

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1217
Judiciary

(Delegate Lee, *et al.*)

Judicial Proceedings

Criminal Law - Credit Card Crimes - Use of Affidavit by Credit Cardholder in
Criminal Case or Juvenile Proceeding

This bill provides that an affidavit sworn to by a lawful credit cardholder may be introduced as substantive evidence that the credit card or credit card number was taken, used, or possessed without the credit cardholder's authorization. This provision applies to a criminal case or juvenile proceeding for the following offenses: (1) credit card theft; (2) credit card counterfeiting; (3) obtaining property by counterfeiting, theft, or misrepresentation; (4) honoring a stolen or counterfeit credit card with the intent to defraud the issuer or the cardholder; (5) completing a credit card or possessing a device to reproduce credit cards without consent; (6) receiving property by stolen counterfeit or misrepresented credit card; (7) publishing the number or code of a telephone credit card; or (8) unauthorized use and disclosure of a credit card or payment device number.

The State must provide at least 10 days notice to the defendant before a proceeding in which the State intends to introduce into evidence an affidavit of a credit card holder under the bill. On written demand of the defendant filed at least five days before the proceeding, the State must require the presence of the affiant as a prosecution witness.

Fiscal Summary

State Effect: The bill's provisions could be implemented with existing resources. Savings could result from fewer contested hearings.

Local Effect: The bill's provisions could be implemented with existing resources. Savings could result from fewer contested hearings and fewer personal appearances of alleged victims at trials.

Small Business Effect: None.

Analysis

Current Law: A person may not take a credit card or divest a person of possession, custody, or control, or receive a credit card that has been wrongfully taken or acquired with the intent to use, sell, or transfer it to a person who is not the issuer or the cardholder. Also, a person may not sell a credit card unless the person is the issuer, or buy a credit card from a person other than the issuer. A person who violates these provisions is guilty of a misdemeanor and is subject to imprisonment for up to 18 months and/or a fine up to \$500.

With intent to defraud another, a person may not falsely make a purported credit card, falsely emboss a credit card, or transfer or possess a falsely made instrument or device that purports to be a credit card. A person may not transfer or possess a falsely embossed credit card with knowledge that the credit card was falsely made or embossed. A person other than the cardholder or another authorized by the cardholder may not sign a credit card with intent to defraud another. A person who violates these provisions is guilty of the felony of credit card counterfeiting and is subject to imprisonment for up to 15 years and/or a fine up to \$1,000.

With intent to defraud another, a person may not use a credit card that the person knows is counterfeit or use a credit card that was stolen for the purpose of obtaining money, goods, services, or anything of value. A person may not, with intent to defraud another, obtain anything of value by representing that the person is the holder of a credit card without the consent of the actual cardholder or by representing that the person is the holder of a credit card that has not been issued. If the value of things obtained in violation of these provisions exceeds \$500, the offender is guilty of a felony and is subject to imprisonment for up to 15 years and/or a fine up to \$1,000. If the value of things obtained is from \$101 to \$500, then the offender is guilty of a misdemeanor and is subject to imprisonment for up to 18 months and/or a fine up to \$500. If the value of things obtained is \$100 or less, then the person is guilty of a misdemeanor and is subject to imprisonment for up to 90 days and/or a fine up to \$500.

A person, an agent, or employee of a person authorized to furnish anything of value on presentation of a credit card by the cardholder may not, with the intent to defraud the issuer or cardholder, furnish anything of value on presentation of a credit card obtained or retained due to theft or counterfeiting or on presentation of a credit card that the person knows is counterfeit. A person, an agent, or employee of the person may not fail to furnish anything of value that the person represents was furnished in writing to the issuer. If the value of things obtained in violation of these provisions exceeds \$500, the offender

is guilty of a felony and is subject to imprisonment for up to 15 years and/or a fine up to \$1,000. If the value of things obtained is from \$101 to \$500, then the offender is guilty of a misdemeanor and is subject to imprisonment for up to 18 months and/or a fine up to \$500. If the value of things obtained is \$100 or less, then the person is guilty of a misdemeanor and is subject to imprisonment for up to 90 days and/or a fine up to \$500.

Without the consent of the issuer, a person, other than the cardholder, may not possess an incomplete credit card with the intent to complete it. A person may not possess, with knowledge of its workings, a device designed to reproduce an instrument purporting to be a credit card of an issuer that has not consented to the preparation of a credit card. A person who violates these provisions is guilty of a felony and is subject to imprisonment for up to 15 years and/or a fine up to \$1,000.

A person may not receive anything of value if the person knows or believes that the things of value were obtained by counterfeiting, theft or misrepresentation. If the value of things obtained in violation of this provision exceeds \$500, the offender is guilty of a felony and is subject to imprisonment for up to 15 years and/or a fine up to \$1,000. If the value of things obtained is from \$101 to \$500, then the offender is guilty of a misdemeanor and is subject to imprisonment for up to 18 months and/or a fine up to \$500. If the value of things obtained is \$100 or less, then the person is guilty of a misdemeanor and is subject to imprisonment for up to 90 days and/or a fine up to \$500.

A person may not communicate orally, in person, in writing or by telephone, radio, or television, or cause to be published the number or code of an existing, canceled, revoked, expired, or nonexistent telephone credit card or the numbering or coding system that is used to issue telephone credit cards with the intent that the number, code or system be used or with knowledge that it may be fraudulently used to avoid paying a lawful toll charge. A person who violates this provision is guilty of a misdemeanor and is subject to imprisonment for up to 12 months and/or a fine up to \$500.

A person may not use or disclose a credit card number or other payment device number or the holder's signature unless the person is the credit card or payment device number holder or unless the disclosure is required pursuant to State or federal law or court order. A person may not disclose a credit card or payment device number or signature unless the disclosure relates to authorizations, billings, collections, or reporting as specified in statute. However, a disclosure for marketing purposes may not be made if the holder of an active credit card or payment device number has prohibited the issuer, in writing, from using the card or number for that purpose. Credit card and payment device number issuers are required to notify cardholders of the option for nondisclosure of credit card or payment device information. A person who violates this provision is guilty of a felony and is subject to imprisonment for up to 15 years and/or a fine up to \$1,000. In addition, the Attorney General may bring a civil action against a person who violates this provision

to recover a civil penalty up to \$1,000 for each violation, on behalf of the State. Each prohibited disclosure or use of a credit card or payment device number or holder's signature is an independent violation. The Attorney General may also seek an injunction in a civil action to prohibit a person from engaging in the violation.

Background: 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.

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 Fiscal and Local Fiscal Effect: The Administrative Office of the Courts advises that the affidavit could result in expenditure savings as the courts will have to spend less time taking testimony on the circumstances of credit card crimes, depending on the vigilance of the State's Attorney in making sure that the affidavit is a true attestation of the credit card holder. Since a significant number of cases result in restitution hearings, the use of affidavits would also substantively establish the crime and decrease the number of contested hearings.

The Office of State's Attorneys advises that the use of credit card affidavits as provided in the bill could result in expenditure savings as the State's Attorney would be able to submit the affidavit as evidence of a credit card crime, rather than reimbursing the

alleged victim (especially if the victim does not live in Maryland) for travel, lodging and other expenses to make a personal appearance to testify at trial.

Additional Information

Prior Introductions: None.

Cross File: SB 468 (Senator Garagiola) – Judicial Proceedings.

Information Source(s): Department of Legislative Services

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