and is subject to imprisonment not exceeding five years, a fine not exceeding \$5,000, or both, if the benefit, credit, goods, services, or other thing that is the subject of the crime is valued at \$500 or more. If the benefit or other thing has a value of less than \$500, then the violator

is guilty of a misdemeanor and is subject to imprisonment for up to 18 months, a maximum fine of \$5,000, or both.

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 five years, a maximum fine of \$5,000, 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 imprisonment for up to 18 months, a maximum fine of \$5,000, or both.

If a violation is committed 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.

Law enforcement officers may operate without regard to jurisdictional boundaries to investigate identity fraud provisions, within specified limitations. 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. Notification of an investigation must be made to appropriate law enforcement personnel.

A person generally commits the crime of theft when the person willfully or knowingly: (1) obtains unauthorized control over property with the intent to deprive the owner of the property; or (2) uses, conceals, or abandons property in a manner that deprives or probably will deprive the owner of the property. If the value of the property is \$500 or more, a violator is guilty of a felony and is subject to a maximum fine of \$25,000, imprisonment for up to 15 years, or both. If the property's value is less than \$500, a violator is guilty of a misdemeanor and is subject to a maximum fine of \$500, imprisonment for up to 18 months, or both. The violator must also return the stolen property or make appropriate restitution.

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 86,168 victims of this crime in the United States during calendar 2001 (the latest data available). About 20% of the 86,168 victims reported experiencing more than one type of identity theft. By far, the most common identity

crime was credit card fraud. About 36,190 of the reported crimes, 42% of the total number, involved credit card fraud. About 61% 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. FTC reported that 3,497 complaints about identity fraud were received in Maryland during 2002, compared to 1,976 complaints in 2001.

According to FTC, the states with the highest number of identity theft complaints during calendar 2001 were California, New York, Texas, Florida, and Illinois. The jurisdictions with the highest number of identity theft complaints per capita were the District of Columbia, California, Nevada, Maryland, and New York. All 50 states and the District of Columbia have provisions related to identity theft. In 1998, the federal government enacted the Identity Theft and Assumption Deterrence Act, which 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.

The National Conference of State Legislatures reports that in six states, identity theft is classified as a misdemeanor. In 20 states, the crime is a felony. Nine states have separate misdemeanor and felony categories for identity theft crimes, while five states, including Maryland, have graduated penalties for identity fraud or theft, depending on the seriousness of the crime.

State Revenues: General fund revenues could increase minimally as a result of the bill's increased monetary penalty provisions from cases heard in the District Court.

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

Additional Information

Prior Introductions: None.

Cross File: None.

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

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