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SENATE BILL NO. 1301

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 28, 2009)

(Patron Prior to Substitute—Senator Hurt)

*A BILL to amend and reenact § 18.2-186.3 of the Code of Virginia, relating to identity theft; penalty.***Be it enacted by the General Assembly of Virginia:****1. That § 18.2-186.3 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-186.3. Identity theft; penalty; restitution; victim assistance.

A. It shall be unlawful for any person, without the authorization or permission of the person or persons who are the 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;

2. Obtain *money, credit, loans*, 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 government of the Commonwealth.

B. It shall be unlawful for any person 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 *money, credit, loans*, 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.

B1. It shall be unlawful for any person to use identification documents or identifying information of another person, whether that person is dead or alive, or of a false or fictitious person, 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 *money, credit, loans*, 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 of subsection B where five or more persons' identifying information has been obtained, recorded, or accessed in the same transaction or occurrence shall be punishable as a Class 6 felony. Any violation of subsection B where 50 or more persons' identifying information has been obtained, recorded, or accessed in the same transaction or occurrence shall be punishable as a Class 5 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 whose identifying information was appropriated or to the estate of such person. 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

60 or errors in his credit report or other identifying information; however, no legal representation shall be
61 afforded such person.

62 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
63 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
64 **be determined for periods of imprisonment in state adult correctional facilities and is \$ 0 for**
65 **periods of commitment to the custody of the Department of Juvenile Justice.**