Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL: **Am. S.B. 7** DATE: **February 17, 1999**

STATUS: **As Reported by Senate Judiciary** SPONSOR: **Sen. Oelslager**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Creates the offense of taking the identity of another**

State Fiscal Highlights

STATE FUND	FY 1999	FY 2000	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase
Crime Victim Reparations Fund			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- As the number of additional offenders who may be sent to state prison as a result of the bill is expected to be relatively small, the Department of Rehabilitation and Correction may experience a minimal increase in annual GRF expenditures related to incarceration and post-release supervision.

- A potential negligible gain in annual court cost revenue deposited to the credit of the Crime Victim Reparations Fund becomes possible as: (1) a few new criminal cases will be created as a result of the bill that may not be covered under current theft and fraud statutes and (2) a few new felony cases are created that would otherwise have been misdemeanors. However, the majority of cases addressed by this bill are expected to be currently covered by existing statutes.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties			
Revenues	- 0 -	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase
Other Local Governments			
Revenues	- 0 -	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- As the number of identity theft cases affected by the bill is anticipated to be relatively small, the potential expenditure increase and revenue gain for counties and municipalities for additional prosecution, adjudication, and sanctioning costs is expected to be minimal.

Detailed Fiscal Analysis

Provisions of the Bill

The bill creates the offense of taking the identity of another. It prohibits the obtaining, possession, or use of any personal identifying information of another with the intent to:

- Fraudulently obtain credit, property, or services;
- Avoid the payment of a debt or legal obligation;
- Aid or abet another in doing the above.

The bill also permits prosecutors to aggregate the value of the credit, property, or services obtained or sought to be obtained in order to determine the degree of the offense.

The bill's penalty structure mirrors the penalties for theft and fraud, as shown below:

Table 1: Penalty Comparison of Existing and Proposed Offenses

	Dollar Amount of Loss			
	Under $500	$500-$4,999	$5,000-$100,000	$100,000 or more
Penalty under Existing Theft Statute	*M1*	*F5*	*F4*	*F3*
Penalty under Existing Fraud Statutes (O.R.C. 2913.45)	*M1*	*F5*	*F4*	*F3*
Penalty under Proposed Identity Theft Statute	*M1*	*F5*	*F4*	*F3*
Imprisonment Term	Up to 6 months	6-12 months	6-18 months	1-5 years
Fine Permitted	Up to $1,000	Up to $2,500	Up to $5,000	Up to $10,000

Prevalence of Identity Theft

Concrete estimates of the prevalence of identity theft are difficult, given that privacy concerns prohibit the major credit reporting agencies and the Federal Trade Commission from commenting in detail upon the scope of the offenses reported to them.

Given aggregate national estimates, it is, however, possible to arrive at a very rough estimate for the number of identity thefts experienced by Ohio residents in a given year. Two major credit reporting agencies provided different estimates of the number of identity fraud cases reported to them, which we have summarized below.

In 1997, Equifax reported receiving 1,200 calls per day, most coming from identity fraud victims. Assuming that there are approximately 254 business days per year, this indicates that there were 304,800 calls to Equifax nationally in 1997 (1,200 calls x 254 days = 304,800 calls). The U.S. Census estimates that the 1997 national population was 267,636,061, with Ohio's population 11,186,331, or 4.2 percent of the national population. If it is assumed that identity theft calls are evenly distributed among all U.S. residents, then we can take 4.2 percent of the 304,800 identity theft calls in 1997 to arrive at an annual estimate of approximately 12,802 reported Ohio identity thefts to Equifax annually.

In 1992, Trans-Union reported receiving 40,000 calls per month in 1992. This works out to approximately 480,000 cases per year nationwide (40,000 cases x 12 months = 480,000 cases). According to the Census, the national population in 1992 was approximately 255,028,000, with Ohio representing 4.3 percent of the national population at 11,005,000 residents. If we take 4.3 percent of the estimated 480,000 calls per year, it is estimated that there were approximately 20,640 reported identity theft calls to Trans-Union from Ohio residents in 1992.

These estimates of calls suggest that it is conceivable that Ohioans experience between 13,000 and 21,000 cases of identity theft annually. These numbers are consistent with estimates from the Cincinnati Police Department, which reports that they document a few hundred cases per year. According to U.S. Census data, Cincinnati represents 3.2 percent of Ohio's population. Cincinnati would therefore be expected to handle roughly 3.2 percent of Ohio's identity theft cases (13,000 x .032 = 416 and 21,000 x .032 = 672). While this is a large number, it is LBO's assumption that a substantial proportion of these cases never ultimately result in arrest or prosecution, and that the majority of the cases that do result in arrest or prosecution are dealt with under existing fraud and theft statutes.

Fiscal Impact of the Bill

Local Fiscal Effects. Based on discussions with police departments and county prosecutors, it is assumed that most identity theft cases are currently dealt with under existing fraud and theft statues, for which the penalty structure is essentially the same as outlined in the bill. The explicit provisions of the bill may result in a few new arrests and cases brought to trial in municipal, county, and common pleas courts. A majority of the new cases are expected to land in common pleas court, because discussions with law enforcement have indicated that the majority of identity theft cases involve amounts over $500.

A few cases may also be consolidated by virtue of law enforcement and prosecutors being permitted to aggregate the value of fraudulently obtained property. Under existing law and practice, the passing of multiple bad checks is treated as a series of smaller offenses, and the value of the checks is not aggregated. Under the bill, the value of the checks would be aggregated under a single charge, and would presumably utilize fewer resources to process.

State GRF. Under the bill, some offenders may be sent to state prison that would not have been otherwise. If that happens, the Department of Rehabilitation and Correction incurs additional GRF costs associated with that offender's incarceration and post-release supervision. However, as the number of offenders this would affect annually is estimated to be relatively small, any additional annual GRF expenses that might be incurred by the department will be minimal.

Crime Victim Reparations Fund. The locally collected, state court cost for a misdemeanor offense is $9 and $30 for a felony offense. These court costs are deposited to the credit of the Crime Victim Reparations Fund in the state treasury. The bill may produce a small number of persons convicted of a felony as opposed to a misdemeanor through the aggregation of the value of the credit, property, or services obtained or sought by the offender. This may result in a negligible gain to the Fund. A few new cases may emerge, apart from those that are currently prosecuted as theft and fraud offenses, potentially resulting in a negligible gain in revenue to the Fund.

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