

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 942

(Delegate Lee, *et al.*) (Commission on Maryland
Cybersecurity Innovation and Excellence)

Judiciary

Judicial Proceedings

Identity Fraud - Health Information and Health Care Records

This bill expands the identity fraud statute to include “health information” and health care records.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s expanded application of existing penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill’s expanded application of existing penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, a person may not:

- knowingly, willfully, and with fraudulent intent possess, obtain, or help another person to possess or obtain any personal identifying information of an individual, without the consent of the individual, in order to access health information or health care in the name of the individual;
- knowingly and willfully assume the identity of another person, including a fictitious person, with fraudulent intent to access health information or health care; and

- knowingly, willfully, and with fraudulent intent use a re-encoder or a skimming device to engage in specified activities in order to access health information or health care.

A person who commits any of these prohibited acts is subject to current statutory penalties for identity fraud based on the value of the health information or health care.

A court may order a person who pleads guilty or *nolo contendere* or who is found guilty of these violations to make restitution to the victim for reasonable costs, including reasonable attorney's fees, incurred for clearing the victim's record or history related to health information or health care. This restitution is in addition to any restitution available under Title 11, Subtitle 6 of the Criminal Procedure Article,

"Health information" means any information, whether oral or recorded in any form or medium that (1) is created or received by a health care provider, a health care carrier, a public health authority, an employer, a life insurer, a school or university, or a health care clearing house; and (2) relates to the past, present, or future physical or mental health condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

The bill also alters the definition of "personal identifying information" to include specified health and medical-related information, and establishes that "personal identifying information" may be derived from any of the elements specified in that definition alone or in conjunction with any other information to identify a specific natural or fictitious individual.

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, including a fictitious person, 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” to place information encoded on the magnetic strip(e) of a credit card onto the magnetic strip(e) of another credit card or other electronic medium without the consent of the individual authorized to use the original card. A person may not use a “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.

In addition to restitution under Title 11, Subtitle 6 of the Criminal Procedure Article, a court may order a person who pleads guilty or *nolo contendere* or who is found guilty of identity fraud to make restitution to the victim for reasonable costs, including reasonable attorney’s 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.

Background:

Identity Fraud Generally

In February 2012, the Federal Trade Commission and the Consumer Sentinel Network (CSN), a consortium of national and international law enforcement and private security entities, released the *Consumer Sentinel Network Data Book* for calendar 2011.

According to the report, CSN received 279,156 identity theft complaints during calendar 2011, up from 86,250 complaints in calendar 2001. Identity theft was the most popular type of complaint CSN received during 2011. Maryland had 4,980 complaints, making it the state with the ninth-highest rate of complaints per 100,000 population. Theft of government documents or benefits and credit card fraud were the two most popular types of identity theft reported by Maryland residents during calendar 2011.

According to Maryland State Commission on Criminal Sentencing Policy, there were 25 convictions for identity fraud violations involving the assumption of another person's identity or obtaining personal identifying information without consent in the State's circuit courts during fiscal 2012.

Commission on Maryland Cybersecurity Innovation and Excellence

Chapters 250 and 251 of 2011 (SB 557/HB 665) established the Commission on Maryland Cybersecurity Innovation and Excellence to (1) review current federal and State laws, standards, and policies for inconsistencies and preemption issues; (2) provide recommendations regarding strategic plans to promote cybersecurity innovation and recover from attacks on cybersecurity; and (3) recommend methods of promoting innovation through public-private partnerships, the education system, research and development, and selection of a State agency suitable to implement a pilot program. University of Maryland University College was tasked to provide staff support for the commission, which held an introductory meeting on November 22, 2011, before submitting its interim report to the Governor and the General Assembly on December 23, 2011. The commission is required to submit its final findings and recommendations to the Governor and the General Assembly by September 1, 2014.

State Revenues: General fund revenues increase minimally as a result of the bill's expanded application of existing monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties due to more people being committed to State correctional 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 State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 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 State inmate (including variable medical care and variable operating costs) is about

\$370 per month. Excluding all medical care, the average variable costs total \$180 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 a State correctional facility. 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 the State 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 State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's expanded application of existing monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of existing 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 State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 624 (Senator Pugh)(Commission on Maryland Cybersecurity Innovation and Excellence) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Office of the Public Defender, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Federal Trade Commission – *Consumer Sentinel Network Data Book for January – December 2011*, Department of Legislative Services

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