



## **Sub. H.B. 309**

124th General Assembly  
(As Reported by H. Criminal Justice)

**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**

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### **BILL SUMMARY**

- Revises one of the prohibitions in the offense of "taking the identity of another" to prohibit a person, without the express or implied consent of the other person, from using, or obtaining or possessing with intent to use, any personal identifying information of another person to do either of the following or with intent to do either of the following: (1) hold the person out to be the other person, or (2) represent the other person's personal identifying information as the person's own personal identifying information.
- Enhances by one degree the penalty for taking the identity of another 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 the prohibition revised by the bill that any of the following apply: (1) the personal identifying information is acting in accordance with a legally recognized guardianship or conservatorship or as a trustee or fiduciary, (2) a law enforcement agency, authorized fraud personnel, or 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 (3) the personal identifying information was obtained, possessed, or used for a lawful purpose.

- Specifies that it is not a defense to a charge of taking the identity of another 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.

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## CONTENT AND OPERATION

### Existing prohibitions

The existing offense of taking the identity of another contains two prohibitions:

#### First prohibition

Existing law prohibits a person from obtaining, possessing, or using any personal identifying information 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 (R.C. 2913.49(B)).

#### Second prohibition

Existing law also prohibits 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 (R.C. 2913.49(C)).

### Changes made by the bill to the prohibitions

#### First prohibition

The bill revises the first prohibition to prohibit a person, without the express or implied consent of the other person, from using, or obtaining or possessing with intent to use, any personal identifying information of another person 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**

In the second prohibition, the bill replaces "living or dead individual" with "person" (R.C. 2913.49(C)). (But see "**Defenses**," below.)

### **Penalty**

#### **Existing law**

A person who violates either prohibition is guilty of taking the identity of another. Generally, taking the identity of another is a misdemeanor of the first degree. 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, taking the identity of another is a felony of the fifth, fourth, or third degree. (R.C. 2923.49(E).)

#### **Operation of the bill**

The bill enhances by one degree the penalty for taking the identity of another 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, 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 is less than \$5,000, taking the identity of another is a felony of the fourth degree (fifth degree under existing law). If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is \$5,000 or more and is less than \$100,000, taking the identity of another is a felony of the third degree (fourth degree under existing law). If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is \$100,000 or more, taking the identity of another is a felony of the second degree (third degree under existing law). (R.C. 2923.49(G).)

### **Defenses**

Under the bill, it is an affirmative defense to the first prohibition that any of the following apply (R.C. 2923.49(D)):

(1) The person using the personal identifying information is acting in accordance with a legally recognized guardianship or conservatorship or as a trustee or fiduciary.

(2) A law enforcement agency, authorized fraud personnel, or 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.

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

The bill specifies that it is not a defense to a charge of taking the identity of another that the person whose personal identifying information was obtained, possessed, or used was deceased at the time of the offense (R.C. 2923.49(E)).

**Definition of "personal identifying information"**

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

**Aggregation**

Under existing law, if the violation of the first prohibition 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 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 exists for the second prohibition. (R.C. 2913.49(D).)

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## HISTORY

| ACTION                        | DATE     | JOURNAL ENTRY |
|-------------------------------|----------|---------------|
| Introduced                    | 06-21-01 | p. 707        |
| Reported, H. Criminal Justice | 02-27-02 | p. 1473       |

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