

**Department of Legislative Services
Maryland General Assembly
2006 Session**

**FISCAL AND POLICY NOTE
Revised**

House Bill 1101
Judiciary

(Delegate Quinter, *et al.*)

Judicial Proceedings

Identity Fraud Investigations - Notification - Motor Vehicle Administration

This bill requires a law enforcement agency to notify the Motor Vehicle Administration in the event of an investigation of possible identity theft in which the victim's driver's license is alleged to have been stolen. The MVA is required to keep a record of the notification and make information about the driver's license number and the possible identity theft available to a law enforcement officer who is making a check of the driver's license number during a traffic stop.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by \$112,500 in FY 2007 only to modify computer programs in the MVA.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	112,500	0	0	0	0
Net Effect	(\$112,500)	\$0	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that a law enforcement agency investigating an identity theft violation in which the victim's driver's license is alleged to have been

stolen must notify the Motor Vehicle Administration (MVA) and keep a record of the notification. The notification to the MVA must include a transmittal date, case number, identifying and contact information for the alleged victim, and the victim's driver license number.

When the MVA receives the notification from the law enforcement agency, the MVA must keep a record of the notification and record that the driver's license number belongs to a possible victim of identity theft. The information recorded by the MVA must be made available to a law enforcement officer who is conducting a routine check of the driver's license of a person who is the subject of a traffic stop by the officer.

At the conclusion of the identity theft investigation, the law enforcement agency must notify the MVA and include information as required by the bill. When the MVA receives notification about the conclusion of the investigation, the MVA must remove the recorded information about the identity theft investigation from its records. The MVA must adopt regulations to implement the bill, in consultation with the primary law enforcement officers of the State. The bill may not be construed to convey to a law enforcement officer any search and seizure powers otherwise prohibited.

Current Law: 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 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.

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 imprisonment for five years 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 imprisonment for 18 months 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 five years and/or a fine of \$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.

Notwithstanding any other provision of law, the State may institute a prosecution for the misdemeanor of identity fraud at any time. Under the Maryland Constitution, a person convicted of the misdemeanor offense of identity fraud is deemed to have committed a misdemeanor whose punishment is confinement in the penitentiary and may reserve a point or question for *in banc* review as provided by the Maryland Constitution. A violator of any of these provisions is subject to a court order for restitution and paying costs, including reasonable attorney's fees, related to restoring a victim's identity. A sentence under the identity fraud provisions may be imposed separate from and consecutive to, or concurrent with, a sentence for any crime based on the acts establishing the violation.

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.

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 *National and State Trends in Fraud and Identity Theft* for calendar 2005. In calendar 2005, the FTC received 255,565 identity theft complaints. In calendar 2004, the number of identity theft complaints was 246,847.

In Maryland, residents reported 4,848 instances of identity theft in 2005, or 86.6 complaints per 100,000 population, ranking Maryland eleventh 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 31% of all complaints. The highest number of complaints came from the State's major urban areas: Baltimore City, Silver Spring, Hyattsville, Rockville, and Gaithersburg.

All 50 states and the District of Columbia have provisions relating to identity theft. The federal Identity Theft and Assumption Deterrence Act of 1998 made 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 Fair and Accurate Credit Transactions Act of 2003 provides additional deterrence to identity theft, but also contains preemptions of state authority relating to enforcement of identity theft provisions enacted after 2003.

Chapters 241 and 242 of 2005 established a 21-member legislative task force on identity theft. To date, 14 of 21 members have been appointed. The task force is charged with studying the problems associated with identity theft in Maryland and the privacy laws in other states. The task force is required to consult with federal agencies, agencies in other states, and identity theft experts during its investigation. The task force must also complete a survey of State agencies to determine compliance with State and federal laws regarding 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.

State Expenditures: TTF expenditures could increase by \$112,500 in fiscal 2007 only for computer modifications to implement the bill's provisions. A database would have to be created to interface with law enforcement agencies. Investigation reports and a function to compare driver's license numbers against the MVA database would also have to be created to implement the bill.

According to the FTC, there were 4,848 identity fraud cases in Maryland during calendar 2005. Assuming that the number of reported cases of identity fraud remains relatively stable, the MVA should be able to handle the provisions of this bill with existing personnel. The MVA also advises that the development of an automated process to place identity fraud alerts directly on a person's driving record would obviate the need for additional personnel in future years, even if the caseload subject to this bill's provisions increases substantially.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 1568 of 2005, which was heard in the House Judiciary Committee but then withdrawn.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, Federal Trade Commission, Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2006
ncs/jr Revised - House Third Reader - March 27, 2006

Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510