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FISCAL IMPACT STATEMENT

LS 6726

BILL NUMBER: HB 1101

NOTE PREPARED: Jan 24, 2006

BILL AMENDED: Jan 19, 2006

SUBJECT: Security Breach Disclosure and Identity Deception.

FIRST AUTHOR: Rep. Walorski

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides that a person that owns or licenses certain personal information concerning Indiana residents that is contained in a computerized data base must disclose to those Indiana residents without unreasonable delay a security breach in the computerized data base if the security breach could cause the Indiana residents to become victims of identity theft, identity deception, or fraud. The bill also specifies that a person that maintains a computer data base but does not own or license the personal information contained in the data base must notify the data base owner if there is a security breach in the data base. The bill provides that a data base owner with a privacy plan drafted to comply with certain federal statutes may comply with that plan instead of these provisions if that plan meets the federal requirements, and permits a data base owner with its own privacy plan to comply with its own plan instead of these provisions if its plan is at least as stringent as these provisions or a plan that complies with certain federal statutes. This bill authorizes the Attorney General to bring an action to enforce the disclosure requirements.

The bill requires a state agency to disclose a breach of security involving information submitted or gathered as part of a licensing or permitting application, and makes this information confidential.

The bill provides that a person who disposes of a customer's unencrypted, unredacted personal information without first shredding, incinerating, mutilating, or erasing the personal information commits a Class C infraction. The bill enhances the offense to a Class A infraction for a second or subsequent offense, or if the person has unlawfully disposed of the personal information of more than 100 customers. It excludes certain information concerning persons whose license or permit has been revoked, restricted, or suspended.

The bill also provides that a person who unlawfully obtains the identifying information of a deceased person

commits identity deception. The bill makes identity deception a Class C felony if a person unlawfully obtains the identities of more than 100 persons or the fair market value of the fraud or harm caused by the identity theft is at least \$50,000.

This bill also makes possession of a card skimming device with the intent to commit identity deception or fraud a Class D felony and a Class C felony if the device is possessed with the intent to commit terroristic deception.

It permits a court to enter a restitution order requiring a person convicted of identity deception to reimburse the victim for additional expenses that arise or are discovered after sentencing or after the entry of a restitution order. The bill grants a court a five year period in which to order a person convicted of identity deception to pay additional restitution.

The bill provides that a person who commits the offense of identity deception may be tried in any county in which any element of the offense occurs. The bill also provides that jurisdiction for cases of identity deception lies in Indiana if the victim resides in Indiana.

It imposes certain fiduciary obligations on members of the governing board of a county hospital.

Effective Date: July 1, 2006.

Explanation of State Expenditures: *Security Breach Disclosures by Private Entities:* This provision of the bill will cause an indeterminable increase in administrative costs for the Attorney General's Office (AG). However, it is estimated this provision can be implemented within the existing level of resources available to the AG. Ultimately the increase in cost will be determined by the level of compliance by data base owners. The bill does allow the AG to recover the costs of investigation and maintaining the action.

Criminal Penalty - Disposal of Personal Information: The bill provides that a person who disposes of unencrypted and unredacted personal information without rendering the information illegible commits a Class C infraction. The violation becomes a Class A infraction if the person disposes of the unencrypted, unredacted personal information of more than 100 customers, or the person has a prior unrelated judgment for a violation this provision.

Criminal Penalty - Deceased Persons and Enhanced Penalty: Under current law, identity deception is a Class D felony. Under the bill, the crime of identity deception would include knowingly and intentionally obtaining, possessing, transferring, or using the identifying information of a deceased person. Additionally, the penalty for identity deception would be increased to a Class C felony, under certain circumstances. There are no data available to indicate how many offenders may be convicted of the Class D or C felony given these changes.

Criminal Penalty - Unlawful Possession of a Card Skimming Device: The bill establishes the crime of unlawful possession of a card skimming device which is punishable as a Class D felony if the device is used for identity deception or fraud, or a Class C felony if it is used for terroristic deception.

Background on Criminal Penalties: Depending upon mitigating and aggravating circumstances, a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, and a Class C felony is punishable by a prison term ranging from 2 to 8 years. The average expenditure to house an adult offender was \$20,977 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for

medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$62,292. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months, and for all Class C felony offenders is approximately two years.

In 2004, there were 14 offenders committed to a state correctional facility for identity deception, and in 2005, there were 28 offenders committed for the offense.

Consumer Credit Reporting Agency Notification: The bill would have indeterminate increased costs if the Attorney General's Consumer Protection Division established and maintained a program to officially notify a consumer credit reporting agency that a person has been the victim of identity deception. Depending on the administrative actions of the Division, the funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Background on Consumer Credit Reporting Agency Notification: The Attorney General's Consumer Protection Division provides a kit for consumers who are the victims of identity theft and will advocate for identity theft victims who cannot clear credit reports.

Background on AG's Office: In FY 2005 the AG reverted \$46,010. According to the October 17, 2005, state staffing table, the AG had 44 vacant positions worth \$1.15 M.

Explanation of State Revenues: *Security Breach Disclosures by Private Entities:* The bill allows a civil penalty of not more than \$150,000 per deceptive act to be imposed on a violating data base owner. The increase in revenue as a result of this provision will ultimately depend upon the number of successful actions that are maintained.

Criminal Penalties: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum judgment for a Class A infraction is \$10,000, and \$500 for a Class C infraction, which would be deposited in the state General Fund. The maximum fine for a Class D or a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Criminal Penalties:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Victim Reimbursement: Courts could incur minimal additional costs because additional restitution orders could be issued up to five years after sentencing. Additional restitution costs could be brought before the court by a prosecutor or a probation officer depending on the circumstance.

Explanation of Local Revenues: *Criminal Penalties:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: All.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Department of Correction; Attorney General's Office; Jason Thompson, Legislative Director, Office of the Attorney General, 317-233-2413.

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