

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 783
Judiciary

(Delegate Lee, *et al.*)

Identity Fraud Crimes - Restitution - Time Lost by Victim

This bill authorizes a court to order a judgment of restitution for a victim of identity fraud in an amount equal to the value of the time reasonably spent by the victim (1) to clear his/her credit history or credit rating; or (2) in connection with a civil or administrative proceeding to satisfy a debt, lien, judgment, or other obligation of the victim that arose because of the identity fraud.

Fiscal Summary

State Effect: None. The bill's change to the restitution process is not expected to materially affect State finances.

Local Effect: None. The bill's change to the restitution process is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law:

Restitution: In general, a court is authorized to order a defendant or child respondent to make restitution for a variety of expenses incurred or property losses sustained by a victim, including loss of earnings. This restitution is in addition to any penalties for the commission of a crime or delinquent act. A victim is presumed to have a right of restitution if the victim or the State makes a request to the court and the court is presented with competent evidence of the claimed loss/expense.

A judgment of restitution does not preclude the property owner or victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or support from bringing a civil action to recover damages from the restitution obligor. A civil verdict made in these cases must be reduced by the amount paid under the criminal judgment restitution.

Victims of identity fraud are specifically authorized to receive court-ordered restitution for reasonable costs, including reasonable fees, incurred (1) for clearing the victim's credit history or credit rating; and (2) in connection with a civil or administrative proceeding to satisfy a debt, lien, judgment, or other obligation of the victim that arose because of the identity fraud. Current law does not specifically mention restitution for time spent by an identity fraud victim to repair the damage caused by the identity fraud. A victim of identity fraud is also eligible for restitution afforded victims of other crimes.

Identity Fraud: 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 "consumer report" is any written or oral communication of any information by a consumer reporting agency that reflects a consumer credit worthiness, standing, capacity or other characteristics that indicate eligibility for credit, insurance, employment, or other purposes, as specified.

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. A person may not knowingly and willfully claim to represent another person without the knowledge and consent of that person, with the intent to solicit, request, or take any action to otherwise induce another person to provide personal identifying information or a payment device number.

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 five years imprisonment 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 18 months imprisonment 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 up to \$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: 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 *Identity Theft Victim Complaint Data* for calendar 2007 (the latest information available). In calendar 2007, FTC received 258,427 identity theft complaints. In calendar 2006, the number of identity theft complaints was 246,124. In Maryland, residents reported 4,821 instances of identity theft in 2007, or 85.8 complaints per 100,000 population, ranking Maryland tenth 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 28% of all complaints. The second most prevalent type of identity fraud involved the opening of new accounts for wireless devices, utilities and the telephone, at 19% of all complaints.

In November 2007, FTC released a national survey, *The 2006 Identity Theft Survey Report*. FTC reports that the survey suggests that 8.5 million United States adults discovered that they were victimized by some form of identity theft in calendar 2005.

In September 2006, the FTC announced that the President's Identity Theft Task Force adopted interim recommendations designed to address identity theft. One of the adopted measures recommended that Congress amend federal criminal restitution statutes to allow identity theft victims to recover for the value of the time that they spend attempting to make themselves financially whole, including rectifying credit reports and resolving fraudulent accounts with creditors. The legislation, part of the Identity Theft Enforcement and Restitution Act of 2008, was signed into law in September 2008.

According to the National Conference of State Legislatures, 25 states and the District of Columbia authorize restitution for victims of identity theft/fraud.

Baltimore County advises that 380 individuals were convicted of identity theft offenses in the county in calendar year 2009.

Additional Information

Prior Introductions: None.

Cross File: SB 817 (Senator Forehand, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); National Conference of State Legislatures; Federal Trade Commission; Office of the State's Attorney for Baltimore County; *The Washington Post*; The White House; Department of Legislative Services

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