

Identity Theft

Overview

Identity theft is a rapidly growing crime, especially in Washington. In 2004, 5,654 complaints were filed in our state, putting it in the top 10 states per capita in identity theft complaints. Identity theft occurs, as defined by the Federal Trade Commission (FTC), "when someone uses your personal information such as your name, Social Security number, credit card number or other identifying information without your permission to commit fraud or other crimes." People who have been victims of identity theft often spend weeks, months or even years working to clear their good names and clean up their credit reports. Identity thieves are becoming more sophisticated, using spyware and "adware" applications to infiltrate one's computer and methods such as "phishing" which involves trying to trick a consumer out of their personal information by sending emails that mimic those of legitimate businesses. Washington state law enforcement officials have reported that the connections between identity theft and methamphetamine abuse are substantial. Both the Attorney General's office and the Federal Trade Commission offer guides for victims of identity theft. These are available at <http://www.atg.wa.gov/ConsumerIssues/ID-Privacy.aspx> and www.consumer.gov/idtheft.

Legislative Background

The Legislature first passed a law specifically making "identity theft" a crime in 1999. (SHB 1250). It defined "theft of identity" as "using or transferring another person's means of identification with the intent to commit or aid any unlawful activity harming or intending to harm the person whose identity is used, or for committing any felony" and made the offense a class C felony.

In response to the increasingly serious nature of identity theft and the novel techniques used by thieves, the legislature expanded the identity theft law in 2001. ESSB 5449 provided that:

- Acquiring money or property by identity theft that is valued in aggregate at \$1500 or above is a class B felony. Any loss valued below \$1500 is a class C felony.
- The jurisdiction for the crime is where the victim resides or any place the crime was committed, whether or not the thief was physically in those locations.
- Upon conviction of identity theft, the courts can issue a legal document that the victim can use to correct his or her public records.
- The victim can prevent fraudulent information from being shared by filing a police report with the consumer reporting agencies.
- Businesses must share information with victims about fraudulent transactions made in their names.
- Collection agencies are prohibited from calling identity theft victims multiple times once they have been notified that a series of checks have been stolen or misappropriated.

In 2003 the Legislature enacted a law criminalizing the possession of instruments or equipment of financial fraud. ESHB 1844 made it a crime to:

- Print or otherwise produce a check or other payment instrument that includes the name, routing number or account number of another person without the consent of that person (class C felony).
- Possess with the requisite criminal intent two or more payment instruments in the name of a person, or which contain the routing or account number of a person, absent the permission of

that person or if the named person, routing number or account number is fictitious (class C felony).

- Possess with the requisite criminal intent any device whose purpose is to manufacture or print any driver's license, identification card, credit/debit card, or badge (class C felony).
- Possess with the requisite criminal intent an identification card in the name of a fictitious person (class C felony).
- Knowingly possess check making equipment or software with the intent to perpetrate a crime involving financial fraud (class C felony).
- Possess identification in the name of another person unless one has the permission of that person (gross misdemeanor).

In 2005 the Legislature passed ESB 5418, which allows a victim of identity theft or a data security breach to place a "freeze" on his credit report by following a detailed procedure. The freeze may be lifted by the consumer for a set period of time or for a specific party. The Legislature also passed ESHB 1012 which prohibits the unauthorized installation of software programs such as "spyware" and "adware" and authorizes the Attorney General to bring a civil action to recover actual damages or \$100,000 per violation, whichever is greater, and allows a court to increase a damage award up to three times (or \$2 million maximum) if the defendant has engaged in a pattern and practice of engaging in the prohibited activities. It also passed SSB 5939 that requires all police and sheriff's departments in Washington to provide police reports to victims of identity theft who request such reports. However, it does not require law enforcement agencies to investigate all incident reports claiming identity theft.

In 2006 the Legislature enacted HB 1966, which classified identity theft as a crime against persons. This means additional restrictions may be imposed on the convicted person at sentencing, including that the convicted person may not have his or her record of conviction cleared, may be subject to community placement or community custody, and may not qualify to earn up to 50 percent earned release time.

In 2008 the Legislature enacted 2SHB 1273, which created the Financial Fraud and Identity Theft Crimes Investigation and Prosecution Program in the Department of Community, Trade and Economic Development (DCTED), and two regional financial fraud and identity theft crime task forces to discuss emerging trends and threats of local financial fraud and identity theft crimes. One task force includes King and Pierce counties and the other Spokane County. The bill also created the Financial Fraud and Identity Theft Crimes Investigation and Prosecution Program Account in the State Treasury as an appropriated account. Financial fraud and identity theft crimes include check fraud, chronic unlawful issuance of bank checks, embezzlement, credit/debit card fraud, identity theft, forgery, counterfeit instruments such as checks or documents, organized counterfeit check rings, and organized identification theft rings.

Federal Law

Identity theft is a federal crime under The Identity Theft and Assumption Deterrence Act, enacted by Congress in October 1998. Features of the new Fair and Accurate Credit Transactions Act, or FACT Act, also help to prevent identity theft and assist victims. A number of features went into effect in 2004, such as requiring the three major credit agencies to provide consumers with a free copy of their credit report each year, and the National Fraud Alert System, which allows someone that suspects that they have been victimized by identity theft to place an alert on his credit files. This tells creditors that they must proceed cautiously when granting credit.

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Outlook

The Attorney General hired legal staff to specifically fight high-tech fraud, identity theft and other scams targeting consumers. House Republicans should continue to ensure that the confidential and financial information of individuals is protected from thieves who wreak such havoc in the lives of innocent individuals.