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**SUBSTITUTE HOUSE BILL 2638**

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**State of Washington**

**60th Legislature**

**2008 Regular Session**

**By** House Public Safety & Emergency Preparedness (originally sponsored by Representatives Pearson, O'Brien, Ericks, Ross, VanDeWege, Sells, Campbell, Roach, and McDonald; by request of Attorney General)

READ FIRST TIME 02/04/08.

1       AN ACT Relating to identity theft; amending RCW 9.35.001 and  
2       9.35.020; creating a new section; and prescribing penalties.

3       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       NEW SECTION.   **Sec. 1.** The legislature enacts this act to expressly  
5       reject the interpretation of *State v. Leyda*, 157 Wn.2d 335, 138 P.3d  
6       610 (2006), which holds that the unit of prosecution in identity theft  
7       is any one act of either knowingly obtaining, possessing, using, or  
8       transferring a single piece of another's identification or financial  
9       information, including all subsequent proscribed conduct with that  
10      single piece of identification or financial information, when the acts  
11      are taken with the requisite intent. The legislature finds that  
12      proportionality of punishment requires the need for charging and  
13      punishing for obtaining, using, possessing, or transferring any  
14      individual person's identification or financial information, with the  
15      requisite intent. The legislature specifically intends that each  
16      individual who obtains, possesses, uses, or transfers any individual  
17      person's identification or financial information, with the requisite  
18      intent, be classified separately and punished separately as provided in  
19      chapter 9.94A RCW.

1       **Sec. 2.** RCW 9.35.001 and 1999 c 368 s 1 are each amended to read  
2 as follows:

3       The legislature finds that means of identification and financial  
4 information ~~((is))~~ are personal and sensitive information such that if  
5 unlawfully obtained, possessed, used, or transferred by others may  
6 ~~((do))~~ result in significant harm to a person's privacy, financial  
7 security, and other interests. The legislature finds that unscrupulous  
8 persons find ever more clever ways, including identity theft, to  
9 improperly obtain ~~((and))~~, possess, use, and transfer another person's  
10 means of identification or financial information. The legislature  
11 intends to penalize ~~((unscrupulous people))~~ for each unlawful act of  
12 improperly obtaining, possessing, using, or transferring means of  
13 identification or financial information of an individual person. The  
14 unit of prosecution for identity theft by use of a means of  
15 identification or financial information is each individual unlawful use  
16 of any one person's means of identification or financial information.  
17 Unlawfully obtaining, possessing, or transferring each means of  
18 identification or financial information of any individual person, with  
19 the requisite intent, is a separate unit of prosecution for each victim  
20 and for each act of obtaining, possessing, or transferring of the  
21 individual person's means of identification or financial information.

22       **Sec. 3.** RCW 9.35.020 and 2004 c 273 s 2 are each amended to read  
23 as follows:

24       (1) No person may knowingly obtain, possess, use, or transfer a  
25 means of identification or financial information of another person,  
26 living or dead, with the intent to commit, or to aid or abet, any  
27 crime.

28       (2) Violation of this section when the accused or an accomplice  
29 ~~((uses the victim's means of identification or financial information))~~  
30 violates subsection (1) of this section and obtains ~~((an aggregate~~  
31 ~~total of))~~ credit, money, goods, services, or anything else of value in  
32 excess of one thousand five hundred dollars in value shall constitute  
33 identity theft in the first degree. Identity theft in the first degree  
34 is a class B felony punishable according to chapter 9A.20 RCW.

35       (3) ~~((Violation of this section when the accused or an accomplice~~  
36 ~~uses the victim's means of identification or financial information and~~  
37 ~~obtains an aggregate total of credit, money, goods, services, or~~

1 ~~anything else of value that is less than one thousand five hundred~~  
2 ~~dollars in value, or when no credit, money, goods, services, or~~  
3 ~~anything of value is obtained shall constitute identity theft in the~~  
4 ~~second degree.)) A person is guilty of identity theft in the second  
5 degree when he or she violates subsection (1) of this section under  
6 circumstances not amounting to identity theft in the first degree.  
7 Identity theft in the second degree is a class C felony punishable  
8 according to chapter 9A.20 RCW.~~

9 (4) Each crime prosecuted under this section shall be punished  
10 separately under chapter 9.94A RCW, unless it is the same criminal  
11 conduct as any other crime, under RCW 9.94A.589.

12 (5) Whenever any series of transactions involving a single person's  
13 means of identification or financial information which constitute  
14 identity theft would, when considered separately, constitute identity  
15 theft in the second degree because of value, and the series of  
16 transactions are a part of a common scheme or plan, then the  
17 transactions may be aggregated in one count and the sum of the value of  
18 all of the transactions shall be the value considered in determining  
19 the degree of identity theft involved.

20 (6) Every person who, in the commission of identity theft, shall  
21 commit any other crime may be punished therefor as well as for the  
22 identity theft, and may be prosecuted for each crime separately.

23 (7) A person who violates this section is liable for civil damages  
24 of one thousand dollars or actual damages, whichever is greater,  
25 including costs to repair the victim's credit record, and reasonable  
26 attorneys' fees as determined by the court.

27 ((+5)) (8) In a proceeding under this section, the crime will be  
28 considered to have been committed in any locality where the person  
29 whose means of identification or financial information was appropriated  
30 resides, or in which any part of the offense took place, regardless of  
31 whether the defendant was ever actually in that locality.

32 ((+6)) (9) The provisions of this section do not apply to any  
33 person who obtains another person's driver's license or other form of  
34 identification for the sole purpose of misrepresenting his or her age.

35 ((+7)) (10) In a proceeding under this section in which a person's  
36 means of identification or financial information was used without that  
37 person's authorization, and when there has been a conviction, the

1 sentencing court may issue such orders as are necessary to correct a  
2 public record that contains false information resulting from a  
3 violation of this section.

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