

HOUSE BILL REPORT

HB 2638

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to identity theft.

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 History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/21/08, 1/30/08 [DPS].

Brief Summary of Substitute Bill

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

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Kirby.

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.

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 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.

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.

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 relating to the initial offense constitutes the same offense for purposes of prosecution.

Summary of Substitute Bill:

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.

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.

Substitute Bill Compared to Original Bill:

The substitute bill removes provisions that expanded the crime of Identity Theft in the first degree.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Identity Theft ties into other types of offenses, including methamphetamine-related crimes and organized retail theft. *State v. Leyda* has caused a variety of problems with respect to the prosecution of Identity Theft. For example, persons who re-victimize their victim after serving time for a previous Identity Theft conviction may not be prosecuted again, even though it is obviously a separate offense. Also, the case allows persons who commit their offenses in multiple jurisdictions to plead guilty to the most lenient offense and not be re-charged in the other jurisdictions. The crime of Identity Theft in the first degree should be expanded because there are more egregious ways in which to commit the crime other than stealing someone else's identification.

(Opposed) None.

Persons Testifying: Hunter Goodman, Office of the Attorney General; Susan Storey, Law Enforcement Group against Identity Theft; and Vicky Marin, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: None.