

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 327 (Senator Kelley, *et al.*) (Task Force to Study Identity Theft)

Judicial Proceedings

Judiciary

Identity Fraud - Cardholder Affidavits - Evidence

This bill expands to identity fraud offenses the use of an affidavit sworn to by a credit cardholder which may be introduced as substantive evidence in a criminal case or juvenile proceeding to establish that the credit card number was taken, used, or possessed without authorization of the credit cardholder.

Fiscal Summary

State Effect: Potential operational efficiencies for the District Court due to decreased court time needed to admit the evidence affected by the bill and fewer contested hearings.

Local Effect: Potential operational efficiencies for circuit courts due to decreased court time needed to admit the evidence affected by the bill and fewer contested hearings.

Small Business Effect: None.

Analysis

Current Law: An affidavit sworn to by a lawful credit cardholder may be introduced as substantive evidence that the credit card or credit card number was taken, used, or possessed without the credit cardholder's authorization. This provision applies to a criminal case or juvenile proceeding for the following offenses: (1) credit card theft; (2) credit card counterfeiting; (3) obtaining property by counterfeiting, theft, or misrepresentation; (4) honoring a stolen or counterfeit credit card with the intent to defraud the issuer or the cardholder; (5) completing a credit card or possessing a device to reproduce credit cards without consent; (6) receiving property by stolen counterfeit or misrepresented credit card; (7) publishing the number or code of a telephone credit card; or (8) unauthorized use and disclosure of a credit card or payment device number.

The State must provide at least 10 days notice to the defendant before a proceeding in which the State intends to introduce into evidence an affidavit of a credit card holder under the bill. On written demand of the defendant filed at least five days before the proceeding, the State must require the presence of the affiant as a prosecution witness.

Background: The bill is one of the measures recommended by the Task Force to Study Identity Theft. The task force was created by Chapters 241 and 242 of 2005 and extended by Chapters 9 and 10 of 2007. Among other things, the task force was directed to • study the problems associated with identity theft in Maryland, including the adequacy of current Maryland law in deterring identity theft; • consult with relevant State and federal agencies and other experts on identity theft; and • make recommendations regarding possible remedies to identity theft, including statutory changes.

The task force met six times between November 15, 2006 and December 6, 2007 and heard from law enforcement agencies, bank security officers, citizens, credit card companies, and consumer advocates about the prevalence of identity theft and ways in which the crime could be prevented. The task force received several recommendations, particularly from State's Attorneys for reform of the rules of evidence to improve prosecution of identity fraud cases. Testimony provided to the task force indicated that State's Attorneys had a difficult time getting identity fraud victims to come to Maryland to appear as witnesses especially if the credit card company had provided financial reimbursement. Some cases are relatively low level, in terms of the amount stolen or the possible penalties, making it difficult to justify the effort of guaranteeing the personal appearance of accountholders, who are able to only testify that he or she held the account that was compromised. Because of these difficulties, the State is unable to proceed, but is also unable to get the court to grant a continuance so that evidence can be obtained. As a result, charges are often dropped in identity fraud cases. The task force believes that the use of a witness affidavit will assist with the prosecution of identity theft cases and will create parity with the credit card crimes for which affidavits are already authorized. Even if the defense objects to the affidavit and demands presentation of the witness, a court may be more willing to grant a continuance so that the witness may be produced at a later time.

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 2006 (the latest information available). In calendar 2006, FTC received 246,035 identity theft complaints. In calendar 2005, the number of identity theft complaints was 255,613. In Maryland, residents reported 4,656 instances of identity theft in 2006, or 82.9 complaints per 100,000 population, ranking Maryland eleventh 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 25% 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 16% 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 U.S. adults discovered that they were victimized by some form of identity theft in calendar 2005.

State and Local Fiscal Effect: The Administrative Office of the Courts advises that the expenditure savings that could result from admitting a credit cardholder's affidavit as evidence in criminal or juvenile proceedings depends on the vigilance of the State's attorney in making sure that the affidavit is a true attestation of the credit cardholder. To the extent that identity fraud cases result in restitution hearings, the use of affidavits would also substantively establish the crime and decrease the number of contested hearings.

The Office of State's Attorneys advises that the use of credit card affidavits as provided in the bill could result in savings as a State's Attorney would be able to submit the affidavit as evidence, rather than reimbursing the alleged victim (especially if the victim does not live in Maryland) for travel, lodging, and other expenses to make a personal appearance to testify at trial.

Additional Information

Prior Introductions: The bill is similar to HB 407 of 2006, which was given an unfavorable report by the House Judiciary Committee.

Cross File: HB 1107 (Delegates Lee, *et al.*) (Task Force to Study Identity Theft) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2008
ncs/jr Revised - Senate Third Reader - March 24, 2008

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