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HOUSE BILL NO. 2175
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on February 10, 2003)
(Patron Prior to Substitute—Delegate Bell)

A BILL to amend and reenact §§ 2.2-3800, 17.1-227, 18.2-186.3, 18.2-204.1 and 42.1-82 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-186.3:1 and 18.2-186.5, relating to identity theft; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3800, 17.1-227, 18.2-186.3, 18.2-204.1 and 42.1-82of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-186.3:1 and 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, except that universities and colleges that have such a prevention plan for misuse of personal information in place on or before July 1, 2004, in compliance with this section, the date shall be January 1, 2005.*

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.

§ 17.1-227. Documents to be recorded in deed books.

All deeds, deeds of trust, deeds of release, certificates of satisfaction or certificates of partial satisfaction, quitclaim deeds, homestead deeds, grants, transfers and mortgages of real estate, releases of such mortgages, powers of attorney to convey real estate, leases of real estate, notices of lis pendens and all contracts in reference to real estate, which have been acknowledged as required by law, and certified copies of final judgments or decrees of partition affecting the title or possession of real estate, any part of which is situated in the county or city in which it is sought to be recorded, and all other writings relating to or affecting real estate which are authorized to be recorded, shall, unless otherwise provided, be recorded in a book to be known as the deed book. All deeds, deeds of trust, deeds of release, quitclaim deeds, grants, transfers, and mortgages of real estate or any addendum or memorandum relating to any of these instruments submitted for recordation in the deed books of the appropriate office of the clerk of court shall be prepared according to the requirements for deeds as set forth in §§ 55-48 and 55-58 and shall include the names of all grantors and grantees in the first clause of each such instrument. *The clerk may refuse to accept any instrument submitted for recordation that includes a grantor's, grantee's or trustee's social security number.* Each instrument shall be indexed under all such names in accordance with the provisions of § 17.1-249.

§ 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:*

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

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

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 Commonwealth.

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

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

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

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

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

§ 18.2-186.3:1. Identity fraud; consumer reporting agencies; notification of police reports.

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

B. Consumer reporting agencies may decline to block or may rescind any block of consumer information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency *believes that: (i) the information was blocked due to a misrepresentation of a material fact by the consumer; (ii) the information was blocked due to fraud, in which the consumer participated, or of which the consumer had knowledge, and which may for purposes of this section be demonstrated by circumstantial evidence; (iii) the consumer agrees that portions of the blocked information or all of it were blocked in error; (iv) the consumer knowingly obtained or should have known that he obtained 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.*

C. If blocked information is unblocked pursuant to this section, 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.

D. 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.

E. 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.

F. 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.

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

Any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification may file a petition with the court for relief pursuant to § 19.2-392.2. A person who has petitioned the court pursuant to § 19.2-392.2 as a result of a violation of § 18.2-186.3, may provide to the Attorney General a certified copy of a court order obtained pursuant to § 19.2-392.2. The Office of the Attorney General, in cooperation with the State Police, may establish and maintain a registry of individuals who provide such a court order, and may issue an "Identity Theft Passport" certifying that such an order has been submitted. The Office of the Attorney General and the State Police may provide access to the registry to criminal justice agencies and individuals who have submitted a court order pursuant to this section.

§ 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 be punishable as a Class 6 felony.

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

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

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

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.

2. The Office of the Attorney General in cooperation with the Superintendent of State Police shall, on or before January 1, 2004, establish procedures for the operation and maintenance of a registry of Identity Theft Passports issued pursuant to §§ 18.2-186.3:1 and 18.2-186.5.

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.