

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 972
Judiciary

(Delegate Mitchell, *et al.*)

Criminal Law - Identity Fraud - Prohibitions

This bill prohibits a person from knowingly, willfully, and with fraudulent intent disclosing or helping another person to disclose an individual's personal identifying information without the individual's consent in order 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. Violators are subject to existing statutory penalties for identity fraud based on the value of the benefit, credit, good, service, or other thing of value that is the subject of the crime.

The bill also prohibits a person from knowingly, willfully, and with fraudulent intent possessing, obtaining, disclosing, or helping another person to possess, obtain, or disclose an individual's personal identifying information without the individual's consent in order to annoy, threaten, embarrass, or harass the individual. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 18 months and/or a maximum fine of \$5,000.

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

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: 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 2010. 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.

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 567 (Senator Zirkin) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, 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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