



**Sub. H.B. 309\***

124th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

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**BILL 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 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.
- 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 doing specified acts.

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*\* This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- 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 the prohibition revised by the bill, as 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.
- 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.
- 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.

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## CONTENT AND OPERATION

### Offense of "taking the identity of another"

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

**Third and fourth prohibitions.** The bill creates two additional prohibitions. First, the bill prohibits a person, with intent to defraud, from permitting another person to use the person's own personal identifying

information. Second, the bill 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. (R.C. 2913.49(D) and (E).)

### **Penalty**

**Existing law.** A person who violates either prohibition described above is guilty of "taking the identity of another." Generally, taking the identity of another is a misdemeanor of the first degree. But 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, taking the identity of another is a felony of the fifth degree. If the value is \$5,000 or more but less than \$100,000, it is a felony of the fourth degree. If the value is \$100,000 or more, it is a felony of the third degree. (R.C. 2913.49(E).)

**Operation of the bill.** The bill renames the offense as "identity fraud." The bill 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 bill, 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 existing 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 existing law). If the value is \$100,000 or more, it is a felony of the second degree (third degree under existing law). (R.C. 2913.49(I).)

### **Defenses**

Existing law does not provide any defenses that apply specifically to the offense of identity fraud. Under the bill, 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 bill 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"**

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

**Aggregation**

Under existing law, unchanged by the bill, if the 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 bill, exists under existing law for the second prohibition described above. (R.C. 2913.49(D)--relocated by the bill to R.C. 2913.49(F).)

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

**Existing law**

**Recording of discharge.** Existing law 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. Existing law 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.** Existing law provides that, upon application by a person whose discharge has 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 must expunge without a fee the person's record of discharge or the person's "separation program number" from the person's record of discharge. "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 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 must be in a specified form that includes 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 bill

The bill expands the existing 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 existing law, the expungement must be done without fee. Related to this provision, the bill 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 bill expands the definition of "separation program number" to include "separation code." The definition will be read 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 version of United States Department of Defense form DD-214.* The bill 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 NGB-22A. (R.C. 317.24(C).)

### Access to records in a county recorder's office

#### Operation of the bill

The bill 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 bill (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.)

### **Existing County Recorder Law**

Existing law provides that, on demand and tender of the proper fees, a county recorder must furnish to any person an accurate, certified copy of any record in the recorder's office and must affix the recorder's official seal to the copy. The recorder must issue without charge, upon the request of any discharged member of the armed forces, one certified copy or one certified photostatic copy of the recorded record of discharge, with the official seal of the county recorder affixed to the copy. Any certified copy of any record, document, or map and any transcription of records, required or permitted to be made by the recorder, may be made by any method provided for the making of records. (R.C. 317.27--not in the bill.)

### **Existing Public Records Law**

The existing Public Records Law provides that: (1) subject to a provision limiting access by persons incarcerated pursuant to a criminal conviction or a juvenile adjudication, (a) all "public records" (see below) must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours, and (b) upon request, a public office or person responsible for public records must make copies available at cost, within a reasonable period of time, and (2) in order to facilitate broader access to public records, public offices must maintain public records in a manner that they can be made available for inspection under (1). The Law contains a series of provisions regarding the accessing, duplication, and delivery of the public records and the enforcement of a person's rights under the Law (see **COMMENT**). (R.C. 149.43(B) to (E)--not in the bill.)

As used in the Public Records Law:

(1) "Public record" means any "record" (see (2), below) that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except that "public record" does not mean any (R.C. 149.43(A)(1)--not in the bill): (a) medical records, (b) records pertaining to probation and parole proceedings, (c) records pertaining to actions under R.C. 2151.85 and 2919.121(C) and to appeals of actions arising under those sections, (d) records pertaining to adoption proceedings, (e) information in a record contained in the putative father registry, regardless of what entity holds the information, (f) records listed in R.C. 3107.42(A) or specified in R.C. 3107.52(A),

(g) trial preparation records, (h) confidential law enforcement investigatory records, (i) records containing information that is confidential under R.C. 2317.023 or 4112.05, (j) DNA records stored in the DNA database, (k) inmate records released by the Department of Rehabilitation and Correction (DRC) to the Department of Youth Services (DYS) or a court of record pursuant to R.C. 5120.21(E), (l) records maintained by DHS pertaining to children in its custody released by DRC pursuant to R.C. 5139.05, (m) intellectual property records, (n) donor profile records, (o) records maintained by the Department of Job and Family Services pursuant to R.C. 3121.894, (p) peace officer residential and familial information, (q) in the case of a county hospital operated pursuant to R.C. Chapter 339., information that constitutes a trade secret, as defined in R.C. 1333.61, (r) information pertaining to the recreational activities of a person under 18, (s) records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under R.C. 307.621 to 307.629, other than the report prepared pursuant to R.C. 307.626, (t) records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to R.C. 5153.171 other than the information released under that section, (u) test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under R.C. 4751.04 or contracts under that section with a private or government entity to administer, or (v) records the release of which is prohibited by state or federal law.

(2) "Records" includes (R.C. 149.011--not in the bill) any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

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## COMMENT

The existing Public Records Law contains the following provisions regarding the accessing, duplication, and delivery of the public records and the enforcement of a person's rights under the Law, as follows (R.C. 149.43(B)(2) to (E)--not in the bill):

(a) If any person chooses to obtain a copy of a public record in accordance with R.C. 149.43(B)(1), the public office or person responsible for the public record must permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can

be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this provision, the public office or person responsible for the public record must provide a copy of it in accordance with the choice made by the person seeking the copy.

(b) Upon a request made in accordance with R.C. 149.43(B)(1), a public office or person responsible for public records must transmit a copy of a public record to any person by United States mail within a reasonable period of time after receiving the request for the copy. The responsible public office or person may require the requestor to pay in advance the cost of postage and other supplies used in the mailing. Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by mail and must comply with them in performing its duties. In any such policy and procedures, a public office may limit the number of records requested by a person that the office will transmit by mail to ten per month, subject to specified exceptions.

(c) A responsible public office or person is not required to permit a person incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request is for the purpose of acquiring information that is subject to release as a public record and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(d) Upon written request containing specified information made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer must disclose to the journalist the address of the actual personal residence of the peace officer and, if the peace officer's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's spouse, former spouse, or child. As used in this provision, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(e) If a person allegedly is aggrieved by the failure of a public office to promptly prepare a public record and make it available for inspection in

accordance with the Public Records Law, or if a person who has requested a copy of a public record allegedly is aggrieved by a failure to make a copy available to the person in accordance with that Law, the person may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with the Law and that awards reasonable attorney's fees to the person that instituted the mandamus action.

(f) The existing Personal Information Systems Law, contained in R.C. Chapter 1347., does not limit the provisions of the Public Records Law.

(g) The Bureau of Motor Vehicles may adopt rules to reasonably limit the number of "bulk commercial special extraction requests" made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for such requests for the "actual cost" of the Bureau, plus "special extraction costs," plus 10%. The Bureau may charge for expenses for redacting information, the release of which is prohibited by law.

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## HISTORY

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Introduced	06-21-01	p. 707
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