Jennifer L. La Fayette *Legislative Service Commission*

Sub. H.B. 309

124th General Assembly
(As Passed by the General Assembly)

Reps. **Hughes, Calvert, Carmichael, Collier, Fessler, Goodman, Hoops, Latta, Lendrum, Olman, Reidelbach, Schaffer, Schmidt, G. Smith, Key, R. Miller, Womer Benjamin, Sulzer, Seaver, S. Smith, Brown, Faber, Willamowski, Setzer, Flowers, Wolpert, McGregor, Aslanides, Core, Evans, Ogg, Carano, Mason, Cirelli, D. Miller, Allen, Coates, Otterman, Latell, Seitz, Metzger, Wilson, Schneider, Distel, Woodard, DeBose, Sferra, Rhine, Manning, Krupinski, Roman, Kearns, Reinhard, Damschroder, Widowfield, Hollister, Niehaus, Buehrer, Hagan, Cates, Raga, Webster, Gilb, Boccieri, Barrett, Driehaus, Britton**

Sens. **Herington, Amstutz, Armbruster, Espy, Goodman, Hagan, Harris, Hottinger, Jacobson, Mallory, Mead, Oelslager, Roberts, Spada, Wachtmann, White**

Effective date: September 27, 2002

ACT SUMMARY

- Renames the offense of "taking the identity of another" as "identity fraud."
- Revises one of the prohibitions in the renamed offense of "identity fraud" to prohibit a person, without the express or implied consent of the other person, from using, obtaining, or possessing any personal identifying information of another person with intent to hold the person out to be the other person or to represent the other person's personal identifying information as the person's own personal identifying information.
- Specifies that it is an affirmative defense to that revised prohibition that the person using the personal identifying information is acting in accordance with a legally recognized guardianship or conservatorship or as a trustee or fiduciary.
- Prohibits a person, with intent to defraud, from permitting another person to use the person's own personal identifying information.

- Prohibits a person who is permitted to use another person's personal identifying information from using, obtaining, or possessing the other person's personal identifying information with intent to defraud any person by holding the person out to be the other person or by representing the other person's personal identifying information as the person's own personal identifying information.

- Enhances by one degree the penalty for identity fraud if the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is $500 or more.

- Specifies that it is an affirmative defense, to specified prohibitions under identity fraud that either of the following apply: (1) a law enforcement agency, authorized fraud personnel, or a representative of or attorney for a law enforcement agency or authorized fraud personnel uses the personal identifying information in a bona fide investigation, an information security evaluation, a pretext calling evaluation, or a similar matter, or (2) the personal identifying information was obtained, possessed, or used for a lawful purpose.

- Specifies that it is not a defense to a charge of " identity fraud" that the person whose personal identifying information was obtained, possessed, or used was deceased at the time of the offense.

- Expands the definition of "personal identifying information" as used in the offense of taking the identity of another to include a birth certificate.

- Expands a provision that currently permits a discharged member of the armed forces who has registered the person's discharge with a county recorder to expunge the record of discharge or the person's separation program number, to also permit the person to expunge the person's Social Security number and separation code from the record of discharge and other service-related documents that have been recorded.

- Requires a county recorder to post a notice stating that documents filed in the recorder's office generally are public records to which other persons have access.

CONTENT AND OPERATION

Offense of "taking the identity of another"

Preexisting prohibitions modified by the act

The preexisting offense of "taking the identity of another" contained two prohibitions:

First prohibition. Preexisting law prohibited a person from obtaining, possessing, or using any "personal identifying information" (see "***Definition of "personal identifying information"***," below) of any living or dead individual with the intent to fraudulently obtain credit, property, or services or avoid the payment of a debt or any other legal obligation. The act revises this prohibition to prohibit a person, without the express or implied consent of the other person, from using, obtaining, or possessing any personal identifying information of another person with intent to do either of the following (R.C. 2913.49(B)):

(1) Hold the person out to be the other person;

(2) Represent the other person's personal identifying information as the person's own personal identifying information.

Second prohibition. Preexisting law also prohibited a person from creating, obtaining, possessing, or using the personal identifying information of any *living or dead individual* with the intent to aid or abet another person in violating the first prohibition. In this prohibition, the act replaces "living or dead individual" with "person." (R.C. 2913.49(C).) (But see "***Defenses***," below.)

Prohibitions created by the act

Third and fourth prohibitions. The act creates two additional prohibitions. First, the act prohibits a person, with intent to defraud, from permitting another person to use the person's own personal identifying information (the third prohibition). Second, the act prohibits a person who is permitted to use another person's personal identifying information as described above, from using, obtaining, or possessing the other person's personal identifying information with intent to defraud any person by doing any act as described in "***First prohibition***," above (the fourth prohibition). (R.C. 2913.49(D) and (E).)

Penalty

Preexisting law. A person who violated either of the preexisting prohibitions described above was guilty of "taking the identity of another."

Generally, taking the identity of another was a misdemeanor of the first degree under preexisting law. But if the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct was $500 or more and less than $5,000, taking the identity of another was a felony of the fifth degree. If the value was $5,000 or more but less than $100,000, it was a felony of the fourth degree. If the value was $100,000 or more, it was a felony of the third degree. (R.C. 2913.49(E).)

Operation of the act. The act renames the offense of "taking the identity of another" as "identity fraud." The act enhances by one degree the penalty for identity fraud if the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is $500 or more. Thus, under the act, if the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is $500 or more and less than $5,000, identity fraud is a felony of the fourth degree (fifth degree under preexisting law). If the value is $5,000 or more and less than $100,000, it is a felony of the third degree (fourth degree under preexisting law). If the value is $100,000 or more, it is a felony of the second degree (third degree under preexisting law). (R.C. 2913.49(I).)

Defenses

Preexisting law did not provide any defenses that applied specifically to the offense of "taking the identity of another" (renamed identity fraud). Under the act, it is an affirmative defense to the first prohibition described above that the person using the personal identifying information is acting in accordance with a legally recognized guardianship or conservatorship or as a trustee or fiduciary. (R.C. 2913.49(F)(1).)

It is an affirmative defense to a charge under the first, third, and fourth prohibition, above, that either of the following applies (R.C. 2913.49(F)(2)):

(1) A law enforcement agency, authorized fraud personnel, or a representative of or attorney for a law enforcement agency or authorized fraud personnel uses the personal identifying information in a bona fide investigation, an information security evaluation, a pretext calling evaluation, or a similar matter.

(2) The personal identifying information was obtained, possessed, or used for a lawful purpose.

The act specifies that it is not a defense to a charge of identity fraud (under any of the four prohibitions described above) that the person whose personal identifying information was obtained, possessed, or used was deceased at the time of the offense (R.C. 2913.49(G)).

Definition of "personal identifying information"

Preexisting law, unchanged by the act, provides that, as used in the offense of taking the identity of another, "personal identifying information" includes, but is not limited to, the following: the name, address, telephone number, driver's license, driver's license number, commercial driver's license, commercial driver's license number, state identification card, state identification card number, social security card, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, money market account number, mutual fund account number, other financial account number, personal identification number, password, or credit card number of a living or dead individual.

The act expands the definition of "personal identifying information" to also include a birth certificate. (R.C. 2913.49(A).)

Aggregation

Under preexisting law, unchanged by the act, if a violation of the first prohibition described above occurs as part of a course of conduct involving other violations of the first prohibition or violations of, attempts to commit a violation, conspiracies to commit a violation, or complicity in committing violations of the second prohibition described above or the offenses of petty theft, theft, grand theft, aggravated theft, theft from an elderly person or disabled adult, grand theft of a motor vehicle, or theft of drugs (R.C. 2913.02), unauthorized use of property or unauthorized use of computer or telecommunication property (R.C. 2913.04), passing bad checks (R.C. 2913.11), misuse of credit cards (R.C. 2913.21), forgery or forging identification cards or selling or distributing forged identification cards (R.C. 2913.31), tampering with records (R.C. 2913.42), securing writings by deception (R.C. 2913.43), or falsification, falsification in a theft offense, or falsification to purchase a firearm (R.C. 2921.13), the court, in determining the degree of the offense, may aggregate all credit, property, or services obtained or sought to be obtained by the offender and all debts or other legal obligations avoided or sought to be avoided by the offender in the violations involved in that course of conduct. The course of conduct may involve one victim or more than one victim.

A parallel aggregation provision, unchanged by the act, exists under preexisting law for the second prohibition described above. (R.C. 2913.49(D)--relocated by the act to R.C. 2913.49(H).)

County recorder's recording of discharge from military and expungement of record of discharge or certain information on it

Preexisting law

Recording of discharge. Preexisting law, unchanged by the act, provides that, upon the request of any discharged member of the armed forces of the United States and presentation of the member's discharge, a county recorder must record without a fee the discharge in a book furnished by the board of county commissioners for that purpose. Preexisting law, unchanged by the act, also provides that, upon the request of any person who served during World War I or World War II as a member of any armed force of the government of Poland or Czechoslovakia, participated while so serving in armed conflict with an enemy of the United States, and has been a citizen of the United States for at least ten years and the presentation of the person's discharge, a county recorder must record without a fee the person's discharge in a book to be furnished by the board of county commissioners for that purpose. The record, or a certified copy of it, must be received in evidence in all cases where the original would be received. (R.C. 317.24(A) and (D).)

Expungement of record of discharge or certain information on it. Preexisting law provided that, upon application by a person whose discharge had been recorded by a county recorder under R.C. 317.24 (apparently, under either of the provisions described in the preceding paragraph), the county recorder was required to expunge without a fee the person's record of discharge or the person's "separation program number" from the person's record of discharge. Preexisting law defined "separation program number" to mean the coded number or numbers used to specify the reasons for a person's separation from active duty, as contained in line 9(c) or line 11(c) of a veteran's discharge paper, United States department of defense form DD-214. (R.C. 317.24(B) and (C).)

An application for expungement under this provision was required to be in a specified form that included the following request of the applicant (R.C. 317.24(B)):

> "I, _____ (Name of Applicant), the undersigned, hereby request the County Recorder of the County of _____ (Name of County), state of Ohio, to expunge my _____ (Insert either Record of Discharge or Separation Program Number from my Record of Discharge)."

Operation of the act

The act expands the preexisting provision regarding the expungement of a person's record of discharge that has been recorded by a county recorder, or certain information on it, to also require the county recorder to expunge, upon application by a person whose discharge has been recorded under R.C. 317.24, *the person's Social Security number and separation code* from the person's record of discharge and from any other recorded service-related documents. As under preexisting law, the expungement must be done without fee. Related to this provision, the act modifies the language of the request that is included on an application for expungement so that it also indicates that an applicant may request expungement of the applicant's Social Security number and separation code from the applicant's record of discharge and from other recorded service-related documents. (R.C. 317.24(B).)

The act expands the definition of "separation program number" to include "separation code." The expanded definition reads as follows: "*Separation code*" or "separation program number" means the coded number or numbers used to specify the reasons for a person's separation from active duty, *as contained in one of the following: (1) regarding a separation code, as contained in line 23 or 26 of a veteran's discharge paper, United States Department of Defense form DD-214* or (2) regarding a separation program number, as contained in line 9(c) or line 11(c) of a veteran's discharge paper, *under prior versions of* United States Department of Defense form DD-214. The act also defines "service-related document" as any United States Department of Defense form DD-215 or DD-220, or any National Guard Bureau form NGB-22 or NBG-22A. (R.C. 317.24(C).)

Access to records in a county recorder's office

Operation of the act

The act requires each county recorder to display at all times, in a conspicuous place in the office of the recorder, a printed card that warns people about the application of the existing Public Records Law, not in the act (see "***Existing Public Records Law***," below). The printed card must read substantially as follows:

"WARNING

> Documents recorded in the recorder's office generally are considered to be public records. Other persons have access to the information contained in recorded documents."

If a county recorder fails to post a card in accordance with the above-described requirement, the county recorder is not liable in a civil action for injury, death, or loss to person or property that allegedly results from that failure. (R.C. 317.42.)

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	06-21-01	p.	707
Reported, H. Criminal Justice	02-27-02	p.	1473
Passed House (95-0)	03-19-02	pp.	1560-1563
Reported, S. Judiciary on Criminal Justice	05-22-02	pp.	1800-1801
Passed Senate (33-0)	05-22-02	pp.	1804-1805, 1806-1807
House concurred in Senate amendments (95-0)	05-23-02	pp.	1805-1806

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