

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 1453
 Judiciary

(Delegates Quinter and Lee)

Judicial Proceedings

Crimes - Fraudulent Use of Internet to Obtain Identifying Information -
 Penalties

This bill prohibits a person from using an electronic mail message, a web page, or the Internet to solicit identifying information about a person through misrepresentation as a legitimate business.

Fiscal Summary

State Effect: General fund expenditures in the Office of the Attorney General could increase by \$173,100 in FY 2007 for additional personnel to investigate the use of the Internet or electronic mail to obtain personal information for fraudulent purposes. Out-years include annualization and inflation. Potential significant increase in general fund revenues and potential minimal increase in expenditures due to the bill's penalty provisions. Potential minimal increase in general fund expenditures in the District Court for additional clerical and trial time for new cases.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	-	-	-	-	-
GF Expenditure	173,100	194,300	204,400	215,100	226,400
Net Effect	(\$173,100)	(\$194,300)	(\$204,400)	(\$215,100)	(\$226,400)

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

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

Small Business Effect: Potential minimal. Internet service and electronic mail providers that are victimized by the fraudulent use of their services may be able to recover costs of fraudulent activity through civil litigation.

Analysis

Bill Summary: This bill prohibits a person from using a web page, electronic mail message, or the Internet, willfully or with actual knowledge or conscious avoidance of actual knowledge, to solicit, request, or otherwise induce another person to provide identifying information by directly or indirectly misrepresenting oneself as a legitimate business, without the authority or consent of the business. A person may not conspire with another person or attempt to engage in an act that would violate the bill's prohibitions. A person may not willfully, or with actual knowledge or conscious avoidance of actual knowledge, possess with intent to use in a fraudulent manner, sell, or distribute identifying information obtained in violation of the bill's prohibitions.

“Identifying information” consists of an individual's: (1) Social Security number; (2) driver's license number; (3) bank account number; (4) credit or debit card number; (5) personal identification number for a financial account; (6) automated or electronic signature; (7) unique biometric data; (8) account password; or (9) other information that can be used to access financial accounts or to acquire goods or services.

A person who violates this provision is guilty of a misdemeanor and is subject to imprisonment for up to five years and/or a fine of up to \$100,000. The Attorney General may bring an action against a violator of this provision to enjoin further violations and recover a maximum fine of \$500 for each separate violation.

A person who provides Internet access whose network is used to transmit a message in violation of the bill or an owner of a web page or trademark that is adversely affected by the actions of the violator under this bill may bring an action against the violator to enjoin further violations and recover actual damages. In an action brought by the Attorney General or an aggrieved person, the court may award up to three times the amount of the fine or damages if the court finds that the defendant engaged in a pattern or practice of this offense. The court may also award costs and reasonable attorney's fees to the prevailing party.

Current Law: State law does not apply specific penalties, other than those penalties that apply to violation of identity fraud provisions, to those persons who use electronic mail, web pages, or the Internet to obtain things of value with the intent to defraud through misrepresentation as a business.

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 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, 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.

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 breach of personal information that occurred at Choice Point, a data collection company, was perpetrated by thieves who set up bogus business accounts.

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

State Expenditures: General fund expenditures in the Office of the Attorney could increase by \$173,106 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one assistant Attorney General and one forensic investigator to trace the sources of electronic mail or web sites that fraudulently obtain information, track the true identity of the individuals, and determine whether there was intent to defraud consumers into divulging financial information. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$135,460
Automobile	18,926
Spyware Detection Software	2,000
Other Operating Expenses	<u>16,720</u>
Total FY 2007 State Expenditures	\$173,106

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

General fund expenditures in the Department of Public Safety and Correctional Services could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,974 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 \$341 per month. Excluding medical care, the average variable costs total \$134 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. 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 2007 are estimated to range from \$17 to \$65 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.

General fund expenditures in the Judiciary could minimally increase potentially from additional clerical and trial time to process new cases, depending on the volume of new cases generated as a result of the bill's provisions.

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

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration 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 \$33 to \$119 per inmate in fiscal 2007.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection), Department of Public Safety and Correctional Services, National Conference of State Legislatures, Department of Legislative Services

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