



**H.B. 48\***

126th General Assembly  
(As Reported by H. Criminal Justice)

**Reps. Hughes, Aslanides, Combs, C. Evans, D. Evans, Faber, Flowers, Gibbs, Hoops, Kearns, Latta, McGregor, Oelslager, Schaffer, J. Stewart, Taylor, Trakas, Webster, DeGeeter, Otterman, Perry**

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**BILL SUMMARY**

- Renames the offense of "identity fraud" when it is committed against an elderly person or disabled adult as "identity theft against an elderly person or disabled adult" and enhances the penalty for "identity fraud against an elderly person or disabled adult."
- Permits the Attorney General, in cooperation with a law enforcement agency, to issue an identity fraud passport to a person who has filed a police report citing that the person is a victim of identity fraud in Ohio.
- Permits a victim of identity fraud to present an identity fraud passport to a law enforcement agency or to the victim's creditors and permits the agency or creditor to accept the passport at its discretion.

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**CONTENT AND OPERATION**

**Current law: offense of identity fraud**

**Prohibitions**

The offense of identity fraud contains four prohibitions:

**First prohibition.** Current law prohibits a person, without the express or implied consent of the other person, from using, obtaining, or possessing any

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

personal identifying information<sup>1</sup> 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.

**Second prohibition.** A person is also prohibited from creating, obtaining, possessing, or using the personal identifying information of any person with the intent to aid or abet another person in violating the first prohibition (R.C. 2913.49(C)).

**Third prohibition.** Current law prohibits a person, with intent to defraud, from permitting another person to use the person's own personal identifying information (R.C. 2913.49(D)).

**Fourth prohibition.** A person who is permitted to use another person's personal identifying information (as described in the third prohibition) is prohibited 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 representing the other person's personal identifying information as the person's own (R.C. 2913.49(E)) (see **COMMENT 1**).

### **Penalty**

Generally, identity fraud is a first degree misdemeanor. 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 but less than \$5,000, identity fraud is a fourth degree felony. If the value is \$5,000 or more but less than \$100,000, it is a third degree felony. If the value is \$100,000 or more, it is a second degree felony. (R.C. 2913.49(I).) (See **COMMENT 2**.)

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<sup>1</sup> *"Personal identifying information" includes, but is not limited to, all of the following belonging to a living or dead individual: 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, birth certificate, 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 (R.C. 2913.49(A)).*

## The bill

### Identity fraud against an elderly person or disabled adult

Under the bill, if the victim of a violation of one of the prohibitions described above is an elderly person or disabled adult, the offense is "identity fraud against an elderly person or disabled adult," the penalty for which generally is one degree higher than for identity fraud.<sup>2</sup> Thus, identity fraud against an elderly person or disabled adult is generally a fifth degree felony. 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 but less than \$5,000, the bill provides that identity fraud against an elderly person or disabled adult is a third degree felony. If the value is \$5,000 or more but less than \$100,000, the bill specifies that it is a second degree felony. If the value is \$100,000 or more, the bill provides that it is a first degree felony. (R.C. 2913.49(I).)

### Identity fraud passport

The bill requires the Attorney General, in cooperation with any law enforcement agency, to issue an identity fraud passport to a victim of "identity fraud" in Ohio and has filed a police report with any law enforcement agency citing that the person is a victim of the identity fraud statute. It further provides that once a person who is a victim of "identity fraud" in Ohio has filed a police report with a law enforcement agency citing that the person is a victim of a violation of the identity fraud statute, the victim is permitted to apply for an identity fraud passport through any law enforcement agency. Under the bill, the agency must send a copy of the police report and the application for the passport to the Attorney General. The bill requires the Attorney General to process the application and supporting police report and permits the Attorney General to issue the victim an identity fraud passport in the form of a card or certificate. (R.C. 109.94(A).)

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<sup>2</sup> "Elderly person" means a person who is age 65 or older (R.C. 2913.01(CC) not in the bill).

*"Disabled adult" means a person who is age 18 or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is age 18 or older and has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons (R.C. 2913.01(DD) not in the bill).*

The bill permits a victim to present the passport to a law enforcement agency to help prevent the victim's arrest or detention for offenses committed by a person other than the victim who is using the victim's identity. A victim is also permitted to present the passport to any of the victim's creditors to aid in the creditors' investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity. A law enforcement agency or creditor may accept, but is not required to accept, the identity fraud passport at the agency's or creditor's discretion and is permitted to take into consideration the surrounding circumstances and available information regarding the offense of identity fraud pertaining to the victim. (R.C. 109.94(B).)

Although the bill allows the Attorney General to provide access to the applications and supporting documentation filed with the Attorney General's office under the bill to other criminal justice agencies in this or another state, the bill also specifies that those materials are not public records under the public records law (R.C. 109.94(C)).<sup>3</sup>

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## COMMENT

1. There are several affirmative defenses available if a person is charged with one of the prohibitions described in the **CONTENT AND OPERATION** section of this analysis. These affirmative defenses are not affected by the operation of the bill.

It is an affirmative defense to a charge under the first 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.

It is an affirmative defense to a charge under the first, third, or fourth prohibition that either (1) the person or entity using the personal identifying information is a law enforcement agency, authorized fraud personnel, or a representative of or attorney for a law enforcement agency or authorized fraud personnel and is using 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. (R.C. 2913.49(F).)

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<sup>3</sup> *Ohio's public records law generally requires every "public office" to promptly prepare and make available for inspection all public records, at all reasonable times, during regular business hours (R.C. 149.43 not in the bill).*

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 (R.C. 2913.49(G)).

2. If an offender commits a violation of the first, third, or fourth prohibitions discussed above in the **CONTENT AND OPERATION** section of this analysis, and the violation occurs as part of a course of conduct involving other violations of the first, third, or fourth prohibitions or violations of, attempts to violate, conspiracies to violate, or complicity in violations of the second prohibition or R.C. 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 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.

If the violation of the second prohibition occurs as part of a course of conduct involving other violations of the second prohibition or violations of, attempts to violate, conspiracies to violate, or complicity in violations of the first, third, or fourth prohibitions or R.C. 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 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 person aided or abetted and all debts or other legal obligations avoided or sought to be avoided by the person aided or abetted in the violations involved in that course of conduct. The course of conduct may involve one victim or more than one victim.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-08-05	p. 192
Reported, H. Criminal Justice	---	---

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