SB 43

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 43 (Senator Jones, *et al.*)
Judicial Proceedings Judiciary

Task Force to Study Identity Theft

This bill establishes a task force to study problems associated with identity theft in Maryland and privacy laws in other states. The task force must also consult with relevant federal agencies, agencies in other states, and identity theft experts and complete a survey of State agencies to determine compliance with State and federal laws relating to the collection and use of Social Security numbers. Findings and recommendations for possible remedies to identity theft must be submitted to the General Assembly by December 31, 2006. The Department of Legislative Services will provide staff to the task force.

The bill is effective July 1, 2005 and terminates on January 31, 2007.

Fiscal Summary

State Effect: Any expense reimbursements for task force members are assumed to be minimal and absorbable with existing resources. General fund expenditures increase $20,000 in FY 2006 only to meet the survey requirement, otherwise, staffing could be provided within existing resources.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	$0	$0	$0	$0	$0
GF Expenditure	20,000	0	0	0	0
Net Effect	($20,000)	$0	$0	$0	$0

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

Local Effect: Minimal. The bill calls for three local representatives to serve on the task force.

Small Business Effect: Minimal.

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, 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 $25,000, or both, if the benefit, credit, good, service, 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 $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, a maximum fine of $5,000, or both.

If a 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.

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.

Background: Identity theft is commonly regarded as one of the fastest growing crimes in the United States. Thieves employ a variety of methods, including looking through dumpsters, watching people enter passwords, and "phishing" for personal information, over the telephone or via the Internet to siphon off the value of a person's good name and credit.

In September 2003, the Federal Trade Commission (FTC) released an *Identity Theft Survey Report*. From March through April of 2003, 4,057 adults were surveyed nationwide to determine the magnitude and impact of identity theft. A total of 4.6% of survey respondents indicated they were the victims of identity theft between 2002 and 2003. Extrapolation of this survey result suggested that 9.9 million Americans are victimized by identity theft annually. When asked about the last five years, 12.7% of the survey respondents indicated that they were the victims of identity theft involving setting up new accounts, misuse of existing credit cards, or misuse of savings or checking accounts. Extrapolation of these survey results suggested that as many as 27 million Americans may have been victims of identity theft over the last five years.

The Identity Theft Data Clearinghouse, sponsored by FTC and Consumer Sentinel, a consortium of national and international law enforcement and private security entities, released *National and State Trends in Fraud and Identity Theft* for calendar 2003 (the latest information available). In 2003, FTC received 516,740 fraud and identity theft consumer complaints. In 2002, the number of complaints received was 404,000. In 2003, there were 214,905 identity theft reports and 301,835 fraud complaints.

Of the 214,905 reports in 2003, the most common type of identity theft reported was credit card fraud, with a prevalence of 33%. Identity theft relating to phone or utilities fraud occurred in 21% of reported cases, bank fraud occurred in 17%, and employment-related fraud occurred in 11% of reported cases. Other types of identity theft included government documents or benefits, in 8% of reported cases and loan fraud, in 6% of reported cases. FTC reports that identity theft victims are not likely to notify law enforcement. Only 40% of reported victims notified a police department. Eight percent of those victims stated that a police report was not taken after notifying law enforcement.

In calendar 2003, the metropolitan area with the highest number of identity theft complaints per 100,000 population was Phoenix-Mesa Arizona, with 5,041 victims and 155 victims per 100,000 population. The Washington, DC metropolitan area ranked twelfth, with 4,936 reported victims and 100.3 victims per 100,000 population. The

Baltimore metropolitan area ranked twenty-second, with 1,816 reported victims and 71.1 victims per 100,000 population. The five states with the highest reported incidents of identity theft in calendar 2003 were Arizona, Nevada, California, Texas, and Florida. The five states with the lowest incidences of identity theft were West Virginia, Maine, Vermont, North Dakota, and South Dakota.

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. 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: General fund expenditures could increase $20,000 in fiscal 2006 only in the Department of Legislative Services for the development and completion of the survey required by the bill. Otherwise, staffing requirements could be met with existing resources.

Additional Information

Prior Introductions: This bill is a reintroduction of SB 325/HB 191 from the 2004 session. SB 325 was referred to the Judicial Proceedings Committee, where it received an unfavorable report. HB 191, as amended, passed the House, and was referred to Judicial Proceedings, where it received an unfavorable report.

Cross File: None designated, although HB 818 is identical.

Information Source(s): Federal Trade Commission, National Consumer Law Center, Identity Theft Resource Center, National Consumers League, Department of Legislative Services

Fiscal Note History: First Reader - January 14, 2005
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