

Initiative Measure No.

1501

Initiative Measure No. 1501 concerns seniors and vulnerable individuals.

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

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The Secretary of State is not responsible for the content of statements or arguments (WAC 434-381-180).

Explanatory Statement

Written by the Office of the Attorney General

The Law as it Presently Exists

It is currently a crime in Washington to knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit any crime. In other words, it is illegal to have or use another person's identity or financial information to commit a crime. This crime is known as identity theft and is punishable as a class C felony. If, however, the identity theft involves obtaining credit, money, goods, services, or anything else valued over \$1,500, it is considered a class B felony and is punishable with a longer maximum prison sentence and higher potential fines.

A person who is a victim of consumer fraud may be able to sue the wrongdoer in court to recover money or obtain other relief. Several state laws authorize these types of lawsuits and each law establishes the criteria for bringing a lawsuit and the remedies available. For example, the Consumer Protection Act permits a person who is injured by an unfair or deceptive action by a business to sue the business to stop the harm and recover damages caused by the unfair or deceptive act.

The Public Records Act generally requires government agencies to provide public records to anyone who asks for them. However, some types of records may not be disclosed by government agencies. For example, there are limitations on disclosure of certain types of financial information, including credit or debit card numbers and social security numbers. Some types of personal information may not be disclosed if the information would violate an individual's personal privacy. Disclosure of information violates personal privacy if it would be highly offensive to a reasonable person and the information is not of concern to the public. Generally, an individual's name, telephone number, and address are not considered personal information.

The Effect of the Proposed Measure if Approved

This measure would change criminal and civil laws that apply when vulnerable individuals or seniors are targets of identity theft or consumer fraud. The measure would define a "senior" as any person over the age of sixty-five. The definition of "vulnerable individual" would include a person (1) sixty years of age or older who cannot take care of himself or herself; (2) found by a court to be unable to take care of himself or herself; or (3) receiving home care services.

The measure would increase the criminal penalty for identity theft when a senior or vulnerable individual, as defined, is targeted. If a defendant were found guilty of knowingly

targeting a senior or vulnerable individual when committing the crime of identity theft, the crime would be considered identity theft in the first degree and be punishable as a class B felony.

The measure would also increase civil penalties for consumer fraud that targets a senior or vulnerable individual, as defined. Any person who commits consumer fraud that targets such individuals would be subject to civil penalties of three times the amount of the actual damages.

The measure would change the Public Records Act to prohibit disclosing "sensitive personal information" of both vulnerable individuals and "in-home caregivers of vulnerable populations." The measure defines "sensitive personal information" to include names, addresses, GPS coordinates, telephone numbers, email addresses, social security numbers, driver's license numbers, or other personally identifying information. It would apply to the sensitive personal information of care providers contracted by the Department of Social and Health Services, home care aides, and certain family childcare providers. The measure provides specific circumstances when the government may disclose such information. For example, the measure would allow the information to be released to other government agencies or to a certified collective bargaining representative.

The measure also requires the Department of Social and Health Services to report to the Governor and Attorney General about any additional records that should be made exempt from public disclosure to protect seniors and vulnerable individuals against fraud, identity theft, and other forms of victimization.

Fiscal Impact Statement

Written by the Office of Financial Management
For more information visit www.ofm.wa.gov/ballot

Summary

Initiative 1501 would have no significant fiscal impact on state or local governments.

General Assumptions

- The effective date of the initiative is December 8, 2016.

Assumptions for Expenditure Analysis

Increasing criminal penalties for identity theft

Initiative 1501 (I-1501) increases the criminal penalties for the crime of identity theft to when the accused knowingly targets a senior or vulnerable individual when knowingly obtaining, possessing, using or transferring means of identification or financial information of another person with the intent to commit, or aid or abet, any crime. No new expenditures have been identified.

Increasing civil penalties for consumer fraud

I-1501 increases civil penalties for consumer fraud targeting seniors or vulnerable individuals, as defined in the initiative. Any consumer fraud that targets a senior or vulnerable individual would be subject to civil penalties of three times the amount of actual damages. No new expenditures have been identified.

Public records exemption

I-1501 provides a new exemption from public disclosure laws for sensitive personal information of vulnerable individuals and their in-home caregivers, as defined in the initiative. I-1501 would add the requirement that individual names, addresses, GPS coordinates, telephone numbers, email addresses, social security numbers, driver's license numbers and other personally identifying information be protected, and thus be redacted before disclosure. These additional redactions would result in little change to workload in responding to public records requests. It is assumed the initiative would not result in a significant increase or decrease in the number of public records requests. Minimal fiscal impact to the state or local governments is anticipated as a result of the new exemption.

Department of Social and Health Services report

I-1501 would require the Department of Social and Health Services (DSHS) to report to the Governor and the 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." Reporting would

be required within 180 days of the effective date of the initiative. DSHS assumes the cost of reporting will be minimal and can be absorbed with current resources.

State agency prohibition on release of sensitive personal information

Subject to outlined exceptions, I-1501 would prohibit state agencies from releasing sensitive personal information, as defined in the initiative, of vulnerable individuals or their in-home caregivers. This prohibition is expected to have a minimal fiscal impact to the state as the additional redactions required under the initiative will result in an insignificant change to workload in responding to public records requests.

Argument for

Consumer Fraud and Identity Theft Hurt Us All

You have heard the news and stories from family and friends targeted in scams. They often start with a telemarketer impersonating the IRS or a relative in distress, demanding money or personal information. With basic information, criminals can steal an identity, causing emotional stress, devastating personal finances and ruining credit. Fraud and identity theft hurt all of us and cause real financial and emotional damage.

We Need to Protect Seniors and Other Vulnerable People

According to a recent study, over half of scam victims are over age 50. In fact, financial exploitation of seniors costs them \$2.9 billion every year. For every case that is reported, it is estimated that 43 others are not.

As caregivers, advocates for seniors and retired people, and a public safety official, our priority is the health, safety and protection of our state's most vulnerable populations. We cannot let fraudulent telemarketers and other criminals continue to prey on them. We need the protections offered by I-1501 for their peace of mind and safety.

Increase Penalties and Prevent Release of Personal Information

I-1501 increases penalties on criminals who prey on senior citizens and other vulnerable people. It prevents the government from releasing information that could help identity thieves targeting seniors and the vulnerable. And it protects the personal information of caregivers.

Initiative 1501 is endorsed by consumer advocates, caregivers, law enforcement and public safety officials, and other community leaders. Please join us in approving Initiative 1501.

Rebuttal of argument against

Senior citizens, vulnerable people, and their caregivers are not special interests. When they are the victims of fraud or identity theft, they deserve justice in the form of increased penalties on the perpetrators of their crimes. I-1501 will discourage fraudulent telemarketers and scam artists from profiting on our personal information and increase penalties when they do. I-1501 is supported by the Washington State Senior Citizens' Lobby because they recognize we all need its protections.

Written by

Martha Corona, child care provider in Yakima; **Vera Kandrashuk**, in-home caregiver in Spokane; **Jerry Reilly**, Elder advocate in Olympia; **Robby Stern**, Puget Sound Advocates for Retirement Action; **John Urquhart**, King County Sheriff

Contact: (360) 329-2812; info@yeson1501.com; www.yeson1501.com

Argument against

Please vote no. Initiative 1501 isn't what it claims to be. It was given an innocent-sounding title to deceive voters as to its true purpose. Initiative 1501 is an attack on vulnerable individuals by a powerful special interest that has poured over \$1.2 million into funding it.

Initiative 1501 was written by the Service Employees International Union (SEIU). Its goal is to rewrite the Public Records Act to prevent in-home caregivers and childcare providers from learning they no longer can be forced to pay dues to the union.

Through Initiative 1501, SEIU ensures that it, and only it, will still receive caregivers' information — even Social Security numbers — so it can continue capturing over \$20 million in dues from these individuals every year. Caregivers have the right to stop paying SEIU, but the State isn't informing them of their right. If Initiative 1501 passes, caregivers will not even be able to contact each other to discuss issues of common concern.

Initiative 1501 is a shameless attempt by a powerful special interest to diminish government transparency and the rights of hard-working caregivers. Our strong government transparency laws should not be weakened to oppress low wage workers. Every person deserves to know his or her rights. Initiative 1501 empowers only the already-powerful.

Our Public Records Act, one of the best in the nation, shouldn't be manipulated for the enrichment of a wealthy special interest and for the purpose of keeping in-home caregivers and childcare workers in the dark.

Rebuttal of argument for

Don't be deceived. The only two caregivers who helped draft the I-1501 pro statement are SEIU activists, not ordinary workers. That's because the measure only benefits union executives, not hard-working caregivers. It has nothing to do with protecting seniors from identity theft. It's all about keeping caregivers from discovering they no longer have to share their paychecks with the union. Follow the money. I-1501 protects union bosses' wallets while hurting workers and vulnerable individuals.

Written by

Brad Boardman, in-home caregiver who left SEIU; **Mary Jane Aurdal-Olson**, in-home caregiver who left SEIU; **Tim Benn**, family child care co-owner and advocate; **Deborah Thurber**, Spokane area family child care provider and advocate; **Toby Nixon**, President of Washington Coalition for Open Government; **Maxford Nelsen**, Director of Labor Policy, Freedom Foundation

Contact: (360) 362-3991; info@1501truth.com; 1501truth.com

formats accessible to all courts and court clerks in the state.

(4) For purposes of this section, “court clerks” means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The administrative office of the courts shall determine the significant non-English speaking or limited English speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by December 1, 2017.

(6) The administrative office of the courts shall update the instructions, brochures, standard petition and extreme risk protection order forms, and court staff handbook as necessary, including when changes in the law make an update necessary.

NEW SECTION. Sec. 17. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 18. Sections 1 through 16 of this act constitute a new chapter in Title 7 RCW.

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Complete Text

Initiative Measure No. 1501

AN ACT Relating to the protection of seniors and vulnerable individuals from financial crimes and victimization; amending RCW 9.35.005, 9.35.001, and 9.35.020; adding a new section to chapter 42.56 RCW and chapter 43.17 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. This act may be known and cited as the seniors and vulnerable individuals’ safety and financial crimes prevention act.

NEW SECTION. Sec. 2. It is the intent of this initiative to protect the safety and security of seniors and vulnerable individuals by (1) increasing criminal penalties for identity theft targeting seniors and vulnerable individuals; (2) increasing penalties for consumer fraud targeting seniors and vulnerable individuals; and (3) prohibiting the release of certain public records that could facilitate identity theft and other financial crimes against seniors and vulnerable individuals.

Sec. 3. RCW 9.35.005 and 2001 c 217 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Financial information” means any of the following information identifiable to the individual that concerns the amount and conditions of an individual’s assets, liabilities, or credit:

(a) Account numbers and balances;

(b) Transactional information concerning an account; and

(c) Codes, passwords, social security numbers, tax identification numbers, driver’s license or permit numbers, state identicard numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(2) “Financial information repository” means a person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.

(3) “Means of identification” means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, an electronic address, or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver’s license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(4) “Person” means a person as defined in RCW 9A.04.110.

(5) “Senior” means a person over the age of sixty-five.

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(6) “Victim” means a person whose means of identification or financial information has been used or transferred with the intent to commit, or to aid or abet, any unlawful activity.

(7) “Vulnerable individual” means a person:

(i) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(ii) Found incapacitated under chapter 11.88 RCW;

(iii) Who has a developmental disability as defined under RCW 71A.10.020;

(iv) Admitted to any facility;

(v) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(vi) Receiving services from an individual provider as defined in RCW 74.39A.240; or

(vii) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

PART I

INCREASING CRIMINAL PENALTIES FOR IDENTITY THEFT

TARGETING SENIORS OR VULNERABLE INDIVIDUALS

Sec. 4. RCW 9.35.001 and 2008 c 207 s 3 are each amended to read as follows:

(1) The legislature finds that means of identification and financial information are personal and sensitive information such that if unlawfully obtained, possessed, used, or transferred by others may result in significant harm to a person’s privacy, financial security, and other interests. The legislature finds that unscrupulous persons find ever more clever ways, including identity theft, to improperly obtain, possess, use, and transfer another person’s means of identification or financial information. The legislature intends to penalize for each unlawful act of improperly obtaining, possessing, using, or transferring means of identification or financial information of an individual person. The unit of prosecution for identity theft by use of a means of identification or financial information is each individual unlawful use of any one person’s means of identification or financial information. Unlawfully obtaining, possessing, or transferring each means of identification or financial information of any individual person, with the requisite intent, is a separate unit of prosecution for each victim and for each act of obtaining, possessing, or transferring of the individual person’s means of identification or financial information.

(2) The people find that additional measures are needed to protect seniors and vulnerable individuals from identity theft because such individuals often have less ability to protect themselves and such individuals can be targeted using information available through public sources, including publicly available information that identifies such individuals or their in-home caregivers.

Sec. 5. RCW 9.35.020 and 2008 c 207 s 4 are each amended to read as follows:

(1) No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of

another person, living or dead, with the intent to commit, or to aid or abet, any crime.

(2) Violation of this section when the accused or an accomplice violates subsection (1) of this section and obtains credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value, or when the accused knowingly targets a senior or vulnerable individual in carrying out a violation of subsection (1) of this section, shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(3) A person is guilty of identity theft in the second degree when he or she violates subsection (1) of this section under circumstances not amounting to identity theft in the first degree. Identity theft in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(4) Each crime prosecuted under this section shall be punished separately under chapter 9.94A RCW, unless it is the same criminal conduct as any other crime, under RCW 9.94A.589.

(5) Whenever any series of transactions involving a single person’s means of identification or financial information which constitute identity theft would, when considered separately, constitute identity theft in the second degree because of value, and the series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining the degree of identity theft involved.

(6) Every person who, in the commission of identity theft, shall commit any other crime may be punished therefor as well as for the identity theft, and may be prosecuted for each crime separately.

(7) A person who violates this section is liable for civil damages of one thousand dollars or actual damages, whichever is greater, including costs to repair the victim’s credit record, and reasonable attorneys’ fees as determined by the court.

(8) In a proceeding under this section, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(9) The provisions of this section do not apply to any person who obtains another person’s driver’s license or other form of identification for the sole purpose of misrepresenting his or her age.

(10) In a proceeding under this section in which a person’s means of identification or financial information was used without that person’s authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section.

PART II

INCREASING PENALTIES FOR CONSUMER FRAUD AGAINST SENIORS AND VULNERABLE INDIVIDUALS

NEW SECTION. Sec. 6. A new section is added to read as follows:

(1) It is the intent of this section to increase civil penalties for consumer fraud targeting a senior or a vulnerable individual.

(2) Any consumer fraud that targets a senior or a vulnerable individual, as defined in RCW 9.35.005, is subject to civil penalties of three times the amount of actual damages.

(3) This section creates no new cause of action. This section increases penalties where a plaintiff proceeds under any existing cause of action under statute or common law and successfully proves that he or she was victim to consumer fraud that targeted him or her as a senior or vulnerable individual.

**PART III
PROHIBITING THE RELEASE OF CERTAIN
PUBLIC RECORDS THAT COULD BE USED TO
VICTIMIZE SENIORS AND VULNERABLE INDIVIDUALS**

NEW SECTION. Sec. 7. It is the intent of part three of this act to protect seniors and vulnerable individuals from identity theft and other financial crimes by preventing the release of public records that could be used to victimize them. Sensitive personal information about in-home caregivers for vulnerable populations is protected because its release could facilitate identity crimes against seniors, vulnerable individuals, and the other vulnerable populations that these caregivers serve.

NEW SECTION. Sec. 8. A new section is added to chapter 42.56 RCW to read as follows:

(1) Sensitive personal information of vulnerable individuals and sensitive personal information of in-home caregivers for vulnerable populations is exempt from inspection and copying under this chapter.

(2) The following definitions apply to this section:

(a) "In-home caregivers for vulnerable populations" means: (i) individual providers as defined in RCW 74.39A.240, (ii) home care aides as defined in RCW 18.88B.010, and (iii) family child care providers as defined in RCW 41.56.030.

(b) "Sensitive personal information" means names, addresses, GPS coordinates, telephone numbers, email addresses, social security numbers, driver's license numbers, or other personally identifying information.

(c) "Vulnerable individual" has the meaning set forth in RCW 9.35.005.

NEW SECTION. Sec. 9. Within one hundred eighty days after the effective date of this section, the department of social and health services shall 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.

NEW SECTION. Sec. 10. A new section is added to chapter 43.17 RCW to read as follows:

(1) To protect vulnerable individuals and their children from identity crimes and other forms of victimization, neither the

state nor any of its agencies shall release sensitive personal information of vulnerable individuals or sensitive personal information of in-home caregivers for vulnerable populations, as those terms are defined in section 8 of this act.

NEW SECTION. Sec. 11. Nothing in this act shall prevent the release of public information in the following circumstances:

(a) 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;

(b) 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;

(c) 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;

(d) the information is being provided to a representative certified or recognized under RCW 41.56.080, or as necessary for the provision of fringe benefits to public employees, and the recipient agrees to protect the confidentiality of the information;

(e) the disclosure is required by federal law;

(f) 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;

(g) 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

(h) information about specific public employee(s) 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 employee(s).

(2) Nothing in this act shall prevent an agency from providing contact information for the purposes of RCW 74.39A.056(3) and RCW 74.39A.250. Nothing in this act shall prevent an agency from confirming the licensing or certification status of a caregiver on an individual basis to allow consumers to ensure the licensing or certification status of an individual caregiver.

NEW SECTION. Sec. 12. This act shall be liberally construed to promote the public policy of protecting seniors and vulnerable individuals from identity theft, consumer fraud, and other forms of victimization.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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