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HOUSE BILL NO. 2175

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 2.2-3800, 18.2-186.3, 18.2-186.4, 18.2-204.1, 42.1-82, and 55-106.5 of the Code of Virginia, relating to identity theft; penalty.

Patrons—Bell, Black, Bryant, Cosgrove, Drake, Landes, Lingamfelter, Louderback, McDougale, O'Bannon, Rapp, Saxman and Suit

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3800, 18.2-186.3, 18.2-186.4, 18.2-204.1, 42.1-82, and 55-106.5 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3800. Short title; findings; principles of information practice.

A. This chapter may be cited as the "Government Data Collection and Dissemination Practices Act."

B. The General Assembly finds that:

1. An individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;

2. The increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;

3. An individual's opportunities to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and

4. In order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

C. Recordkeeping agencies of the Commonwealth and political subdivisions shall adhere to the following principles of information practice to ensure safeguards for personal privacy:

1. There shall be no personal information system whose existence is secret.

2. Information shall not be collected unless the need for it has been clearly established in advance.

3. Information shall be appropriate and relevant to the purpose for which it has been collected.

4. Information shall not be obtained by fraudulent or unfair means.

5. Information shall not be used unless it is accurate and current.

6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.

7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.

8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse. *On and after July 1, 2004, no agency shall display the social security number of a data subject on a student or employee identification card.*

9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.

10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.

11. On and after July 1, 2004, no state agency as defined in § 42.1-77 shall deliver or cause to be delivered an envelope or package upon which a social security number is printed or applied or can be seen from the outside of the envelope or package.

§ 18.2-186.3. Identity fraud; penalty; victim assistance.

A. It shall be unlawful for any person, without the authorization or permission of the person or persons who ~~is~~ ~~are~~ the ~~subject~~ subjects of the identifying information, with the intent to defraud, either for his own use or the use of a third person, *or with the intent to distribute or sell the information to another to:*

1. Obtain, record or access identifying information which is not available to the general public that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person; or

2. Obtain goods or services through the use of identifying information of such other person; or

3. Obtain identification documents in such other person's name; or

4. Obtain, record or access identifying information that is readily available and accessible through legal means to the person who takes, records or accesses another's identifying information, which

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58 information would assist in accessing financial resources, obtaining identification documents, or
59 obtaining benefits of such other person; or

60 5 Obtain, record or access identifying information while impersonating a law-enforcement officer or
61 an official of the government of the Commonwealth.

62 B. It shall be unlawful for any person to use identification documents or identifying information of
63 another person, whether alive or dead, to avoid summons, arrest, prosecution, or to impede a criminal
64 investigation.

65 C. It is unlawful for any person to purchase, possess, record or distribute the means or methods by
66 which a person may commit a violation of subsection A or B.

67 CD. As used in this section, "identifying information" shall include but not be limited to: (i) name;
68 (ii) date of birth; (iii) social security number; (iv) driver's license number; (v) bank account numbers;
69 (vi) credit or debit card numbers; (vii) personal identification numbers (PIN); (viii) electronic
70 identification codes; (ix) automated or electronic signatures; (x) biometric data; (xi) fingerprints; (xii)
71 passwords; or (xiii) any other numbers or information that can be used to access a person's financial
72 resources, obtain identification, act as identification, or obtain goods or services.

73 DE. Violations of this section shall be punishable as a ~~Class 1 misdemeanor~~. Any violation resulting
74 in financial loss of greater than \$200 shall be punishable as a Class 6 felony by imprisonment in a state
75 correctional facility for not less than 1 nor more than 20 years or, in the discretion of the jury or court
76 trying the case without a jury, violators shall be confined in jail for a period not exceeding 12 months
77 or fined not more than \$2,500, or both. Any second or subsequent conviction shall be punishable as a
78 Class 6 felony. Any violation resulting in the arrest and detention of the person whose identification
79 documents or identifying information were used to avoid summons, arrest, prosecution, or to impede a
80 criminal investigation shall be punishable as a Class 64 felony. In any proceeding brought pursuant to
81 this section, the crime shall be considered to have been committed in any locality where the person
82 whose identifying information was appropriated resides, or in which any part of the offense took place,
83 regardless of whether the defendant was ever actually in such locality.

84 EF. Upon conviction, in addition to any other punishment, a person found guilty of this offense shall
85 be ordered by the court to make restitution as the court deems appropriate to any person whose
86 identifying information was appropriated. Such restitution may include the person's actual expenses
87 associated with correcting inaccuracies or errors in his credit report or other identifying information.

88 FG. A. 1. Upon the request of a person whose identifying information was appropriated, the Attorney
89 General may provide assistance to the victim in obtaining information necessary to correct inaccuracies
90 or errors in his credit report or other identifying information; however, no legal representation shall be
91 afforded such person.

92 A person who reasonably believes that he is the victim of identity theft may petition a circuit court
93 for an expedited judicial determination of his factual innocence, where the perpetrator of the identity
94 theft was arrested for or convicted of a crime under the victim's identity, or where the victim's identity
95 has been mistakenly associated with a record of criminal conviction. Any judicial determination of
96 factual innocence made pursuant to this section may be heard and determined upon declarations,
97 affidavits, police reports, or other material, relevant, and reliable information submitted by the parties.
98 Where the court determines that the petition is meritorious and that there is no reasonable cause to
99 believe that the petitioner committed the offense for which the perpetrator of the identity theft was
100 arrested or convicted, the court shall find the petitioner factually innocent of that offense. If the
101 petitioner is found factually innocent, the court shall issue an order certifying this determination. A
102 court issuing a determination of factual innocence pursuant to this section may at any time vacate that
103 determination if the petition, or any information submitted in support of the petition, is found to contain
104 any material misrepresentation of fraud.

105 2. If a consumer, as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., submits to a
106 consumer reporting agency, as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., a
107 copy of a valid police report, the consumer reporting agency shall, within 30 days of receipt thereof,
108 block the reporting of any information that the consumer alleges appears on his credit report, as
109 defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as a result of a violation of
110 § 18.2-186.3. The consumer reporting agency shall promptly notify the furnisher of the information that
111 a police report has been filed, that a block has been requested, and the effective date of the block.

112 3. Consumer reporting agencies may decline to block or may rescind any block of consumer
113 information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency
114 believes that: (i) the information was blocked due to a misrepresentation of a material fact by the
115 consumer; (ii) the information was blocked due to fraud, in which the consumer participated, or of
116 which the consumer had knowledge, and which may for purposes of this section be demonstrated by
117 circumstantial evidence; (iii) the consumer agrees that portions of the blocked information or all of it
118 were blocked in error; (iv) the consumer knowingly obtained or should have known that he obtained
119 possession of goods, services, or moneys as a result of the blocked transaction or transactions; or (v)

the consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the consumer's report of a violation of § 18.2-186.3.

4. If blocked information is unblocked pursuant to this subdivision, the consumer shall be notified in the same manner as consumers are notified of the reinsertion of information pursuant to the Fair Credit Reporting Act at 15 U.S.C. § 1681i, as amended. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he obtained possession of any goods, services, or moneys.

5. A consumer reporting agency shall accept the consumer's version of the disputed information and correct the disputed item when the consumer submits to the consumer reporting agency documentation obtained from the source of the item in dispute or from public records confirming that the report was inaccurate or incomplete, unless the consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the documentation submitted and notifies the consumer in writing of that decision, explaining its reasons for unblocking the information and setting forth the specific, verifiable facts on which the decision is based.

6. A consumer reporting agency shall delete from a consumer credit report inquiries for credit reports based upon credit requests that the consumer reporting agency verifies were initiated as a result of a violation of § 18.2-186.3.

B. The provisions of this section do not apply to (i) a consumer reporting agency that acts as a reseller of credit information by assembling and merging information contained in the databases of other consumer reporting agencies, and that does not maintain a permanent database of credit information from which new consumer credit reports are produced, (ii) a check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods, or (iii) a demand deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

H. 1. On and after January 1, 2004, in order for a victim of identity theft to be included in the database established pursuant to subdivision 3, he shall submit to the State Police and the Attorney General a court order obtained pursuant to any provision of law, including a determination of factual innocence as set forth in subsection G, that may include a full set of fingerprints and any other information prescribed by the Attorney General.

2. Upon receiving information pursuant to subdivision 2, the State Police shall verify the identity of the victim against any driver's license or other identification record maintained by the Department of Motor Vehicles.

3. The State Police shall establish and maintain a database of individuals who have been victims of identity theft and shall provide a victim of identity theft or his authorized representative access to the database in order to establish that the individual has been a victim of identity theft. Access to the database shall be limited to criminal justice agencies, victims of identity theft, and individuals and agencies authorized by the victims.

4. The State Police and the Attorney General shall establish, maintain, and publish a toll-free telephone number to provide access to information under subdivision 3.

I. The Attorney General shall, on or before January 1, 2004, establish guidelines and policies governing the use of police reports submitted to credit agencies concerning incidents of identity theft.

§ 18.2-186.4. Use of a person's identity with the intent to coerce, intimidate, or harass; penalty.

It shall be unlawful for any person, with the intent to coerce, intimidate, or harass another person, to publish the person's name or photograph along with identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of § 18.2-186.3. Any person who violates this section is guilty of a Class 1 misdemeanor.

§ 18.2-204.1. Fraudulent use of birth certificates, drivers' licenses, etc.

A. It shall be unlawful for any person to obtain or possess, sell or transfer the birth certificate of another for the purpose of establishing a false identity for himself or for another person.

B. It shall be unlawful for any person to obtain, possess, sell or transfer any document for the purpose of establishing a false status, occupation, membership, license or identity for himself or any other person.

C. Any person who shall violate the provisions of this section is guilty of a Class 1 misdemeanor, except when the birth certificate or document is obtained, possessed, sold, or transferred with the intent to use such certificate or document to purchase a firearm, in which case a violation of this section shall

181 be punishable as a Class 6 felony.

182 D. The provisions of this section shall not apply to members of state, federal, county, city or town
183 law-enforcement agencies in the performance of their duties.

184 § 42.1-82. Duties and powers of Library Board.

185 The State Library Board shall with the advice of the Council:

186 1. Issue regulations to facilitate the creation, preservation, storage, filing, reformatting, management,
187 and destruction of public records by all agencies. Such regulations shall establish procedures for records
188 management containing recommendations for the retention, disposal or other disposition of public
189 records; procedures for the physical destruction or other disposition of public records proposed for
190 disposal; and standards for the reproduction of records by photocopy or microphotography processes
191 with the view to the disposal of the original records. *The procedures for the disposal, physical*
192 *destruction or other disposition of public records containing social security numbers shall include all*
193 *reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying*
194 *the social security numbers in those records to make them unreadable or undecipherable by any means.*
195 Such standards shall relate to the quality of film used, preparation of the records for filming, proper
196 identification of the records so that any individual document or series of documents can be located on
197 the film with reasonable facility, and that the copies contain all significant record detail, to the end that
198 the photographic or microphotographic copies shall be of archival quality.

199 2. Issue regulations specifying permissible qualities of paper, ink, and other materials to be used by
200 agencies for public record purposes. The Board shall determine the specifications for and shall select
201 and make available to all agencies lists of approved papers, photographic materials, ink, or other writing
202 materials for archival public records, and only those approved may be purchased for use in the making
203 of such records. These regulations and specifications shall also apply to clerks of courts of record.

204 3. Provide assistance to agencies in determining what records no longer have administrative, legal,
205 fiscal, or historical value and should be destroyed or disposed of in another manner. Each public official
206 having in his custody official records shall assist the Board in the preparation of an inventory of all
207 public records in his custody and in preparing a suggested schedule for retention and disposition of such
208 records. No land or personal property book shall be destroyed without being first offered to The Library
209 of Virginia for preservation.

210 All records created prior to the Constitution of 1902 that are declared archival may be transferred to
211 the archives.

212 § 55-106.5. When clerk may refuse document to be recorded.

213 A clerk may refuse any document for recording in which (i) the name or names of the person under
214 which the document is to be indexed does not legibly appear or is not otherwise furnished, *or (ii) any*
215 *person's social security number appears unless the number is required by law to appear.*

216 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
217 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
218 **be determined for periods of imprisonment in state adult correctional facilities and cannot be**
219 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**