

GENERAL ASSEMBLY OF NORTH CAROLINA



BILL NUMBER: Senate Bill 1048 (Third Edition)

SHORT TITLE: Identity Theft Protection Act of 2005.

SPONSOR(S): Senator Clodfelter

| FISCAL IMPACT | | | | | |
|---|-------------------|------------------------------------|---------------------------|-------------------|-------------------|
| | Yes (X) | No () | No Estimate Available () | | |
| | <u>FY 2005-06</u> | <u>FY 2006-07</u> | <u>FY 2007-08</u> | <u>FY 2008-09</u> | <u>FY 2009-10</u> |
| REVENUES: | | | | | |
| EXPENDITURES: | | | | | |
| Administrative Office of the Courts | | Exact amount cannot be determined. | | | |
| Dept. of Health and Human Services | | No additional resources required | | | |
| Dept. of Justice | | No additional resources required | | | |
| Dept. of Revenue | | No additional resources required | | | |
| Division of Motor Vehicles | | No additional resources required | | | |
| POSITIONS (cumulative): | | | | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts, Department of Health and Human Services, Department of Justice, Department of Revenue, and Division of Motor Vehicle | | | | | |
| EFFECTIVE DATE: Section 1 – G.S. 75-62(a)(2), (3), (4), and (5) on October 1, 2006; Section 4 – G.S. 132-1.8(b)(6), (7), (8), and (9) on July 1, 2007; and Section 6 for offenses committed and causes of action arising on or after December 1, 2005. The remainder of the act is effective December 1, 2005. | | | | | |

BILL SUMMARY: Legislation introduced on March 24, 2005. The House Committee Substitute (HCS) enumerates nine (9) changes to the second edition of the proposed “Identity Theft Protection Act.” First, the HCS defines “encryption” and “redaction” and modifies definition of “security breach” to include acquisition of unencrypted and unredacted personal information used or likely to be used illegally or that creates a material risk of harm to a consumer, and any unauthorized acquisition of encrypted personal information. Second, modifies proposed GS 75-62 (social security number protection) and 132-1.8 (limiting use of social security numbers by State

and local government agencies) to prohibit use of only a person's entire social security number (was, six digits or more of number). Third, deletes provisions in GS 75-63 (security freeze procedures) and 132-1.8(f) (removal of certain identifying information from official records) which authorized a person's attorney-in-fact or legal guardian to make requests on person's behalf. Fourth, further modifies security freeze requirements to delete requirement that consumer reporting agency notify consumer five business days prior to the removal of freeze due to consumer's material misrepresentation. Fifth, modifies GS 75-62 to prohibit the disclosure of social security number to a third party without consumer's consent if person disclosing information knows or upon the exercise of reasonable diligence would have reason to believe (was, knows or has reasonable grounds to believe) that third party lacks a legitimate purpose for obtaining number. Provides that social security number protections also apply to applications to amend or terminate accounts. Also provides that prohibitions against social security number disclosure do not apply when used for a purpose authorized under provisions of the Gramm-Leach-Bliley Act or to locate a missing person or one who is due a benefit. Sixth, enacts new GS 75-63(l)(11) to also exempt from security freeze protections the use of a consumer credit report by any property and casualty insurer for certain listed purposes. Seventh, modifies GS 75-64 (requirements for destruction of personal records) to exempt health care facilities that are subject to federal health information protections and to provide that violation is an illegal trade practice. Eighth, revises proposed GS 75-65 (protection from security breaches) to require that any business that owns or licenses personal information notify consumer of security breaches without unreasonable delay and to require that any business that maintains or possesses that information notify consumer following the breach's discovery. Further modifies section to authorize business to delay notification of consumer if business receives written notice that notice would impede a criminal investigation or jeopardize homeland security or if business documents an oral request by law enforcement. Also authorizes business to provide notice to consumer by direct telephone contact. Provides that no private right of action may be brought for violation of section unless a person can demonstrate injury and prohibits assignment of causes of action arising under Article. Ninth, revises GS 132-1.8 to make section inapplicable to redacted social security numbers, to delete proposed sub-section (d) regarding access to information by the news media, and to clarify that an instrument's validity is not affected by the inclusion of personal information and that the register of deeds may not reject an instrument because it includes personal information. The legislation also limits public access to a request to redact information, provides that the clerk has no duty to remove a redaction, and imposes a fine of \$500 for requesting a redaction without proper authority. Revises proposed GS 132.1.8(b)(9) to provide that even where a social security number may be included in a mailing, the number or any portion of the number may not be printed on the outside of the mailing. Makes additional technical changes.

ASSUMPTIONS AND METHODOLOGY:

Administrative Office of the Courts

The provisions of SB 1048 require businesses and government to take certain steps to protect an individual's personal identifying information and provide various remedies as needed. If numerous violations or petitions result and civil damages were sought in these cases, there would be increased workload for the court system. However, most businesses and government are likely to comply with the provisions of SB 1048 and, as a result, few such cases will arise.

Department of Health and Human Services (DHHS)

According to the Department, divisions and agencies currently collect identifying information in order to comply with state or federal laws or for other legitimate purposes, such as preventing duplication of services or to verify income. Many programs within the DHHS have federal and state laws, rules and regulations that govern the use of the identifying information and the confidentiality of client records including social security numbers.

Therefore, this bill does not appear to put any new requirements on the programs, divisions or agencies in the department. This bill should have little fiscal impact to the Department of Health and Human Services.

Department of Justice

The Department believes that any workload associated with the provisions found in this bill can be absorbed within current resources. (See Department of Revenue section below for further detail.) The Department states that the 2007 effective dates provide adequate time to address any impacts on the Department of Justice.

Department of Revenue

The Department of Revenue can adapt agency systems to accommodate the requirements of the legislation, and therefore, will experience no fiscal impact. Section 4 of the bill amends Chapter 132, Public Records, to add a new provision, G.S. 132-1.8 that would be specific to social security numbers and other personal identifying information. Section 4(e) adds language to clarify that the validity of a legal document filed or recorded with the register of deeds is not affected by the inclusion of personal information. As a result, the register of deeds may not reject a document because it includes personal information. Although Section 4(e) may require some additional work, the Department thinks internal processes can be adapted to accommodate this provision. Legal staff with the Attorney General's Office, who represent the Department, will redact any identifying information in documents provided to the courts. Attorneys currently review this material prior to submission to the courts; therefore deleting information would not present a significant change in procedure. There is no cost for the Department to adhere to this new practice.

Division of Motor Vehicle

Section 4 is specifically aimed at protecting an individual's social security number. The Division of Motor Vehicles currently adheres to all Federal and State regulations regarding collection, storage and reporting of social security numbers and the requirements listed in SB 1048 are already in place. Therefore, there would be no impact on DMV's operations.

SOURCES OF DATA: Administrative Office of the Courts, Department of Health and Human Services, Department of Justice, Department of Revenue, and Division of Motor Vehicle.

TECHNICAL CONSIDERATIONS: None

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