

AN ACT concerning criminal law.

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

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

(720 ILCS 5/16G-10)

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

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

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

- (1) A person's name;
- (2) A person's address;
- (2.5) A person's date of birth;
- (3) A person's telephone number;
- (4) A person's drivers license number or State of Illinois identification card as assigned by the Secretary

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

(5) A person's Social Security number;

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

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

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

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

(10) Personal identification numbers;

(11) Electronic identification numbers;

(12) Digital signals;

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

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

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

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

(1) An electronic funds transfer card.

(2) A credit card.

(3) A debit card.

(4) A point-of-sale card.

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

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

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

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

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

(720 ILCS 5/16G-15)

Sec. 16G-15. Identity theft.

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

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

(2) uses any personal identification information or

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

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

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

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

(6) 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

(7) 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.

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

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

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

(d) Sentence.

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

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

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

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

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

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

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

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

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

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

(720 ILCS 5/16G-21)

Sec. 16G-21. Civil remedies. A person who is convicted of identity theft or aggravated identity theft is liable in a civil action to the person who suffered damages as a result of the violation. The person suffering damages may recover court costs, attorney's fees, lost wages, and actual damages. Where a person has been convicted of identity theft in violation of subsection (a)(6) or subsection (a)(7) of Section 16G-15, 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.

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

(720 ILCS 5/16G-25)

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

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

(b) 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.

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

(720 ILCS 5/16G-30)

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

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

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

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

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

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

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

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



(720 ILCS 5/16G-35 new)

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

(720 ILCS 5/16G-40 new)

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

(a) This Article does not:

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

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

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

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

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

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

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