

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 1279 2<sup>nd</sup> Edition

**SHORT TITLE:** Financial Identity Fraud

**SPONSOR(S):** Rep. 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

**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.

**SECOND VERSION INCLUDES LANGUAGE FROM H 814.**

**H 814. FINANCIAL IDENTITY FRAUD. TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD.** Adds new Article 19C to GS Ch. 14 to make “financial identity fraud” a criminal offense punishable as a Class H felony. Makes it unlawful for a person, without authorization of another, and with intent unlawfully to appropriate financial resources of that other person to his or her own use or the use of a third party, to do the following: (1) obtain or record identifying information that would assist in accessing financial resources of the other person, or (2) access or attempt to access the financial resources of the other person through the use of identifying information. Identifying information includes, but is not limited to, social security numbers, drivers license numbers, checking account numbers, savings account numbers, credit card numbers, debit card numbers, personal identification numbers, electronic identification numbers, digital signatures, and any other numbers or information that can be used to access a person’s financial resources. Exempts (1) the lawful obtaining of credit information in the course of bona fide consumer or commercial transactions; (2) the lawful, good faith exercise of a security interest or a right to offset by a creditor or financial institution; and (3) the lawful, good faith compliance with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive. Effective Dec. 1, 1999; applies to offenses committed on or after that date.

Source: Institute of Government, Daily Bulletin, April 1, 1999.

In addition, the second version adds section 14-113.23 (b) (c) and (d). Part (b) allows any victim of this crime may institute a civil action and is entitled to civil damages up to \$5,000 or three times the amount of the actual damages, whichever is greater. Part (c) allows the court to order restitution to be paid by the person convicted of this crime to any victims. Part (d) protects the victim of the crime by ensuring that when an additional crime is committed along with financial identity fraud, that court records show the fraud victim did not commit the additional crime.

## **ASSUMPTIONS AND METHODOLOGY:**

### 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 defendants under the bill that unlawfully obtain identifying information belonging to another person that would assist in accessing that person’s financial resources with the intent to unlawfully appropriate financial resources even prior to the use or attempted use of the information. However, 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.

Even if these cases are charged under the bill, it would be necessary to prove the defendant obtained the information with intent to unlawfully appropriate financial resources prior to an attempted use of the information. Most of the identity fraud cases are noticed when the information is used or attempted to be used to access another person's financial resources unlawfully.

The bill allows a victim to institute a civil action which would add to court workload. It also requires the court 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.

The Fiscal Research Division believes that the number of additional cases fitting this description would be insignificant in comparison to the charges under G.S. 14-100 as a Class H felony. 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, 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.

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.

**TECHNICAL CONSIDERATIONS:** None  
**FISCAL RESEARCH DIVISION 733-4910**  
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**APPROVED BY:** Tom Covington

**DATE:** Wednesday, April 28, 1999



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