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HOUSE BILL 2638

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State of Washington

60th Legislature

2008 Regular Session

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

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1 AN ACT Relating to identity theft; amending RCW 9.35.001, 9.35.020,  
2 and 46.20.0921; 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 is identity theft in the first degree  
29 when the accused, a conspirator, or an accomplice ~~((uses the victim's~~  
30 ~~means of identification or financial information))~~ violates subsection  
31 (1) of this section and:

32       (a) Obtains ~~((an aggregate total of))~~ credit, money, goods,  
33 services, or anything else of value in excess of one thousand five  
34 hundred dollars in value ~~((shall constitute identity theft in the first~~  
35 ~~degree));~~ or

36       (b) Acts with intent to transfer the means of identification or  
37 financial information to another person; or

1 (c) Transfers the means of identification or financial information  
2 to a third person; or

3 (d) Manufactures or intends to manufacture any false means of  
4 identification, financial documents, accounts, or records for transfer  
5 to or use by any other person; or

6 (e) Obtains, possesses, transfers, or uses the means of  
7 identification or financial information through use of the actor's  
8 position as a "trusted person" as defined in RCW 9A.68.060; or

9 (f) Violates RCW 46.20.0921(3)(a); or

10 (g) During a contact with a law enforcement officer, uses the means  
11 of identification or financial information as a form of identification.

12 Identity theft in the first degree is a class B felony punishable  
13 according to chapter 9A.20 RCW.

14 ~~(3) ((Violation of this section when the accused or an accomplice~~  
15 ~~uses the victim's means of identification or financial information and~~  
16 ~~obtains an aggregate total of credit, money, goods, services, or~~  
17 ~~anything else of value that is less than one thousand five hundred~~  
18 ~~dollars in value, or when no credit, money, goods, services, or~~  
19 ~~anything of value is obtained shall constitute identity theft in the~~  
20 ~~second degree.))~~ A person is guilty of identity theft in the second  
21 degree when he or she violates subsection (1) of this section under  
22 circumstances not amounting to identity theft in the first degree.

23 Identity theft in the second degree is a class C felony punishable  
24 according to chapter 9A.20 RCW.

25 (4) Except as provided in subsection (5) of this section, each  
26 crime prosecuted under this section shall be punished separately under  
27 chapter 9.94A RCW, unless it is the same criminal conduct as any other  
28 crime, under RCW 9.94A.589.

29 (5) Whenever any series of transactions involving a single person's  
30 means of identification or financial information which constitute  
31 identity theft would, when considered separately, constitute identity  
32 theft in the second degree because of value, and the series of  
33 transactions are a part of a common scheme or plan, then the  
34 transactions may be aggregated in one count and the sum of the value of  
35 all of the transactions shall be the value considered in determining  
36 the degree of identity theft involved.

37 (6) Every person who, in the commission of identity theft, shall

1 commit any other crime may be punished therefor as well as for the  
2 identity theft, and may be prosecuted for each crime separately.

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

7 ((+5)) (8) In a proceeding under this section, the crime will be  
8 considered to have been committed in any locality where the person  
9 whose means of identification or financial information was appropriated  
10 resides, or in which any part of the offense took place, regardless of  
11 whether the defendant was ever actually in that locality.

12 ((+6)) (9) The provisions of this section do not apply to any  
13 person who obtains another person's driver's license or other form of  
14 identification for the sole purpose of misrepresenting his or her age.

15 ((+7)) (10) In a proceeding under this section in which a person's  
16 means of identification or financial information was used without that  
17 person's authorization, and when there has been a conviction, the  
18 sentencing court may issue such orders as are necessary to correct a  
19 public record that contains false information resulting from a  
20 violation of this section.

21 **Sec. 4.** RCW 46.20.0921 and 2003 c 214 s 1 are each amended to read  
22 as follows:

23 (1) It is a misdemeanor for any person:

24 (a) To display or cause or permit to be displayed or have in his or  
25 her possession any fictitious or fraudulently altered driver's license  
26 or identicard;

27 (b) To lend his or her driver's license or identicard to any other  
28 person or knowingly permit the use thereof by another;

29 (c) To display or represent as one's own any driver's license or  
30 identicard not issued to him or her;

31 (d) Willfully to fail or refuse to surrender to the department upon  
32 its lawful demand any driver's license or identicard which has been  
33 suspended, revoked, or canceled;

34 (e) To use a false or fictitious name in any application for a  
35 driver's license or identicard or to knowingly make a false statement  
36 or to knowingly conceal a material fact or otherwise commit a fraud in  
37 any such application;

1 (f) To permit any unlawful use of a driver's license or identicard  
2 issued to him or her.

3 (2) It is a class C felony for any person to sell or deliver a  
4 stolen driver's license or identicard.

5 (3) It is unlawful for any person to manufacture, sell, or deliver  
6 a forged, fictitious, counterfeit, fraudulently altered, or unlawfully  
7 issued driver's license or identicard, or to manufacture, sell, or  
8 deliver a blank driver's license or identicard except under the  
9 direction of the department. A violation of this subsection is:

10 (a) A class C felony if committed (i) for financial gain or (ii)  
11 with intent to commit forgery((~~7~~)) or theft((~~7~~ ~~or identity theft~~)); or

12 (b) A gross misdemeanor if the conduct does not violate (a) of this  
13 subsection.

14 (4) Notwithstanding subsection (3) of this section, it is a  
15 misdemeanor for any person under the age of twenty-one to manufacture  
16 or deliver fewer than four forged, fictitious, counterfeit, or  
17 fraudulently altered driver's licenses or identicards for the sole  
18 purpose of misrepresenting a person's age.

19 (5) In a proceeding under subsection (1), (2), (3), or (4) of this  
20 section that is related to an identity theft under RCW 9.35.020, the  
21 crime will be considered to have been committed in any locality where  
22 the person whose means of identification or financial information was  
23 appropriated resides, or in which any part of the offense took place,  
24 regardless of whether the defendant was ever actually in that locality.

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