



Summary of Initiative 1501

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 1501. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Provides that a person is guilty of Identity Theft in the first degree if he or she knowingly obtains, possesses, uses, or transfers another person's means of identification or financial information with the intent to commit, or aid or abet, any crime, regardless of value, knowing the victim is a senior or vulnerable individual.
- Requires civil penalties of up to three times the amount of actual damages for acts of consumer fraud targeting a senior or vulnerable individual.
- Exempts certain personal information of vulnerable individuals and in-home caregivers from disclosure under the Public Records Act.

BACKGROUND

Initiative 1501

Initiative 1501 was certified to the ballot on August 1, 2016. The ballot title and ballot measure summary prepared by the Attorney General are as follows:

Ballot Title

Statement of Subject: Initiative Measure No. 1501 concerns seniors and vulnerable individuals.

Concise Description: This measure would increase the penalties for criminal identity theft and civil consumer fraud targeted at seniors or vulnerable individuals; and exempt certain information of vulnerable individuals and in-home caregivers from public disclosure.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

This measure would increase penalties for criminal identity theft and civil penalties for consumer fraud when persons over sixty-five or vulnerable individuals are targeted. It would exempt certain information, including names, addresses, and other personally identifying information, of vulnerable individuals and in-home caregivers for vulnerable populations from public disclosure. It would also prohibit the state and state agencies from releasing certain information of vulnerable individuals and in-home caregivers of vulnerable populations except in limited situations.

Identity Theft

A person commits the crime of Identity Theft if he or she knowingly obtains, possesses, uses, or transfers another person's means of identification or financial information with the intent to commit, or aid or abet, any crime. However, a person who obtains the identification for the sole purpose of misrepresenting his or her age is not guilty of Identity Theft.

A person commits Identity Theft in the first degree if he or she, or an accomplice, uses the means of identification or financial information to obtain credit, money, goods, services, or anything else of value in excess of \$1,500. Identity Theft in the first degree is a seriousness level IV class B felony offense. A person commits Identity Theft in the second degree if he or she, or an accomplice, uses the means of identification or financial information to obtain credit, money, goods, services, or anything else of value less than \$1,500. Identity Theft in the second degree is a seriousness level II class C felony offense.

Civil Damages

Depending on the circumstances, a victim of fraud or theft may bring various statutory or common-law claims in civil court to recover damages. For example, under the Identity Theft statutes a person committing Identity Theft is liable to the victim for civil damages of \$1,000 or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees. For certain claims brought under the Consumer Protection Act, the court is authorized to increase an award of damages to up to three times the actual damages sustained by the plaintiff.

Public Records Act

The Public Records Act (PRA) generally requires state and local government agencies to make all public records available for public inspection and copying upon request. There are a number of statutory exemptions to this general rule, including exemptions for certain types of personal records and personal information.

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The stated policy of the PRA is that disclosure is favored and that listed exemptions must be narrowly construed. If information falls under an exemption, an agency must determine whether the exempt information can be redacted so that the remaining portions of the record may be released. An agency must describe why each withheld record or redacted portion of a record is exempt from disclosure.

An agency may not distinguish among persons requesting records, and may not require requestors to provide information about the purpose of the request except to determine whether disclosure is exempted or prohibited.

SUMMARY

Initiative 1501 may be known as the Seniors and Vulnerable Individuals' Safety and Financial Crimes Prevention Act.

Definitions

The definition for "vulnerable individual" means any person who:

- is 60 years of age or older who has the functional, mental, or physical inability to care for him or herself;
- is found incapacitated in a guardianship proceeding;
- has a developmental disability;
- is admitted to a facility;
- is receiving services from home health, hospice, or home care agencies;
- is receiving services from an individual provider; or
- self-directs his or her own care and receives services from a personal aid.

A "senior" is defined as a person over the age of 65 years old.

"In-home caregivers for vulnerable populations" means: (a) individual providers, (b) home care aides, and (c) family child care providers.

"Sensitive personal information" means names, addresses, Global Positioning System coordinates, telephone numbers, email addresses, Social Security numbers, driver's license numbers, or other personally identifying information.

Identity Theft

The crime of Identity Theft in the first degree is expanded. A person commits Identity Theft in the first degree if he or she knowingly obtains, possesses, uses, or transfers another person's means of identification or financial information with the intent to commit, or aid or abet, any

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crime, regardless of value, knowing the victim is a senior or vulnerable individual.

Civil Penalties

Any consumer fraud that targets a senior or vulnerable individual is subject to civil penalties of three times the amount of actual damages. Penalties are increased where a plaintiff proceeds under any existing statutory or common-law cause of action and successfully proves that he or she was a victim to consumer fraud that targeted him or her as a senior or vulnerable individual.

Public Records Act

Sensitive personal information of vulnerable individuals and of in-home caregivers for vulnerable populations is exempt from inspection and copying under the PRA. The state and its agencies are prohibited from releasing sensitive personal information of vulnerable individuals or of in-home caregivers for vulnerable populations.

Nothing in the initiative prevents the release of public information in the following circumstances:

- the information is released to a governmental body, including the state's area agencies on aging, and the recipient agrees to protect the confidentiality of the information;
- the information concerns individuals who have been accused of or disciplined for abuse, neglect, exploitation, abandonment, or other acts involving the victimization of individuals or other professional misconduct;
- the information is being released as part of a judicial or quasi-judicial proceeding and subject to a court's order protecting the confidentiality of the information and allowing it to be used solely in that proceeding;
- the information is being provided to a specific collective bargaining representative, or as necessary for the provision of fringe benefits to public employees, and the recipient agrees to protect the confidentiality of the information;
- the disclosure is required by federal law;
- the disclosure is required by a contract between the state and a third party, and the recipient agrees to protect the confidentiality of the information;
- the information is released to a person or entity under contract with the state to manage, administer, or provide services to vulnerable residents, or under contract with the state to engage in research or analysis about state services for vulnerable residents, and the recipient agrees to protect the confidentiality of the information; or
- the information about specific public employees is released to a bona fide news organization that requests such information to conduct an investigation into, or report upon, the actions of such specific public employees.

Within 180 days after the effective date of the initiative, the Department of Social and Health

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Services must report to the Governor and Attorney General about any additional records that should be made exempt from public disclosure to provide greater protection to seniors and vulnerable individuals against fraud, identity theft, and other forms of victimization.

Construction

The initiative language must be liberally construed to promote the public policy of protecting seniors and vulnerable individuals from identity theft, consumer fraud, and other forms of victimization.

Effective Date: The initiative takes effect 30 days after the election at which it is approved.

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