

13101633D

HOUSE BILL NO. 1684

Offered January 9, 2013

Prefiled January 7, 2013

A BILL to amend and reenact §§ 2.2-511, 18.2-59, 18.2-152.5, 18.2-152.5:1, 18.2-186.3, 18.2-186.3:1, 18.2-186.4, 18.2-186.5, 19.2-8, 19.2-70.3, 19.2-349, 42.1-86.1, 53.1-127.5, and 58.1-4018.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-186.3:01, 18.2-186.3:02, and 18.2-186.3:03, relating to identity theft; penalties.

Patrons—Bell, Robert B., LeMunyon and Villanueva

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 18.2-59, 18.2-152.5, 18.2-152.5:1, 18.2-186.3, 18.2-186.3:1, 18.2-186.4, 18.2-186.5, 19.2-8, 19.2-70.3, 19.2-349, 42.1-86.1, 53.1-127.5, and 58.1-4018.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-186.3:01, 18.2-186.3:02, and 18.2-186.3:03 as follows:

§ 2.2-511. Criminal cases.

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, (vii) the practice of law without being duly authorized or licensed or the illegal practice of law, (viii) violations of § 3.2-4212 or 58.1-1008.2, (ix) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), (x) with the concurrence of the local attorney for the Commonwealth, violations of the Air Pollution Control Law (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), and the State Water Control Law (§ 62.1-44.2 et seq.), (xi) with the concurrence of the local attorney for the Commonwealth, violations of Chapters 2 (§ 18.2-18 et seq.), 3 (§ 18.2-22 et seq.), and 10 (§ 18.2-434 et seq.) of Title 18.2, if such crimes relate to violations of law listed in clause (x) of this subsection, (xii) with the concurrence of the local attorney for the Commonwealth, criminal violations by Medicaid providers or their employees in the course of doing business, or violations of Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may institute proceedings by information, presentment or indictment, as appropriate, and conduct the same, (xiii) with the concurrence of the local attorney for the Commonwealth, violations of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2, (xiv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of §§ 18.2-186.3, 18.2-186.3:01, 18.2-186.3:02, 18.2-186.3:03, and 18.2-186.4, (xv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of § 18.2-46.2, 18.2-46.3, or 18.2-46.5 when such violations are committed on the grounds of a state correctional facility, and (xvi) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2.

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

B. The Attorney General shall, upon request of a person who was the victim of a crime and subject to such reasonable procedures as the Attorney General may require, ensure that such person is given notice of the filing, of the date, time and place and of the disposition of any appeal or habeas corpus proceeding involving the cases in which such person was a victim. For the purposes of this section, a victim is an individual who has suffered physical, psychological or economic harm as a direct result of the commission of a crime; a spouse, child, parent or legal guardian of a minor or incapacitated victim;

INTRODUCED

HB1684

59 or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall
60 confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas
61 corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages
62 against the Commonwealth or any of its political subdivisions, the Attorney General or any of his
63 employees or agents, any other officer, employee or agent of the Commonwealth or any of its political
64 subdivisions, or any officer of the court.

65 **§ 18.2-59. Extortion of money, property or pecuniary benefit.**

66 Any person who (i) threatens injury to the character, person, or property of another person, (ii)
67 accuses him of any offense, (iii) threatens to report him as being illegally present in the United States,
68 or (iv) knowingly destroys, conceals, removes, confiscates, withholds or threatens to withhold, or
69 possesses any actual or purported passport or other immigration document, or any other actual or
70 purported government identification document, of another person, and thereby extorts money, property,
71 or pecuniary benefit or any note, bond, or other evidence of debt from him or any other person, is guilty
72 of a Class 5 felony.

73 For the purposes of this section, injury to property includes the sale, distribution, or release of
74 identifying information defined in clauses (iii) through ~~(xii)~~ (xiii) of ~~subsection C~~ subdivision A 1 of
75 § 18.2-186.3, but does not include the distribution or release of such information by a person who does
76 so with the intent to obtain money, property or a pecuniary benefit to which he reasonably believes he
77 is lawfully entitled.

78 **§ 18.2-152.5. Computer invasion of privacy; penalties.**

79 A. A person is guilty of the crime of computer invasion of privacy when he uses a computer or
80 computer network and intentionally examines without authority any employment, salary, credit or any
81 other financial or identifying information, as defined in clauses (iii) through (xiii) of ~~subsection C~~
82 ~~subdivision A 1~~ of § 18.2-186.3, relating to any other person. "Examination" under this section requires
83 the offender to review the information relating to any other person after the time at which the offender
84 knows or should know that he is without authority to view the information displayed.

85 B. The crime of computer invasion of privacy shall be punishable as a Class 1 misdemeanor.

86 C. Any person who violates this section after having been previously convicted of a violation of this
87 section or any substantially similar laws of any other state or of the United States is guilty of a Class 6
88 felony.

89 D. Any person who violates this section and sells or distributes such information to another is guilty
90 of a Class 6 felony.

91 E. Any person who violates this section and uses such information in the commission of another
92 crime is guilty of a Class 6 felony.

93 F. This section shall not apply to any person collecting information that is reasonably needed to (i)
94 protect the security of a computer, computer service, or computer business, or to facilitate diagnostics or
95 repair in connection with such computer, computer service, or computer business or (ii) determine
96 whether the computer user is licensed or authorized to use specific computer software or a specific
97 computer service.

98 **§ 18.2-152.5:1. Using a computer to gather identifying information; penalties.**

99 A. It is unlawful for any person, other than a law-enforcement officer, as defined in § 9.1-101, and
100 acting in the performance of his official duties, to use a computer to obtain, access, or record, through
101 the use of material artifice, trickery or deception, any identifying information, as defined in clauses (iii)
102 through (xiii) of ~~subsection C~~ subdivision A 1 of § 18.2-186.3. Any person who violates this section is
103 guilty of a Class 6 felony.

104 B. Any person who violates this section and sells or distributes such information to another is guilty
105 of a Class 5 felony.

106 C. Any person who violates this section and uses such information in the commission of another
107 crime is guilty of a Class 5 felony.

108 **§ 18.2-186.3. Identity theft; definition of identifying information; restitution; victim assistance.**

109 A. It shall be unlawful for any person, without the authorization or permission of the person or
110 persons who are the subjects of the identifying information, with the intent to defraud, for his own use
111 or the use of a third person, to:

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

115 2. Obtain money, credit, loans, goods or services through the use of identifying information of such
116 other person;

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

118 4. Obtain, record or access identifying information while impersonating a law-enforcement officer or
119 an official of the government of the Commonwealth.

120 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, *The following provisions of this section apply to §§ 18.2-186.3:01, 18.2-186.3:02, and 18.2-186.3:03:*

"identifying 1. "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.

2. In any proceeding brought pursuant to this section § 18.2-186.3:01, 18.2-186.3:02, or 18.2-186.3:03, 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. 3. Upon conviction, in addition to any other punishment, a person found guilty of this offense *an identity theft 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. B. 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.

§ 18.2-186.3:01. Identity theft, distribution; penalty.

A. It is 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 identifying documents, or obtaining benefits of such other person; or

2. Obtain identification documents in such other person's name.

B. A violation of this section is punishable as a Class 4 felony.

§ 18.2-186.3:02. Aggravated identity theft offense; penalty.

A. It is unlawful for any person, without the authorization or permission of the person who is the subject of the identifying information, with the intent to defraud, for his own use or the use of a third person, to:

1. Obtain money, goods, or services through the use of identifying information of such other person;

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

3. 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, or prosecution, or to impede a criminal investigation.

B. A violation of this section is punishable as a Class 5 felony.

§ 18.2-186.3:03. Identity theft offense; penalties.

A. It is unlawful for any person, without the authorization or permission of the person who is the subject 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 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; or

2. Obtain identification documents in such other person's name.

B. A violation of subdivision A 1 is punishable as a Class 2 misdemeanor. A violation of subdivision A 2 is punishable as a Class 1 misdemeanor.

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

A. A consumer may report a case of identity theft to the law-enforcement agency in the jurisdiction where he resides. 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, 18.2-186.3:01, 18.2-186.3:02, or 18.2-186.3:03.

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.

§ 18.2-186.4. 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 subdivision A 1 of § 18.2-186.3, or identification of the person's primary residence address. Any person who violates this section is guilty of a Class 1

misdemeanor.

Any person who violates this section knowing or having reason to know that person is a law-enforcement officer, as defined in § 9.1-101, is guilty of a Class 6 felony. The sentence shall include a mandatory minimum term of confinement of six months.

§ 18.2-186.5. Expungement of false identity information from police and court records; Identity Theft Passport.

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, *18.2-186.3:01*, *18.2-186.3:02*, or *18.2-186.3:03* may submit to the Attorney General a certified copy of a court order obtained pursuant to § 19.2-392.2. Upon receipt by the Attorney General of a certified copy of the court order and upon request by such person, the Office of the Attorney General, in cooperation with the State Police, may issue an "Identity Theft Passport" stating that such an order has been submitted. The Office of the Attorney General shall provide access to identity theft information to (i) criminal justice agencies and (ii) individuals who have submitted a court order pursuant to this section. When the Office of the Attorney General issues an Identity Theft Passport, it shall transmit a record of the issuance of the passport to the Department of Motor Vehicles. The Department shall note on the individual's driver abstract that a court order was obtained pursuant to § 19.2-392.2 and that an Identity Theft Passport has been issued. The provisions of § 2.2-3808 shall not apply to this section.

§ 19.2-8. Limitation of prosecutions.

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for any misdemeanor violation of § 54.1-3904 shall be commenced within two years of the discovery of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the discovery of the offense by the building official.

Prosecution of any misdemeanor violation of § 54.1-111 shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of any misdemeanor violation of any professional licensure requirement imposed by a locality shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of § 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to

305 make any return at the time or times required by law or regulations shall commence within three years
306 next after the commission of the offense, unless a longer period is otherwise prescribed.

307 Prosecution of violations of subsection A or B of § 3.2-6570 shall commence within five years of the
308 commission of the offense, except violations regarding agricultural animals shall commence within one
309 year of the commission of the offense.

310 A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the
311 commission of the offense.

312 A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ 24.2-945 et
313 seq.) of Title 24.2, shall commence within one year of the discovery of the offense but in no case more
314 than three years after the date of the commission of the offense.

315 A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer
316 Crimes Act (§ 18.2-152.1 et seq.) or *an offense punishable as identity theft* pursuant to § 18.2-186.3 ~~for~~
317 ~~identity theft, 18.2-186.3:01, 18.2-186.3:02, or 18.2-186.3:03~~ shall be commenced before the earlier of
318 (i) five years after the commission of the last act in the course of conduct constituting a violation of the
319 article or (ii) one year after the existence of the illegal act and the identity of the offender are
320 discovered by the Commonwealth, by the owner, or by anyone else who is damaged by such violation.

321 Nothing in this section shall be construed to apply to any person fleeing from justice or concealing
322 himself within or without the Commonwealth to avoid arrest or be construed to limit the time within
323 which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or
324 failure to provide for the support and maintenance of a spouse or child.

325 **§ 19.2-70.3. Obtaining records concerning electronic communication service or remote**
326 **computing service.**

327 A. A provider of electronic communication service or remote computing service, which, for purposes
328 of subdivisions A 2 through A 4, includes a foreign corporation that provides such services, shall
329 disclose a record or other information pertaining to a subscriber to or customer of such service,
330 excluding the contents of electronic communications, to an investigative or law-enforcement officer only
331 pursuant to:

- 332 1. A subpoena issued by a grand jury of a court of this Commonwealth;
- 333 2. A search warrant issued by a magistrate, general district court or a circuit court;
- 334 3. A court order for such disclosure issued as provided in this section; or
- 335 4. The consent of the subscriber or customer to such disclosure.

336 B. A court shall issue an order for disclosure under this section only if the investigative or
337 law-enforcement officer shows that there is reason to believe the records or other information sought are
338 relevant and material to an ongoing criminal investigation, or the investigation of any missing child as
339 defined in § 52-32, missing senior adult as defined in § 52-34.4, or an incapacitated person as defined
340 in § 64.2-2000 who meets the definition of a missing senior adult except for the age requirement. Upon
341 issuance of an order for disclosure under this section, the order and any written application or statement
342 of facts may be sealed by the court for 90 days for good cause shown upon application of the attorney
343 for the Commonwealth in an ex parte proceeding. The order and any written application or statement of
344 facts may be sealed for additional 90-day periods for good cause shown upon subsequent application of
345 the attorney for the Commonwealth in an ex parte proceeding. A court issuing an order pursuant to this
346 section, on a motion made promptly by the service provider, may quash or modify the order, if the
347 information or records requested are unusually voluminous in nature or compliance with such order
348 would otherwise cause an undue burden on such provider.

349 C. A provider of electronic communication service or remote computing service, including a foreign
350 corporation that provides such services, shall disclose the contents of electronic communications to an
351 investigative or law-enforcement officer only pursuant to a search warrant issued by a magistrate, a
352 juvenile and domestic relations district court, a general district court, or a circuit court, based upon
353 complaint on oath supported by an affidavit as required in § 19.2-54, or judicial officer or court of any
354 of the several states of the United States or its territories, or the District of Columbia when the warrant
355 issued by such officer or such court complies with the provisions of subsection E. In the case of a
356 search warrant directed to a foreign corporation the affidavit shall state that the complainant believes
357 that the records requested are actually or constructively possessed by a foreign corporation that provides
358 electronic communication service or remote computing service within the Commonwealth of Virginia. If
359 satisfied that probable cause has been established for such belief and as required by Chapter 5
360 (§ 19.2-52 et seq.), the magistrate, the juvenile and domestic relations district court, the general district
361 court, or the circuit court shall issue a warrant identifying those records to be searched for and
362 commanding the person seeking such warrant to properly serve the warrant upon the foreign corporation.

363 D. In order to comply with the requirements of § 19.2-54, any search of the records of a foreign
364 corporation shall be deemed to have been made in the same place wherein the search warrant was
365 issued.

366 E. A Virginia corporation or other entity that provides electronic communication services or remote

computing services to the general public, when properly served with a search warrant and affidavit in support of the warrant, issued by a judicial officer or court of any of the several states of the United States or its territories, or the District of Columbia with jurisdiction over the matter, to produce a record or other information pertaining to a subscriber to or customer of such service or the contents of electronic communications, or both, shall produce the record or other information or the contents of electronic communications as if that warrant had been issued by a Virginia court. The provisions of this subsection shall only apply to a record or other information or contents of electronic communications relating to the commission of a criminal offense that is substantially similar to (i) a violent felony as defined in § 17.1-805, (ii) an act of violence as defined in § 19.2-297.1, (iii) any offense for which registration is required pursuant to § 9.1-902, (iv) computer fraud pursuant to § 18.2-152.3, or (v) identity theft pursuant to § 18.2-186.3, *18.2-186.3:01, 18.2-186.3:02, or 18.2-186.3:03*. The search warrant shall be enforced and executed in the Commonwealth as if it were a search warrant described in subsection C.

F. The provider of electronic communication service or remote computing service may verify the authenticity of the written reports or records that it discloses pursuant to this section, excluding the contents of electronic communications, by providing an affidavit from the custodian of those written reports or records or from a person to whom said custodian reports certifying that they are true and complete and that they are prepared in the regular course of business. When so authenticated, the written reports and records are admissible in evidence as a business records exception to the hearsay rule.

G. No cause of action shall lie in any court against a provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant or subpoena under this section.

H. For the purposes of this section:

"Foreign corporation" means any corporation or other entity, whose primary place of business is located outside of the boundaries of the Commonwealth, that makes a contract or engages in a terms of service agreement with a resident of the Commonwealth to be performed in whole or in part by either party in the Commonwealth, or a corporation that has been issued a certificate of authority pursuant to § 13.1-759 to transact business in the Commonwealth. The making of the contract or terms of service agreement or the issuance of a certificate of authority shall be considered to be the agreement of the foreign corporation or entity that a search warrant or subpoena, which has been properly served on it, has the same legal force and effect as if served personally within the Commonwealth.

"Properly served" means delivery of a search warrant or subpoena by hand, by United States mail, by commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its general manager in the Commonwealth, to any natural person designated by it as agent for the service of process, or if such corporation has designated a corporate agent, to any person named in the latest annual report filed pursuant to § 13.1-775.

§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for Commonwealth; duties of Department of Taxation.

A. The clerk of the circuit court and district court of every county and city shall submit to the judge of his court, the Department of Taxation, the State Compensation Board and the attorney for the Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than 30 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance which remain unsatisfied, including those which are delinquent in installment payments. The monthly report shall include the social security number or driver's license number of the defendant, if known, and such other information as the Department of Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report required by this subsection on behalf of those clerks who participate in the Supreme Court's automated information system.

B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth and the clerk may agree to a process by which collection activity may be commenced 30 days after judgment.

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he

shall follow the procedures established by the Department of Taxation and the Compensation Board. Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private attorneys and collection agencies when active collection efforts are being undertaken. As part of such contract, private attorneys or collection agencies shall be given access to the social security number of the defendant in order to assist in the collection effort. Any such private attorney shall be subject to the penalties and provisions of §§ 18.2-186.3, 18.2-186.3:01, 18.2-186.3:02, and 18.2-186.3:03.

The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.

C. The Department of Taxation and the State Compensation Board shall be responsible for the collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354. Persons owing such unsatisfied judgments or failing to comply with installment payment agreements under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The Department of Taxation and the State Compensation Board shall establish procedures to be followed by clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or collection agents and may employ private attorneys or collection agencies, or engage other state agencies to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct a fee for services from amounts collected for violations of local ordinances.

The Department of Taxation and the State Compensation Board shall annually report to the Governor and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit and district court. The report shall include the procedures established by the Department of Taxation and the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures established by the Department of Taxation and the State Compensation Board.

§ 42.1-86.1. Disposition of public records.

A. No agency shall sell or give away public records. No agency shall destroy or discard a public record unless (i) the record appears on a records retention and disposition schedule approved pursuant to § 42.1-82 and the record's retention period has expired; (ii) a certificate of records destruction, as designated by the Librarian of Virginia, has been properly completed and approved by the agency's designated records officer; and (iii) there is no litigation, audit, investigation, request for records pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or renegotiation of the relevant records retention and disposition schedule pending at the expiration of the retention period for the applicable records series. After a record is destroyed or discarded, the agency shall forward the original certificate of records destruction to The Library of Virginia.

B. No agency shall destroy any public record created before 1912 without first offering it to The Library of Virginia.

C. Each agency shall ensure that records created after July 1, 2006 and authorized to be destroyed or discarded in accordance with subsection A, are destroyed or discarded in a timely manner in accordance with the provisions of this chapter; provided, however, such records that contain identifying information as defined in clauses (iii) through (ix); or clause (xii) of ~~subsection C~~ subdivision A 1 of § 18.2-186.3, shall be destroyed within six months of the expiration of the records retention period.

§ 53.1-127.5. Collection of fees owed; contract for collection; duties of Department of Taxation.

The sheriff or jail superintendent may (i) contract with private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, or (iii) enter into an agreement with the county or city treasurer, upon such terms and conditions as may be established by guidelines promulgated by the Board, to collect fees imposed under § 53.1-131.3. As part of such contract, private attorneys or collection agencies shall be given access to the social security number of the person who owes the fees in order to assist in the collection effort. Any such private attorney or collection agency shall be subject to the penalties and provisions of §§ 18.2-186.3, 18.2-186.3:01, 18.2-186.3:02, and 18.2-186.3:03.

The fees of any private attorney or collection agency shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the sheriff or jail superintendent may collect the administrative fee authorized by § 58.1-3958.

§ 58.1-4018.1. Larceny of tickets; fraudulent notification of prizes; penalty.

A. Any person who steals or otherwise unlawfully converts to his own or another's use a lottery

ticket, prize, share, or portion thereof shall be guilty of larceny. For purposes of this subsection, the value of a lottery ticket, prize, share, or portion thereof shall be deemed to be the greater of its face amount or its redemption value.

B. Any person who, with intent to defraud, steal, embezzle, or violate the provisions of § 18.2-186.3, 18.2-186.3:01, 18.2-186.3:02, or 18.2-186.3:03, designs, makes, prints, or otherwise produces, in whole or in part, a document or writing, whether in printed or electronic form, which falsely purports to be correspondence from or on behalf of the lottery shall be guilty of a Class 5 felony.

Jurisdiction shall lie and prosecution may proceed under this subsection in any county or city (i) in which the document was created; (ii) from which it was sent, regardless of the form of delivery; or (iii) in which it was received, regardless of the form of delivery.

2. 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; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.