

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 255 (Delegate Ramirez, *et al.*)
 Judiciary

Identity Fraud Victims Act of 2004

This bill establishes an “identity fraud passport” to assist victims of identity theft. The bill: (1) allows a victim of identity fraud to file a petition for expungement of a police, court, or other government record if it resulted from the arrest of another person illegally using the name or other identification of the person seeking expungement; and (2) authorizes a victim of identity fraud to request a consumer reporting agency to permanently block the reporting of information that the consumer identifies as erroneous because of an identity fraud violation.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from filing fees (\$30 per expungement petition) in the District Court. General fund expenditure increase of \$105,800 in the Office of the Attorney General (OAG) to administer identity fraud passport program. Out-years include annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	-	-	-	-	-
GF Expenditure	105,800	131,800	139,000	146,800	155,100
Net Effect	(\$105,800)	(\$131,800)	(\$139,000)	(\$146,800)	(\$155,100)

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

Local Effect: Potential minimal increase in revenues from filing fees in the circuit court. Potential minimal increase in expenditures to comply with expungement requests.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that a person may file a petition for expungement of a police record, court record, or other government record if the record resulted from the arrest of another person illegally using the name or other identification of the person seeking expungement. A person authorized to file an expungement petition must file it in the court disposing of the violation of the identity fraud law.

The Attorney General may issue an identity fraud passport to a person who files a police report alleging that the person is an identity theft victim or submits a certified court order for expungement. The Attorney General is required to give the person access to information concerning the identity fraud on receipt of a certified copy of a court order for expungement.

An identity fraud passport must state the basis for its issuance and must be accepted as evidence of identity by law enforcement officers or other individuals who may challenge the person's identity. The Attorney General must keep each application for an identity fraud passport and adopt regulations to carry out the identity passport provisions.

A consumer may request a consumer reporting agency to permanently block the reporting of information that the consumer identifies as erroneous due to an identity fraud violation. The consumer must send to the reporting agency proof of the consumer's identification and a copy of an expungement order or a police report regarding the consumer's claim of identity fraud. Within 30 days of receipt of this information, a consumer reporting agency must permanently block reporting of the information identified as erroneous and promptly notify the consumer of the effective date of the block.

A consumer reporting agency may decline or rescind a block on consumer information if: (1) in the exercise of good faith and reasonable judgment, the agency believes that the consumer misrepresented facts relevant to the information blocking request; (2) the consumer agrees the information should not be blocked; or (3) the consumer knew or should have known that the block was part of a scheme in which money, goods, or services were obtained. If the request for an information block is declined or rescinded, the agency must notify the consumer promptly in the same manner as consumers are notified of the reinsertion of information (currently within five business days, as required by federal law). A consumer whose request for a block on information has been declined or rescinded is not precluded from making another request for a block based on different circumstances.

Current Law: State law does not provide for the use of a document which confirms a person's identity if a person is a victim of identity fraud.

A consumer reporting agency may furnish a consumer report only under the following circumstances: (1) in response to a court order; (2) in accordance with the consumer's written instructions; or (3) to a person the agency has reason to believe has a legitimate use for the information, as specified in statute. No consumer reporting agency may make any consumer report which contains obsolete information, as specified in statute. A consumer reporting agency must, upon request and proper identification of a consumer, provide the consumer with an exact copy of any file on that consumer except medical information, a written explanation of codes and trade language, a description of the consumer's rights, and contact information for the Commissioner of Financial Regulation.

If the completeness or accuracy of any information item in the file is disputed by the consumer in writing, the consumer reporting agency must reinvestigate and record the current status of that information. Additional disclosure rights related to reinvestigation are specified in statute. If reinvestigation does not resolve the matter, the consumer may file a brief statement explaining the nature of the dispute. The consumer reporting agency must clearly note that the information is disputed by the consumer and include either the consumer's statement or an accurate summary of it.

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 or a fine not exceeding \$25,000, 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 or 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 or a maximum fine of \$25,000, 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 or 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.

Background: While there is much information about the steps that should be taken to recover from identity theft, the advice from government and security firms does not address what a victim may present for identification while his or her identity is being investigated by business and law enforcement. A work group of consumer advocates, businesses, and the Federal Trade Commission (FTC) has developed an "Identity Theft Affidavit" which provides a standard form for reporting the event of identity theft to businesses and government agencies. In San Diego, victims of criminal identity theft receive an "Identity Certificate" which details the results of the hearing which determined that due to identity theft, the wrong person was named in a criminal warrant.

Identity theft is commonly regarded as one of the fastest growing crimes in the U.S. In 2003, FTC received 516,740 fraud and identity theft consumer complaints. In 2002, the number of identity and fraud complaints received was 404,000. In 2003, there were 214,905 identity theft reports and 301,835 fraud complaints.

Maryland was ranked eleventh out of 50 states for identity theft, with 74.9 victims per 100,000 population and 4,124 reported identity theft victims. The most common type of identity theft in Maryland was credit card fraud, occurring to 1,533 victims. About 37% of identity theft victims reported this form of identity theft. Phone or utilities fraud occurred in 22% of reported cases, and bank fraud occurred in 18% of reported cases. The areas of Maryland that contained the highest reports of identity theft were Baltimore, Silver Spring, Rockville, Gaithersburg, and Bethesda.

All 50 states and the District of Columbia have provisions relating 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. In 2003, the federal government enacted amendments to the Fair Credit Reporting Act called the Fair and Accurate Credit Transactions Act of 2003. The federal law is intended to provide additional deterrence to identity theft, but also contains preemptions of state authority relating to enforcement of identity theft provisions enacted after 2003.

State Expenditures: The Judiciary advises that there were only 135 charges of identity fraud filed in the District Court in fiscal 2003. A total of 16,506 petitions for expungement were filed in the District Court in fiscal 2003. Petitions for expungement filed at the District Court level could be handled within existing resources.

General fund expenditures could increase by \$105,819 in fiscal 2005 for two positions in OAG and related equipment, accounting for the bill's October 1, 2004 effective date. The ID Theft Clearinghouse maintained by FTC reported 4,124 identity theft complaints from Maryland consumers in calendar 2003. The fiscal estimate assumes that half of those complainants could request record expungement and an identity theft passport. To establish an identity fraud passport program, OAG would need an administrator position to provide information to victims concerning identity fraud, review applications, draft regulations, and issue passports. A secretarial position would be needed for the preparation and mailing of documents, phone support, and records maintenance. Out-years include annualization and inflation.

Local Expenditures: There were 1,488 charges of identity fraud filed at the circuit court level in fiscal 2003. The Judiciary does not record the number of petitions for expungement at the circuit court level. Completing requests for petitions for expungement could have a potential minimal impact on expenditures at the circuit court level.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Somerset County, Montgomery County, Prince George's County, Charles County, Judiciary (Administrative Office of the Courts), Department of State Police, Baltimore County, Frederick County, Office of the Attorney General, Federal Trade Commission, San Diego County Attorney's Office, Department of Legislative Services

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