
**Public Safety & Emergency
Preparedness Committee**

HB 2638

Brief Description: Changing identity theft provisions.

Sponsors: Representatives Pearson, O'Brien, Ericks, Ross, VanDeWege, Sells, Campbell, Roach and McDonald; by request of Attorney General.

Brief Summary of Bill

- Clarifies that each act prohibited by the Identity Theft statute is a separate unit of prosecution.
- Expands the crime of Identity Theft in the first degree.
- Allows, under certain circumstances, the value of separate incidents of Identity Theft to be aggregated for purposes of determining the degree of Identity Theft.

Hearing Date: 1/21/08

Staff: Jim Morishima (786-7191).

Background:

A person commits 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. A person who obtains the identification for the sole purposes of misrepresenting his or her age is not guilty of Identity Theft.

Degrees 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 an aggregate total of credit, money, goods, services, or anything else of value in excess of \$1,500. Identity Theft in the first degree is a class B felony with a seriousness level of IV.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person commits Identity Theft in the second degree if he or she, or an accomplice, uses the victim's means of identification or financial information and obtains: (a) an aggregate total of credit, money, goods, services, or anything else of value less than \$1,500, or (b) no credit, money, goods, services, or anything else of value. Identity Theft in the second degree is a class C felony with a seriousness level of II.

Unit of Prosecution

In *State v. Leyda*, 157 Wn.2d 335 (2006), the Washington Supreme Court ruled that the Legislature, when it enacted the Identity Theft statute, intended that the unit of prosecution for the crime be any one act of knowingly obtaining, possessing, using, or transferring a single piece of another person's identification or financial information. In other words, once the defendant commits an act that constitutes Identity Theft, any subsequent prohibited conduct constitutes the same offense for purposes of prosecution.

Summary of Bill:

Degrees of Identity Theft

Identity Theft in the first degree is expanded to include situations where the accused, a conspirator, or an accomplice commits an act of Identity Theft and:

- Acts with the intent to transfer the identification or financial information to another person;
- Transfers the identification or financial information to a third person;
- Manufactures or intends to manufacture, any false means of identification, false documents, accounts, or records for transfer to, or use by, any other person;
- Obtains, possesses, transfers, or uses the identification or financial information through use of the actor's position as a trusted person;
- Manufactures, sells, or delivers a forged, fictitious, or false driver's license or identification card with the intent to commit forgery or theft; or
- Uses the means of identification or financial information as a form of identification during a contact with law enforcement.

Identity Theft in the second degree occurs when the perpetrator commits Identity Theft under circumstances not constituting Identity Theft in the first degree.

Whenever any series of transactions involving a single person's identification or financial information would, when considered separately, constitute Identity Theft in the second degree because of value, and the series of transactions are part of a common scheme or plan, the transactions may be aggregated for purposes of determining the degree of Identity Theft involved. If a person commits another crime during the commission of Identity Theft, he or she may be prosecuted and punished separately for the other crime as well as for the Identity Theft.

Unit of Prosecution

It is clarified that the relevant unit of prosecution for Identity Theft is each unlawful use of a means of identification or financial information. In other words, a defendant may be prosecuted and punished separately for every instance he or she unlawfully uses the means of identification or financial information, unless the instances constitute the same criminal conduct. Likewise, unlawfully obtaining, possessing, or transferring the means of identification or financial

information of any individual is a separate unit of prosecution for each victim and for each unlawful act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.