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HOUSE BILL NO. 2175

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on January 30, 2003)

(Patron Prior to Substitute—Delegate Bell)

*A BILL to amend and reenact §§ 2.2-3800, 18.2-186.3, 18.2-204.1, 42.1-82, and 55-106.5 of the Code of Virginia and to add a section numbered 18.2-186.5, relating to identity theft; penalty.***Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-3800, 18.2-186.3, 18.2-204.1, 42.1-82, and 55-106.5 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-186.5 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 theft; victim assistance; penalty.

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, for his own use or the use of a third person, 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 while impersonating a law-enforcement officer or an official of the government of the Commonwealth.*

B. It shall be unlawful for any person to use identification documents or identifying information of another to avoid summons, arrest, prosecution, or to impede a criminal investigation without the authorization or permission of the person who is the subject of the identifying information, with the intent to sell or distribute the information to another to:

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

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

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

65 4. *Obtain, record or access identifying information while impersonating a law-enforcement officer or*
66 *an official of the Commonwealth.*

67 C. *It shall be unlawful for any person to use identification documents or identifying information of*
68 *another person, whether that person is dead or alive, to avoid summons, arrest, prosecution or to*
69 *impede a criminal investigation.*

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

76 D E. Violations of this section shall be punishable as a Class 1 misdemeanor. Any violation
77 resulting in financial loss of greater than \$200 shall be punishable as a Class 6 felony. Any second or
78 subsequent conviction shall be punishable as a Class 6 felony. Any violation resulting in the arrest and
79 detention of the person whose identification documents or identifying information were used to avoid
80 summons, arrest, prosecution, or to impede a criminal investigation shall be punishable as a Class 6
81 felony. In any proceeding brought pursuant to this section, the crime shall be considered to have been
82 committed in any locality where the person whose identifying information was appropriated resides, or
83 in which any part of the offense took place, regardless of whether the defendant was ever actually in
84 such locality.

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

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

94 H. *If a consumer submits to a consumer reporting agency a copy of a valid court order issued*
95 *pursuant to § 18.2-386.5, the credit reporting agency shall, within 30 days of receipt thereof, block the*
96 *reporting of any information reported to such agency as a result of a violation of § 18.2-186.3.*

97 *For the purposes of this section, "consumer" means individual and "consumer reporting agency"*
98 *means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly*
99 *engages in whole or in part in the practice of assembling or evaluating consumer credit information or*
100 *other information on consumers for the purpose of furnishing consumer reports to third parties, and*
101 *which uses any means or facility of interstate commerce for the purpose of preparing or furnishing*
102 *consumer reports.*

103 § 18.2-186.5. *Expungement of false identity information from police and court records.*

104 *Any person whose name or other identification has been used without his consent or authorization by*
105 *another person who has been charged or arrested using such name or identification may file a petition*
106 *with the court for relief pursuant to § 19.2-392.2,*

107 § 18.2-204.1. *Fraudulent use of birth certificates, drivers' licenses, etc.*

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

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

113 C. Any person who shall violate the provisions of this section is guilty of a Class 1 misdemeanor,
114 except when the birth certificate or document is obtained, possessed, sold, or transferred with the intent
115 to use such certificate or document to purchase a firearm, in which case a violation of this section shall
116 be punishable as a Class 6 felony.

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

119 § 42.1-82. Duties and powers of Library Board.

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

121 1. Issue regulations to facilitate the creation, preservation, storage, filing, reformatting, management,

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

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

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

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

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

A clerk may refuse any document for recording in which (i) the name or names of the person under which the document is to be indexed does not legibly appear or is not otherwise furnished. *The clerk may refuse to accept any instrument submitted for recordation that includes a grantor's, grantee's or trustee's social security number.*

2. The Attorney General shall, on or before January 1, 2004, establish guidelines and policies governing redaction of erroneous information reported to consumer reporting agencies as a result of a violation of § 18.2-186.3.

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

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