

DEPARTMENT OF TAXATION

2017 Fiscal Impact Statement

1. **Patron** Mark L. Keam

3. **Committee** Passed House and Senate

4. **Title** Notification of Breach of Payroll Data

2. **Bill Number** HB 2113

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. Summary/Purpose:

This bill would require that any employer or payroll service provider that owns or licenses computerized data relating to income tax withheld notify the Office of the Attorney General without unreasonable delay after the discovery or notification of unauthorized access and acquisition of unencrypted and unredacted computerized data containing a taxpayer identification number in combination with the income tax withheld for that taxpayer that compromises the confidentiality of such data and that creates a reasonable belief that an unencrypted and unredacted version of such information was accessed and acquired by an unauthorized person, and causes, or the employer or payroll provider reasonably believes has caused or will cause, identity theft or other fraud. With respect to employers, this bill would apply only to information regarding the employer's employees, and would not apply to information regarding the employer's customers or other non-employees.

Such employer or payroll service provider would be required to provide the Office of the Attorney General with the name and federal employer identification number of the employer that may be affected by the compromise in confidentiality. Upon receipt of such notice, the Office of the Attorney General would be required to notify the Department of Taxation ("the Department") of the compromise in confidentiality.

The effective date of this bill is not specified.

This is a Department of Taxation bill.

6. **Budget amendment necessary:** No.

7. **No Fiscal Impact.** (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would allow the Department to avoid issuing approximately \$800,000 in unrecoverable fraudulent refunds annually, resulting in a positive General Fund revenue impact of \$800,000 in Fiscal Year 2018 and each fiscal year thereafter. No budget amendment is needed because the General Fund revenue impact is assumed in the Introduced Executive Budget.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Background

Employer payroll breaches are one of the largest risks related to identity theft and refund fraud. With the information stolen from the payroll system of an employer or payroll service company, a criminal can file a fraudulent Virginia income tax return and receive a refund before the real taxpayer files his return.

During the first six months of Taxable Year 2016, the Department identified over 160 fraudulent refunds that were issued due to eighteen payroll breaches. As it is usually impossible to recover the funds once issued, the Commonwealth's tax revenue is reduced to the extent that refunds are issued based on fraudulent returns. Fraudulent refund claims also have an economic and emotional cost on taxpayers whose identity has been stolen. They will have problems when they file their actual tax returns and may find that their legitimate refunds are delayed.

When notified promptly by employers and payroll service companies, the Department can take quick action to mitigate the risk and avoid issuing fraudulent refunds. However, many employers and payroll service companies do not promptly notify the Department when they discover or are notified of a breach in their security.

Virginia Database Breach Notification Law

Existing law requires an individual or entity who owns, maintains, or possesses computerized data that includes personal information of Virginia residents and who has a reasonable belief that such personal information, in unencrypted or unredacted form, was

accessed or acquired by an unauthorized person to report the breach to the Office of the Virginia Attorney General and to provide notification to each affected Virginia resident.

Proposed Legislation

This bill would require that any employer or payroll service provider that owns or licenses computerized data relating to income tax withheld notify the Office of the Attorney General without unreasonable delay after the discovery or notification of unauthorized access and acquisition of unencrypted and unredacted computerized data containing a taxpayer identification number in combination with the income tax withheld for that taxpayer that compromises the confidentiality of such data and that creates a reasonable belief that an unencrypted and unredacted version of such information was accessed and acquired by an unauthorized person, and causes, or the employer or payroll provider reasonably believes has caused or will cause, identity theft or other fraud. With respect to employers, this bill would apply only to information regarding the employer's employees, and does not apply to information regarding the employer's customers or other non-employees.

Such employer or payroll service provider would be required to provide the Office of the Attorney General with the name and federal employer identification number of the employer that may be affected by the compromise in confidentiality. Upon receipt of such notice, the Office of the Attorney General would be required to notify the Department of Taxation of the compromise in confidentiality.

The term "employer" would be defined as the Commonwealth, or any political subdivision thereof, the United States, or any agency or instrumentality of any one or more of the foregoing, or the person, whether a resident or a nonresident of the Commonwealth, for whom an individual performs or performed any service as an employee or from whom a person receives a prize in excess of \$5,001 pursuant to the Virginia Lottery Law, except that:

- If the person, governmental unit, or agency thereof, for whom the individual performs or performed the service does not have control of the payment of the wages for such services, the term "employer" (except as used in the definition of "wages" herein) means the person having control of the payment of such wages, and
- In the case of a person paying wages on behalf of a nonresident person not engaged in trade or business within the Commonwealth or on behalf of any governmental unit or agency thereof not located within the Commonwealth, the term, "employer" (except as used in the definition of "wages" herein) means such person. The term shall not include a financial institution, corporation, partnership or other person or entity with respect to benefits paid as custodian, trustee or depository for an individual retirement account (IRA) or simplified employee pension plan (SEPP).

The notification requirement imposed by this bill would not subject the employer or payroll service provider to any other notification requirement, exemption, or penalty, except as already required under current law.

The effective date of this bill is not specified.

Similar Bills

Senate Bill 1033 is identical to this bill.

cc : Secretary of Finance

Date: 2/22/2017 JJS
HB2113FER161