

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1279 3rd Edition

SHORT TITLE: Financial Identity Fraud

SPONSOR(S): Rep. Alex Warner

FISCAL IMPACT

Yes () No (X) No Estimate Available ()

FY 1999-00 FY 2000-01 FY 2001-02 FY 2002-03 FY 2003-04

REVENUES

EXPENDITURES

No fiscal impact.

POSITIONS: none

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Judicial Branch, Department of Correction, Office of the Attorney General.

EFFECTIVE DATE: December 1, 1999 and applies to offenses committed on or after that date.

BILL SUMMARY:

IDENTITY FRAUD. TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD AND TO AUTHORIZE PERSONS WHOSE IDENTIFYING INFORMATION WAS FRAUDULENTLY USED TO INSTITUTE A CIVIL ACTION. Adds new GS 14-118.6 to make it a Class I felony to knowingly obtain identifying information that assists in accessing the financial resources of another or to actually access the financial resources of another through the use of such identifying information. Allows civil action to recover loss by party harmed by violation, with damages of \$5000 or treble actual damages, whichever is greater. Judge may award attorneys fee in the civil action. Allows Attorney General to prosecute these matters, instead of district attorney. Effective Dec. 1, 1999 and applies to offenses committed on or after that date

Source: Institute of Government, Daily Bulletin, April 15, 1999.

IDENTITY FRAUD. Intro. 4/15/99. House committee substitute makes the following changes to 1st edition. Creates new art. 19C, GS Ch. 14 for offense rather than enacting new GS 14-118.6 and reorganizes the bill. Makes 3 exceptions to offense created by the act: (1) lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction; (2) lawful, good faith exercise of a security interest or a right to offset by a creditor or financial institution; (3) lawful, good faith compliance by any party when required by any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order. Changes punishment for offense from Class I to Class H felony.

Source: Institute of Government, Daily Bulletin, April 27, 1999.

FINANCIAL IDENTITY FRAUD. Senate Committee Substitute. The substitute makes the following changes:

- Expands the definition of identity fraud to include financial purposes
- Changes the title to Financial Identity Fraud
- Would include identity fraud for the purposes of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences instead of with the intent to unlawfully appropriate a person's financial resources
- Punishment would be a Class H felony unless the victim whose identity was used suffers arrest, detention, or conviction as a proximate result of the fraud, in which case the fraud would be punishable as a Class G felony
- Attorney General would be given authority to investigate complaints of financial identity fraud and would be required to refer cases to the district attorney in the county where the crime was committed
- Court is no longer required to reflect in its records that any fraud victims would not be charged with committing any secondary crimes when their identity was used in committing the secondary crime

ASSUMPTIONS AND METHODOLOGY – 3rd EDITION IN BOLD:

Judicial Branch

The Administrative Office of the Courts (AOC) expects the bill to have an impact on the judicial system but adequate data are not available to provide a specific estimate. The AOC believes that the vast majority of offenses under this bill would remain Class H felonies, without additional costs to the court system.

Currently, under G.S. 14-100 a defendant would be charged with obtaining or attempting to obtain property by false pretenses. If the value of the property is \$100,000 or more, the offense is punishable as a Class C felony, otherwise the offense is punishable as a Class H felony. During calendar year 1998, 11 defendants were charged under G.S. 14-100 with a Class C felony and 6,311 were charged with a Class H felony.

There may be some additional defendants under the bill that unlawfully obtain identifying information belonging to another person that have not yet attempted to illegally obtain that person's financial resources and therefore would not be existing cases under G.S. 14-

100. **In addition, the Senate Committee Substitute adds unlawfully obtaining such identifying information for the purpose of avoiding legal consequences. It is unknown how many defendants to which this would apply.** The AOC and the Fiscal Research Division do not have any reliable information on which to base an estimate of the fiscal impact of these cases.

Under the Senate Committee Substitute a subset of these cases would be charged as a Class G felony when the victim is arrested, detained, or convicted as a result of the financial identity fraud. There would be some court impact from these cases as a result of the higher punishment, however, the Fiscal Research Division believes that the number of potential cases would be relatively small and therefore would minimize the impact. The AOC and the Fiscal Research Division do not have an estimate available.

The Fiscal Research Division believes that the number of additional cases fitting the description in the bill would be insignificant in comparison to the charges under G.S. 14-100 as a Class H felony. The bill allows a victim to institute a civil action, which would add to court workload. The Fiscal Research Division believes that any additional charges brought as a result of this bill beyond those currently charged under G.S. 14-100 as a Class H felony as well as any additional civil actions, could be handled with existing resources.

Department of Correction

According to the Sentencing Commission, during Fiscal Year 1997/98 there were 928 Class H felony convictions and 1 Class C felony conviction for obtaining or attempting to obtain property by false pretenses where this was the most serious conviction. However, there is no reliable estimate of the total number of additional charges or convictions that are expected. If there were 35 new convictions for this offense, approximately 10 offenders would receive an active sentence of 8.3 months and would result in the need for about seven additional prison beds per year. By the second year, probation revocations could result in the need for an additional eight beds per year for a total of 15 beds. This is assuming that these defendants would receive the same types of sentences as all other Class H felony offenders.

In the Senate Committee Substitute if the victim suffers arrest, detention, or conviction as a result of the fraud, the punishment would be a Class G felony. It is unknown how often this may occur. Hypothetically, if there were 2 convictions, approximately one offender would receive an active sentence of 14.8 months and would result in the need for 2 additional prison beds per year. By the second year, new active sentences and probation revocations could result in the need for 2 additional prison beds. This is assuming that these defendants would receive the same types of sentences as all other Class G felony offenders.

The Fiscal Research Division believes the minimal fiscal impact of this bill could be absorbed with current resources. There is no direct fiscal impact resulting from the passage of this bill because additional beds of this magnitude and their associated costs can be absorbed within the Department of Correction's existing prison bed space.

Office of the Attorney General

The Attorney General is authorized to investigate complaints of financial identity fraud. Although they do not have an estimate of the possible number of complaints, they believe the impact would be minimal.

TECHNICAL CONSIDERATIONS: None

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