



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2554

Introduced 1/18/2006, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

720 ILCS 5/16G-10
720 ILCS 5/16G-15
720 ILCS 5/16G-21
720 ILCS 5/16G-25
720 ILCS 5/16G-30
720 ILCS 5/16G-35 new
720 ILCS 5/16G-40 new

Amends the Identity Theft Law of the Criminal Code of 1961. Provides that identity theft also occurs when a person knowingly: (1) uses any personal identification information or personal identification document of another to portray himself or herself as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person, or (2) uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person. Provides that where a person has been convicted of this form of identity theft, in the absence of proof of actual damages, the person whose personal identification information or personal identification documents were used in the violation in question may recover damages of \$2,000. Provides that it is no defense to a charge of aggravated identity theft or identity theft that the offender received the consent of any person to access any personal identification information or personal identification document, other than the person described by the personal identification information or personal identification document used by the offender. Establishes exemptions to violations of the Identity Theft Law. Effective immediately.

LRB094 18819 RLC 54229 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Sections 16G-10, 16G-15, 16G-21, 16G-25, and 16G-30 and by
6 adding Sections 16G-35 and 16G-40 as follows:

7 (720 ILCS 5/16G-10)

8 Sec. 16G-10. Definitions. In this Article unless the
9 context otherwise requires:

10 (a) "Personal identification document" means a birth
11 certificate, a drivers license, a State identification card, a
12 public, government, or private employment identification card,
13 a social security card, a firearm owner's identification card,
14 a credit card, a debit card, or a passport issued to or on
15 behalf of a person other than the offender, or any document
16 made or issued, or falsely purported to have been made or
17 issued, by or under the authority of the United States
18 Government, the State of Illinois, or any other State political
19 subdivision of any state, or any other governmental or
20 quasi-governmental organization that is of a type intended for
21 the purpose of identification of an individual, or any such
22 document made or altered in a manner that it falsely purports
23 to have been made on behalf of or issued to another person or
24 by the authority of one who did not give that authority.

25 (b) "Personal identifying information" means any of the
26 following information:

27 (1) A person's name;

28 (2) A person's address;

29 (2.5) A person's date of birth;

30 (3) A person's telephone number;

31 (4) A person's drivers license number or State of
32 Illinois identification card as assigned by the Secretary

1 of State of the State of Illinois or a similar agency of
2 another state;

3 (5) A person's Social Security number;

4 (6) A person's public, private, or government
5 employer, place of employment, or employment
6 identification number;

7 (7) The maiden name of a person's mother;

8 (8) The number assigned to a person's depository
9 account, savings account, or brokerage account;

10 (9) The number assigned to a person's credit or debit
11 card, commonly known as a "Visa Card", "Master Card",
12 "American Express Card", "Discover Card", or other similar
13 cards whether issued by a financial institution,
14 corporation, or business entity;

15 (10) Personal identification numbers;

16 (11) Electronic identification numbers;

17 (12) Digital signals;

18 (12.5) User names, passwords, and any other word,
19 number, character or combination of the same usable in
20 whole or part to access information relating to a specific
21 individual, or to the actions taken, communications made or
22 received, or other activities or transactions of a specific
23 individual.

24 (13) Any other numbers or information which can be used
25 to access a person's financial resources, or to identify a
26 specific individual, or the actions taken, communications
27 made or received, or other activities or transactions of a
28 specific individual.

29 (c) "Document-making implement" means any implement,
30 impression, template, computer file, computer disc, electronic
31 device, computer hardware, computer software, instrument, or
32 device that is used to make a real or fictitious or fraudulent
33 personal identification document.

34 (d) "Financial transaction device" means any of the
35 following:

36 (1) An electronic funds transfer card.

1 (2) A credit card.

2 (3) A debit card.

3 (4) A point-of-sale card.

4 (5) Any instrument, device, card, plate, code, account
5 number, personal identification number, or a record or copy
6 of a code, account number, or personal identification
7 number or other means of access to a credit account or
8 deposit account, or a driver's license or state
9 identification card used to access a proprietary account,
10 other than access originated solely by a paper instrument,
11 that can be used alone or in conjunction with another
12 access device, for any of the following purposes:

13 (A) Obtaining money, cash refund or credit
14 account, credit, goods, services, or any other thing of
15 value.

16 (B) Certifying or guaranteeing to a person or
17 business the availability to the device holder of funds
18 on deposit to honor a draft or check payable to the
19 order of that person or business.

20 (C) Providing the device holder access to a deposit
21 account for the purpose of making deposits,
22 withdrawing funds, transferring funds between deposit
23 accounts, obtaining information pertaining to a
24 deposit account, or making an electronic funds
25 transfer.

26 (Source: P.A. 93-401, eff. 7-31-03; 94-38, eff. 6-16-05.)

27 (720 ILCS 5/16G-15)

28 Sec. 16G-15. Identity theft.

29 (a) A person commits the offense of identity theft when he
30 or she knowingly:

31 (1) uses any personal identifying information or
32 personal identification document of another person to
33 fraudulently obtain credit, money, goods, services, or
34 other property, or

35 (2) uses any personal identification information or

1 personal identification document of another with intent to
2 commit any felony theft or other felony violation of State
3 law not set forth in paragraph (1) of this subsection (a),
4 or

5 (3) obtains, records, possesses, sells, transfers,
6 purchases, or manufactures any personal identification
7 information or personal identification document of another
8 with intent to commit or to aid or abet another in
9 committing any felony theft or other felony violation of
10 State law, or

11 (4) uses, obtains, records, possesses, sells,
12 transfers, purchases, or manufactures any personal
13 identification information or personal identification
14 document of another knowing that such personal
15 identification information or personal identification
16 documents were stolen or produced without lawful
17 authority, or

18 (5) uses, transfers, or possesses document-making
19 implements to produce false identification or false
20 documents with knowledge that they will be used by the
21 person or another to commit any felony theft or other
22 felony violation of State law, ~~or~~

23 (6) uses any personal identification information or
24 personal identification document of another to portray
25 himself or herself as that person, or otherwise, for the
26 purpose of gaining access to any personal identification
27 information or personal identification document of that
28 person, without the prior express permission of that
29 person, or

30 (7) uses any personal identification information or
31 personal identification document of another for the
32 purpose of gaining access to any record of the actions
33 taken, communications made or received, or other
34 activities or transactions of that person, without the
35 prior express permission of that person.

36 (b) Knowledge shall be determined by an evaluation of all

1 circumstances surrounding the use of the other person's
2 identifying information or document.

3 (c) When a charge of identity theft of credit, money,
4 goods, services, or other property exceeding a specified value
5 is brought the value of the credit, money, goods, services, or
6 other property is an element of the offense to be resolved by
7 the trier of fact as either exceeding or not exceeding the
8 specified value.

9 (d) Sentence.

10 (1) A person convicted of identity theft in violation
11 of paragraph (1) of subsection (a) shall be sentenced as
12 follows:

13 (A) identity theft of credit, money, goods,
14 services, or other property not exceeding \$300 in value
15 is a Class 4 felony. A person who has been previously
16 convicted of identity theft of less than \$300 who is
17 convicted of a second or subsequent offense of identity
18 theft of less than \$300 is guilty of a Class 3 felony.
19 A person who has been convicted of identity theft of
20 less than \$300 who has been previously convicted of any
21 type of theft, robbery, armed robbery, burglary,
22 residential burglary, possession of burglary tools,
23 home invasion, home repair fraud, aggravated home
24 repair fraud, or financial exploitation of an elderly
25 or disabled person is guilty of a Class 3 felony. When
26 a person has any such prior conviction, the information
27 or indictment charging that person shall state the
28 prior conviction so as to give notice of the State's
29 intention to treat the charge as a Class 3 felony. The
30 fact of the prior conviction is not an element of the
31 offense and may not be disclosed to the jury during
32 trial unless otherwise permitted by issues properly
33 raised during the trial.

34 (B) Identity theft of credit, money, goods,
35 services, or other property exceeding \$300 and not
36 exceeding \$2,000 in value is a Class 3 felony.

1 (C) Identity theft of credit, money, goods,
2 services, or other property exceeding \$2,000 and not
3 exceeding \$10,000 in value is a Class 2 felony.

4 (D) Identity theft of credit, money, goods,
5 services, or other property exceeding \$10,000 and not
6 exceeding \$100,000 in value is a Class 1 felony.

7 (E) Identity theft of credit, money, goods,
8 services, or other property exceeding \$100,000 in
9 value is a Class X felony.

10 (2) A person convicted of any offense enumerated in
11 paragraphs (2) through (7) ~~(5)~~ of subsection (a) is guilty
12 of a Class 3 felony.

13 (3) A person convicted of any offense enumerated in
14 paragraphs (2) through (5) of subsection (a) a second or
15 subsequent time is guilty of a Class 2 felony.

16 (4) A person who, within a 12 month period, is found in
17 violation of any offense enumerated in paragraphs (2)
18 through (7) ~~(5)~~ of subsection (a) with respect to the
19 identifiers of, or other information relating to, 3 or more
20 separate individuals, at the same time or consecutively, is
21 guilty of a Class 2 felony.

22 (Source: P.A. 93-401, eff. 7-31-03; 94-39, eff. 6-16-05.)

23 (720 ILCS 5/16G-21)

24 Sec. 16G-21. Civil remedies. A person who is convicted of
25 identity theft or aggravated identity theft is liable in a
26 civil action to the person who suffered damages as a result of
27 the violation. The person suffering damages may recover court
28 costs, attorney's fees, lost wages, and actual damages. Where a
29 person has been convicted of identity theft in violation of
30 subsection (a)(6) or subsection (a)(7) of Section 16G-15, in
31 the absence of proof of actual damages, the person whose
32 personal identification information or personal identification
33 documents were used in the violation in question may recover
34 damages of \$2,000.

35 (Source: P.A. 92-686, eff. 7-16-02; 93-401, eff. 7-31-03.)

1 (720 ILCS 5/16G-25)

2 Sec. 16G-25. Offenders interest in the property, consent.

3 (a) It is no defense to a charge of aggravated identity
4 theft or identity theft that the offender has an interest in
5 the credit, money, goods, services, or other property.

6 (b) It is no defense to a charge of aggravated identity
7 theft or identity theft that the offender received the consent
8 of any person to access any personal identification information
9 or personal identification document, other than the person
10 described by the personal identification information or
11 personal identification document used by the offender.

12 (Source: P.A. 93-401, eff. 7-31-03.)

13 (720 ILCS 5/16G-30)

14 Sec. 16G-30. Mandating law enforcement agencies to accept
15 and provide reports; judicial factual determination.

16 (a) A person who has learned or reasonably suspects that
17 his or her personal identifying information has been unlawfully
18 used by another may initiate a law enforcement investigation by
19 contacting the local law enforcement agency that has
20 jurisdiction over his or her actual residence, which shall take
21 a police report of the matter, provide the complainant with a
22 copy of that report, and begin an investigation of the facts
23 or, if the suspected crime was committed in a different
24 jurisdiction, refer the matter to the law enforcement agency
25 where the suspected crime was committed for an investigation of
26 the facts.

27 (b) A person who reasonably believes that he or she is the
28 victim of financial identity theft may petition a court, or the
29 court, on its own motion or upon application of the prosecuting
30 attorney, may move for an expedited judicial determination of
31 his or her factual innocence, where the perpetrator of the
32 financial identity theft was arrested for, cited for, or
33 convicted of a crime under the victim's identity, or where a
34 criminal complaint has been filed against the perpetrator in

1 the victim's name, or where the victim's identity has been
2 mistakenly associated with a criminal conviction. Any judicial
3 determination of factual innocence made pursuant to this
4 subsection (b) may be heard and determined upon declarations,
5 affidavits, police reports, or other material, relevant, and
6 reliable information submitted by the parties or ordered to be
7 part of the record by the court. If the court determines that
8 the petition or motion is meritorious and that there is no
9 reasonable cause to believe that the victim committed the
10 offense for which the perpetrator of the identity theft was
11 arrested, cited, convicted, or subject to a criminal complaint
12 in the victim's name, or that the victim's identity has been
13 mistakenly associated with a record of criminal conviction, the
14 court shall find the victim factually innocent of that offense.
15 If the victim is found factually innocent, the court shall
16 issue an order certifying this determination.

17 (c) After a court has issued a determination of factual
18 innocence under this Section, the court may order the name and
19 associated personal identifying information contained in the
20 court records, files, and indexes accessible by the public
21 sealed, deleted, or labeled to show that the data is
22 impersonated and does not reflect the defendant's identity.

23 (d) A court that has issued a determination of factual
24 innocence under this Section may at any time vacate that
25 determination if the petition, or any information submitted in
26 support of the petition, is found to contain any material
27 misrepresentation or fraud.

28 (e) Except for criminal and civil actions provided for by
29 this Article, or for disciplinary or licensure-related
30 proceedings involving the violation of this Article, no
31 information acquired by, or as a result of, any violation of
32 Section 16G-15 or 16G-20 shall be discoverable or admissible in
33 any court or other proceeding, or otherwise subject to
34 disclosure without the express permission of any person or
35 persons identified in that information.

36 (Source: P.A. 93-195, eff. 1-1-04.)

1 (720 ILCS 5/16G-35 new)

2 Sec. 16G-35. Venue. In addition to any other venues
3 provided for by statute or otherwise, venue for any criminal
4 prosecution or civil recovery action under this Law shall be
5 proper in any county where the person described in the personal
6 identification information or personal identification document
7 in question resides or has their principal place of business.
8 Where a criminal prosecution or civil recovery action under
9 this Law involves the personal identification information or
10 personal identification documents of more than one person,
11 venue shall be proper in any county where one or more of the
12 persons described in the personal identification information
13 or personal identification documents in question resides or has
14 their principal place of business.

15 (720 ILCS 5/16G-40 new)

16 Sec. 16G-40. Exemptions, relation to other laws.

17 (a) This Article does not:

18 (1) prohibit the capture or transmission of personal
19 identifying information in the ordinary and lawful course
20 of business;

21 (2) apply to a peace officer of this State, or of the
22 federal government, or the officer's agent, while in the
23 lawful performance of the officer's duties;

24 (3) prohibit a licensed private detective or licensed
25 private detective agency from representing himself,
26 herself, or itself as any another person, provided that he,
27 she, or it may not portray himself, herself, or itself as
28 the person whose information he, she, or it is seeking
29 except as provided under this Article;

30 (4) apply to activities authorized under any other
31 statute.

32 (b) No criminal prosecution or civil action brought under
33 this Article shall prohibit a person from being charged with,
34 convicted of, or punished for any other violation of law

1 committed by that person while violating or attempting to
2 violate this Article.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.