

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 588
Judiciary

(Delegate George, *et al.*)

Criminal Law - Identity Theft - Use of Radio Frequency Identification Reader

This bill expands the statutory prohibition against identity fraud to include the use of “radio frequency identification” (RFID). The bill prohibits a person from using a “skimming device” to access, read, or scan personal identifying information or a payment device number in the RFID chip of a radio frequency identification document or credit card without the consent of the individual authorized to use the credit card. The bill also expands the definition of “skimming device” to include an electromagnetic device that is used to access, read, scan, obtain, memorize, or store personal identifying information or a payment device number encoded in the RFID chip of a radio frequency identification document or credit card.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures from monetary penalties imposed in District Court cases and the bill’s expanded application of current penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures from monetary penalties imposed in circuit court cases and the bill’s expanded application of current penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: “Radio frequency identification” (RFID) means the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion

of the spectrum to communicate to or from an identification document or a credit card through a variety of modulation and encoding schemes. “Radio frequency identification document” means any document with an RFID chip (1) that contains personal identifying information; (2) that is issued to a person; and (3) which that person, and only that person, uses alone or in conjunction with any other information for the purpose of establishing the person’s identity. Driver’s licenses, employee or contractor identification cards, school identification cards, health insurance or benefit cards, or a government benefit card are all examples of such a document.

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 “consumer report” is any written or oral communication of any information by a consumer reporting agency that reflects 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.

A person may not use a “re-encoder” or “skimming device” to access, read, or scan personal identifying information or a payment device number. A person is also prohibited from the knowing, willful possession, with fraudulent intent, of such a device for the unauthorized use, sale, or transfer of personal identifying information or a payment device number and applies the penalties for identity fraud violations to these offenses.

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 15 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 15 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: RFID technology uses miniscule microchips embedded in an object to transmit information through radio waves. RFID has become a component of everyday life – it helps stores track inventory, allows consumers to purchase gasoline quickly, and lets drivers pay tolls at bridges and tunnels without stopping. United States passports even contain the technology. However, with this convenient technology comes additional risks.

Since RFID chips are always accessible wirelessly, thieves are using scanners to access personal information from consumers, thereby creating a new order of contact-free pickpockets whose victims have no idea of what has happened to them. The scanners are available for inexpensive prices, usually \$100 or less. However, security and technology experts disagree on the distance from which an RFID chip can be scanned, with some saying the technology only works in close proximity to the chip while others claim the ability to scan from as far away as 200 feet.

State Revenues: General fund revenues increase minimally from monetary penalties imposed in District Court cases.

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of current incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. 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 \$2,920 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 variable medical care and variable operating costs) is about \$390 per month. Excluding all medical care, the average variable costs total \$170 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally from penalties imposed in circuit court cases.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of current incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Montgomery and Prince George's counties, Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State's Attorneys' Association, Money Central – msn.com, pbs.org, Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2011
ncs/kdm

Analysis by: Amy A. Devadas

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