

AN ACT

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Columbia
Official Code

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, due to Congressional review, the District of Columbia Theft and White Collar Crimes Act of 1982 to establish the crime of identity theft, to provide penalties for the crime, to provide enhanced penalties for persons committing identity theft against persons 65 years of age or older, to authorize the court to provide restitution to the victim and to order the correction of public records containing false information as a result of the identify theft, and to require the Metropolitan Police Department to take reports of identity theft and provide the complainant with a copy of the report.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Identity Theft Congressional Review Emergency Amendment Act of 2004”.

Sec. 2. The District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3201 *et seq.*), is amended as follows:

(a) The table of contents is amended by adding the following after the phrase “Sec. 126o. General disclosures.”:

“Subtitle 3C. Identity Theft.

- “Sec. 127a. Definitions.
- “Sec. 127b. Identity theft.
- “Sec. 127c. Penalties for identity theft.
- “Sec. 127d. Restitution.
- “Sec. 127e. Correction of public records.
- “Sec. 127f. Jurisdiction.
- “Sec. 127g. Limitations.
- “Sec. 127h. Police reports.”.

(b) Section 103 (D.C. Official Code § 22-3203) is amended as follows:

- (1) Paragraph (2) is amended by striking the word “or” at the end.
- (2) Paragraph (3) is amended by striking the period at the end and inserting a semicolon in its place.

Amend
§ 22-3203

(3) New paragraphs (4) and (5) are added to read as follows:

“(4) Identity theft and theft; or

“(5) Identity theft and fraud.”.

(c) A new subtitle 3C is added to read as follows:

“Subtitle 3C. Identity Theft.

“Sec. 127a. Definitions.

“For the purposes of this subtitle, the term:

“(1) “Financial injury” means all monetary costs, debts, or obligations incurred by a person as a result of another person obtaining, creating, possessing, or using that person’s personal identifying information in violation of this subtitle, including, but not limited to:

“(A) The costs of clearing the person’s credit rating, credit history, criminal record, or any other official record, including attorney fees;

“(B) The expenses related to any civil or administrative proceeding to satisfy or contest a debt, lien, judgment, or other obligation of the person that arose as a result of the violation of this subtitle, including attorney fees;

“(C) The costs of repairing or replacing damaged or stolen property; and

“(D) Lost time or wages, or any similar monetary benefit forgone while the person is seeking redress for damages resulting from a violation of this subtitle.

“(2) “Person” means an individual, whether living or dead.

“(3) “Personal identifying information” includes, but is not limited to, the following:

“(A) Name, address, telephone number, date of birth, or mother’s maiden name;

“(B) Driver’s license or driver’s license number, or non-driver’s license or non-driver’s license number;

“(C) Savings, checking, or other financial account number;

“(D) Social security number or tax identification number;

“(E) Passport or passport number;

“(F) Citizenship status, visa, or alien registration card or number;

“(G) Birth certificate or a facsimile of a birth certificate;

“(H) Credit or debit card, or credit or debit card number;

“(I) Credit history or credit;

“(J) Signature;

“(K) Personal identification number, electronic identification number, password, access code or device, electronic address, electronic identification number, routing information or code, digital signature, or telecommunication identifying information;

“(L) Biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

“(M) Place of employment, employment history, or employee identification number; and

“(N) Any other numbers or information that can be used to access a person’s financial resources, access medical information, obtain identification, act as identification, or obtain property.

“(4) “Property” shall have the same meaning as provided in section 101(3) and shall include credit.

“Sec. 127b. Identity theft.

“A person commits the offense of identity theft if that person knowingly:

“(1) Uses personal identifying information belonging to or pertaining to another person to obtain, or attempt to obtain, property fraudulently and without that person’s consent; or

“(2) Obtains, creates, or possesses personal identifying information belonging to or pertaining to another person with the intent to:

“(A) Use the information to obtain, or attempt to obtain, property fraudulently and without that person’s consent; or

“(B) Give, sell, transmit, or transfer the information to a third person to facilitate the use of the information by that third person to obtain, or attempt to obtain, property fraudulently and without that person’s consent.

“Sec. 127c. Penalties for identity theft.

“(a) *Identity theft in the first degree* -- Any person convicted of identity theft shall be fined not more than (1) \$10,000, (2) 3 times the value of the property obtained, or (3) 3 times the amount of the financial injury, whichever is greatest, or imprisoned for not more than 10 years, or both, if the property obtained or the amount of the financial injury is \$250 or more.

“(b) *Identity theft in the second degree* -- Any person convicted of identity theft shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both, if the value of the property obtained or the amount of the financial injury, whichever is greater, is less than \$250.

“(c) *Enhanced penalty* -- Any person who commits the offense of identity theft against an individual who is 65 years of age or older, at the time of the offense, may be punished by a fine of up to 1 ½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 ½ times the maximum term of imprisonment otherwise authorized for the offense, or both. It is an affirmative defense that the accused:

“(1) Reasonably believed that the victim was not 65 years of age or older at the time of the offense; or

“(2) Could not have determined the age of the victim because of the manner in which the offense was committed.

“Sec. 127d. Restitution.

“When a person is convicted of identity theft, the court may, in addition to any other applicable penalty, order restitution for the full amount of financial injury.

“Sec. 127e. Correction of public records.

“(a) When a person is convicted, adjudicated delinquent, or found not guilty by reason of insanity of identity theft, the court may issue such orders as are necessary to correct any District of Columbia public record that contains false information as a result of a violation of this subtitle.

“(b) In all other cases, a person who alleges that he or she is a victim of identity theft may petition the court for an expedited judicial determination that a District of Columbia public record contains false information as a result of a violation of this subtitle. Upon a finding of clear and convincing evidence that the person was a victim of identity theft, the court may issue such orders as are necessary to correct any District of Columbia public record that contains false information as a result of a violation of this subtitle.

“(c) Notwithstanding any other provision of law, District of Columbia agencies shall comply with orders issued under subsection (a) of this section within 30 days of issuance of the order.

“(d) For the purposes of this section, the term “District of Columbia public record” means any document, book, photographic image, electronic data recording, paper, sound recording, or other material, regardless of physical form or characteristic, made or received pursuant to law or in connection with the transaction of public business by any officer or employee of the District of Columbia.

“Sec. 127f. Jurisdiction.

“The offense of identity theft shall be deemed to be committed in the District of Columbia, regardless of whether the offender is physically present in the District of Columbia, if:

“(1) The person whose personal identifying information is improperly obtained, created, possessed, or used is a resident of the District of Columbia; or

“(2) Any part of the offense takes place in the District of Columbia.

“Sec. 127g. Limitations.

“Obtaining, creating, possessing, and using a person’s personal identifying information in violation of this subtitle shall constitute a single scheme or course of conduct, and the applicable period of limitation under § 23-113 shall not begin to run until after the scheme or course of conduct has been completed or terminated.

“Sec. 127h. Police reports

“The Metropolitan Police Department shall make a report of each complaint of identity theft and provide the complainant with a copy of the report.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report of the Identity Theft Amendment Act of 2003, signed by the Mayor on October 27, 2003 (D.C. Act 15-196;50 DCR 9809), as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia