

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1036

(Delegate Lee, *et al.*)

Judiciary

Judicial Proceedings

**Identity Fraud - Inducing Another to Provide Identifying Information -
Prohibited**

This bill prohibits a person from knowingly and willfully claiming to represent another person without the knowledge and consent of that person, with the intent of soliciting, requesting, or taking any other action to induce another to provide personal identifying information or a payment device number. The definition of “personal identifying information” is expanded to include, but not be limited to, the items already specified in statute. A person who violates this provision is subject to maximum penalties of 18 months imprisonment and/or a \$5,000 fine.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provision.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s penalty provision.

Small Business Effect: None.

Analysis

Current Law: A “person” means an individual, sole proprietorship, partnership, firm, association, corporation, or other entity.

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 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.

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 imprisonment for five years 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 imprisonment for 18 months 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.

Notwithstanding any other provision of law, the State may institute a prosecution for the misdemeanor of identity fraud at any time. Under the Maryland Constitution, a person convicted of the misdemeanor offense of identity fraud is deemed to have committed a misdemeanor whose punishment is confinement in the penitentiary and may reserve a point or question for *in banc* review as provided by the Maryland Constitution. A violator of any of these provisions is subject to a court order for restitution and paying costs, including reasonable attorney's fees, related to restoring a victim's identity. A sentence under the identity fraud provisions may be imposed separate from and consecutive to, or concurrent with, a sentence for any crime based on the acts establishing the violation.

Law enforcement officers may operate without regard to jurisdictional boundaries to investigate identity fraud provisions, within specified limitations. The authority may be

exercised only if an act related to the crime was committed in the jurisdiction of an investigative agency or a complaining witness resides in an investigating agency's jurisdiction. Notification of an investigation must be made to appropriate law enforcement personnel.

Background: Identity theft is commonly regarded as one of the fastest growing crimes in the United States. Thieves employ a variety of methods, including "pretexting" to obtain personal information.

"Pretexting" occurs when a person falsely claims to be someone else or to represent a business and tries to obtain confidential information about another person. The Federal Trade Commission (FTC) first began investigating pretexting in 1999 by targeting businesses that used false pretenses to gather financial information and, as a result, prosecuted some companies for unfair and deceptive trade practices as defined by the Federal Trade Commission Act. Since 1999, the federal Gramm-Leach-Bliley Act has specifically prohibited the false or fraudulent representation of identity to a financial institution to obtain customer information from the financial institution.

According to the FTC, an entire industry of companies offering to provide cellular and land line phone records for sale has developed in recent years. The successful purchase of the cell phone records of public figures has made national headlines. The FTC also reported that a data broker, Touch Tone Information, Inc., allegedly sold the home phone numbers and addresses of Los Angeles police detectives to suspected mobsters, who then tried to intimidate the detectives and their families. The Hewlett-Packard computer company recently settled a civil suit for over \$14 million, stemming from the company's admission that its board of directors had hired private investigators to identify directors who divulged information about board activities to the press. The investigators used pretexting to obtain the confidential phone records of journalists, as well as members of the board.

In January 2007, the federal Telephone Records and Privacy Protection Act of 2006 was enacted. It prohibits anyone from pretending to be someone else or otherwise use fraudulent tactics, to persuade phone companies to divulge confidential data about a person's calling habits and subjects an offender to a maximum prison term of 10 years. The proponents of the act argued that specific federal legislation to criminalize pretexting was necessary, especially in light of the investigatory practices employed by Hewlett-Packard and other companies. States have considered legislation to criminalize pretexting and California recently enacted such a measure.

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

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty 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 \$2,300 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 medical care and variable costs) is \$465 per month. Excluding medical care, the average variable costs total \$134 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. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2008 are estimated to range from \$21 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term 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 could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$42 to \$120 per inmate in fiscal 2008.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Federal Trade Commission, *c/net news.com*, *The New York Times*, Department of Legislative Services

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