

Sundabrook R - CR.
Millage
Chairman

HSB 37

JUDICIARY
Succeeded By
SF/HE

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing the crime of identity theft, providing for
2 the recovery of civil damages, relating to the reporting of
3 identity theft to a consumer reporting agency, and providing
4 and applying penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

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2 Section 1. NEW SECTION. 714.16B IDENTITY THEFT -- CIVIL
3 CAUSE OF ACTION.

4 In addition to any other remedies provided by law, a person
5 as defined under section 714.16, subsection 1, suffering a
6 pecuniary loss as a result of an identity theft by another
7 person under section 715A.8, may bring an action against such
8 other person to recover the following:

9 1. One thousand dollars or three times the actual damages,
10 whichever is greater.

11 2. Reasonable attorney fees and court costs.

12 Sec. 2. NEW SECTION. 715A.8 IDENTITY THEFT.

13 1. For purposes of this section, "identification
14 information" means the name, address, date of birth, telephone
15 number, driver's license number, nonoperator's identification
16 number, social security number, place of employment, employee
17 identification number, parent's legal surname prior to
18 marriage, demand deposit account number, savings or checking
19 account number, or credit card number of a person.

20 2. A person commits the offense of identity theft if the
21 person knowingly obtains identification information of another
22 person and uses or attempts to use that information to obtain
23 credit, property, or services without the authorization of
24 that other person.

25 3. If the value of the credit, property, or services
26 exceeds one thousand dollars, the person commits a class "D"
27 felony. If the value of the credit, property, or services
28 does not exceed one thousand dollars, the person commits an
29 aggravated misdemeanor.

30 4. A violation of this section is an unlawful practice
31 under section 714.16.

32 Sec. 3. NEW SECTION. 715A.9 VALUE FOR PURPOSES OF
33 IDENTITY THEFT.

34 The value of property or services is its highest value by
35 any reasonable standard at the time the identity theft is

1 committed. Any reasonable standard includes but is not
2 limited to market value within the community, actual value, or
3 replacement value.

4 If credit, property, or services are obtained by two or
5 more acts from the same person or location, or from different
6 persons by two or more acts which occur in approximately the
7 same location or time period so that the identity thefts are
8 attributable to a single scheme, plan, or conspiracy, the acts
9 may be considered as a single identity theft and the value may
10 be the total value of all credit, property, and services
11 involved.

12 DIVISION II

13 Sec. 4. NEW SECTION. 537.9101 DEFINITIONS.

14 1. "Consumer report" means any written, oral, or other
15 communication of any information by a consumer reporting
16 agency bearing on a consumer's creditworthiness, credit
17 standing, credit capacity, character, general reputation,
18 personal characteristics, or mode of living which is used or
19 expected to be used or collected in whole or in part for the
20 purpose of any of the following:

21 a. To serve as a factor in establishing the consumer's
22 eligibility for credit or insurance to be used primarily for
23 personal, family, or household purposes.

24 b. To serve as a factor in establishing the consumer's
25 eligibility for employment.

26 c. To be provided to a person who the consumer reporting
27 agency has reason to believe has a legitimate need for the
28 information, in connection with a business transaction that is
29 initiated by the consumer or to review an account to determine
30 whether the consumer continues to meet the terms of the
31 account.

32 2. "Consumer reporting agency" means any person or legal
33 entity which engages in the practice of assembling or
34 evaluating consumer credit information or other information on
35 consumers for the purpose of furnishing consumer reports to

1 third parties requesting consumer reports.

2 Sec. 5. NEW SECTION. 537.9102 CREDIT ISSUING PRACTICES.

3 If a person intends to issue credit to a consumer who
4 appears in person on the basis of an application for credit
5 submitted in person, a consumer reporting agency contacted by
6 the person, in deciding whether to grant the credit
7 application shall, with a reasonable degree of certainty,
8 match at least three categories of identifying information
9 within the file maintained by the consumer reporting agency on
10 the consumer with the information provided to the consumer
11 reporting agency by the person. The categories of identifying
12 information may include, but are not limited to, name, date of
13 birth, driver's license number, place of employment, current
14 residence address, previous residence address, or social
15 security number. The categories of identifying information
16 shall not include a parent's surname prior to marriage.

17 Sec. 6. NEW SECTION. 537.9103 REPORTING TO A CONSUMER
18 REPORTING AGENCY.

19 1. If a consumer submits to a consumer reporting agency a
20 copy of a valid report to a law enforcement agency pertaining
21 to an identity theft, the consumer reporting agency shall
22 promptly and permanently block reporting any information that
23 the consumer alleges appears on the consumer's consumer report
24 as a result of a violation of section 715A.8. The consumer
25 reporting agency shall promptly notify the person furnishing
26 the information that the information has been blocked.

27 2. Persons furnishing information and consumer reporting
28 agencies shall ensure that a permanent block on the reporting
29 of information is removed only when a preponderance of the
30 evidence exists establishing the facts required under
31 paragraphs "a" and "b". The permanent block on the reporting
32 of information shall be removed if any of the following
33 applies:

34 a. The information was blocked due to fraud.

35 b. The consumer agrees that the blocked information was

1 blocked in error.

2 3. If a block is removed pursuant to this section, the
3 consumer shall be promptly notified in the same manner as
4 consumers are notified of the reinsertion of information.

5 Sec. 7. NEW SECTION. 537.9104 APPLICABILITY.

6 This article applies to a consumer credit transaction as
7 defined in section 537.1301, subsection 11, but also includes
8 consumer credit sales of goods and services, consumer leases,
9 and consumer loans where the amount financed is more than
10 twenty-five thousand dollars, notwithstanding section
11 537.1301, subsection 12, paragraph "a", subparagraph (5);
12 section 537.1301, subsection 13, paragraph "a", subparagraph
13 (4); and section 537.1301, subsection 14, paragraph "a",
14 subparagraph (5).

15 Sec. 8. NEW SECTION. 537.9105 REMEDIES.

16 1. A consumer who suffers a pecuniary loss as a result of
17 a violation of this article by a person, including, but not
18 limited to, a consumer reporting agency, has a cause of action
19 against the person for the greater of five hundred dollars or
20 actual damages, plus reasonable attorney fees and court costs.

21 2. A violation of this article is an unlawful practice
22 under section 714.16.

23

EXPLANATION

24 This bill creates the new crime of identity theft. A
25 person must first knowingly obtain identification information
26 of another such as a name, birth date, driver's license
27 number, or social security number. If the person uses or
28 attempts to use that information to obtain credit, goods, or
29 services and the value of the credit, goods, or services
30 exceeds \$1,000, the person commits a class "D" felony. If the
31 value of the credit, goods, or services does not exceed
32 \$1,000, the person commits an aggravated misdemeanor.

33 The bill also establishes a civil remedy for the victims of
34 an identity theft crime against the perpetrator in addition to
35 any criminal sanctions that may be imposed. The victim of an

1 identity theft may sue the perpetrator of an identity theft
2 for \$1,000 or up to three times the amount of actual damages,
3 whichever is greater, and for reasonable attorney fees and
4 court costs. In addition the bill provides that the
5 commission of identity theft constitutes an unlawful practice
6 under Code section 714.16, which prohibits and provides
7 various civil penalties and remedies for consumer fraud.

8 The bill provides that committing identity theft and
9 certain disclosures of blocked information by a consumer
10 reporting agency are violations of the consumer fraud Act.

11 The bill also provides that an entity taking credit
12 applications in person must first confirm three personal
13 identification categories with a consumer reporting agency
14 before a line of credit is established.

15 The bill further allows the victim to submit a police
16 report pertaining to the identity theft to a consumer
17 reporting agency which would then require the agency to stop
18 any negative credit information from being released. A
19 consumer reporting agency may release negative credit
20 information after the police report is filed if the victim
21 submitted a fraudulent police report, or the victim agrees the
22 negative credit information was not due to identity theft.

23 If a victim suffers a loss as a result of a consumer
24 reporting agency release of negative credit information in
25 violation of this bill, the victim may sue the person
26 releasing the information for actual damages plus attorney
27 fees and court costs. The person releasing the information
28 may also be required to pay civil penalties and reimbursement
29 for damages under the consumer fraud provisions in Code
30 section 714.16.

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THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515/281-5164
FACSIMILE: 515/281-4209

MEMORANDUM

TO: Members of the General Assembly
FROM: Anne Bunz, Legislative Liaison
DATE: September 17, 1998
SUBJECT: Background statement for Identity Theft

The Iowa Attorney General's Office is submitting a bill request for legislation dealing with identity theft. Several states have addressed this problem. This proposal, in part, is based upon a California statute.

Identity theft is one of the fastest growing crimes in America. Not only can this crime destroy a person's bank account; it can destroy a person's credit. Iowa currently has no statute that addresses the problem of a person stealing, using or attempting to use another's personal identification information. This makes criminal prosecutions in these matters extremely difficult. In 1995, individually and institutionally, victims in the U.S. suffered a \$442 million dollar loss. In 1997, the loss skyrocketed to \$745 million.

This legislation is divided into three sections: criminal liability, civil liability, and prevention.

Criminal Liability: The intent of the first part of the bill is to provide for a criminal offense if a person knowingly obtains personal identification information of another and uses that information to obtain credit, property, or services in the name of the other person without consent.

Civil Liability: Part two of the bill provides for a private right of action against the perpetrator who was in violation of the criminal statute. The Attorney General would also have civil enforcement authority under the Consumer Fraud Act.

Prevention: Part three of the bill addresses prevention of identity theft. It requires a consumer credit reporting agency to match three categories of personal identification information when a consumer applies for credit in person. This section also requires that if a victim of identity theft submits a copy of a police report to the credit reporting agency, the agency shall promptly and permanently block reporting any information that the consumer alleges appears on his or her credit report as a result of a criminal violation.

MAR 12 1999

5-3/17/99 Judiciary
5-3/24/99 Do Pass

Place On Calendar

HOUSE FILE **659**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 37)

Passed House, ^(P.712) Date 3/17/99

Passed Senate, ^(P.926) Date 4/5/99

Vote: Ayes 95 Nays 0

Vote: Ayes 47 Nays 1

Approved April 21, 1999

A BILL FOR

1 An Act establishing the crime of identity theft and providing
2 penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 714.16B IDENTITY THEFT -- CIVIL
2 CAUSE OF ACTION.

3 In addition to any other remedies provided by law, a person
4 as defined under section 714.16, subsection 1, suffering a
5 pecuniary loss as a result of an identity theft by another
6 person under section 715A.8, may bring an action against such
7 other person to recover the following:

8 1. One thousand dollars or three times the actual damages,
9 whichever is greater.

10 2. Reasonable attorney fees and court costs.

11 Sec. 2. NEW SECTION. 715A.8 IDENTITY THEFT.

12 1. For purposes of this section, "identification
13 information" means the name, address, date of birth, telephone
14 number, driver's license number, nonoperator's identification
15 number, social security number, place of employment, employee
16 identification number, parent's legal surname prior to
17 marriage, demand deposit account number, savings or checking
18 account number, or credit card number of a person.

19 2. A person commits the offense of identity theft if the
20 person with the intent to obtain a benefit fraudulently
21 obtains identification information of another person and uses
22 or attempts to use that information to obtain credit,
23 property, or services without the authorization of that other
24 person.

25 3. If the value of the credit, property, or services
26 exceeds one thousand dollars, the person commits a class "D"
27 felony. If the value of the credit, property, or services
28 does not exceed one thousand dollars, the person commits an
29 aggravated misdemeanor.

30 4. A violation of this section is an unlawful practice
31 under section 714.16.

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34 The value of property or services is its highest value by
35 any reasonable standard at the time the identity theft is

1 committed. Any reasonable standard includes but is not
2 limited to market value within the community, actual value, or
3 replacement value.

4 If credit, property, or services are obtained by two or
5 more acts from the same person or location, or from different
6 persons by two or more acts which occur in approximately the
7 same location or time period so that the identity thefts are
8 attributable to a single scheme, plan, or conspiracy, the acts
9 may be considered as a single identity theft and the value may
10 be the total value of all credit, property, and services
11 involved.

12 EXPLANATION

13 This bill creates the new crime of identity theft. A
14 person must first obtain identification information of another
15 such as a name, birth date, driver's license number, or social
16 security number, with the intent to obtain a benefit
17 fraudulently. If the person uses or attempts to use that
18 information to obtain credit, property, or services and the
19 value of the credit, property, or services exceeds \$1,000, the
20 person commits a class "D" felony. If the value of the
21 credit, property, or services does not exceed \$1,000, the
22 person commits an aggravated misdemeanor.

23 The bill also establishes a civil remedy for the victims of
24 an identity theft crime against the perpetrator in addition to
25 any criminal sanctions that may be imposed. The victim of an
26 identity theft may sue the perpetrator of an identity theft
27 for \$1,000 or up to three times the amount of actual damages,
28 whichever is greater, and for reasonable attorney fees and
29 court costs.

30 An aggravated misdemeanor is punishable by confinement for
31 no more than two years and a fine of at least \$500 but not
32 more than \$5,000. A class "D" felony is punishable by
33 confinement for no more than five years and a fine of at least
34 \$500 but not more than \$7,500.

35

**HOUSE FILE 659
FISCAL NOTE**

The estimate for House File 659 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

SUMMARY

This Bill creates the new crime of identity theft. A person obtaining the identification of another and uses or attempts to use that information to obtain credit, property, or services which exceeds \$1,000, the person commits a Class D felony. If the value does not exceed \$1,000, the person commits an aggravated misdemeanor.

ASSUMPTIONS

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
3. The law will become effective July 1, 1999. A lag effect of six months is assumed from the law's effective date to the date of first entry of affected offenders into the correctional system.
4. Approximately 18 charges a year will be brought, eight at the Class D felony level and eight at the aggravated misdemeanor level.
5. The marginal cost per prison inmate is \$12 per day.
6. The marginal cost for a residential facility is \$14 per day. Offenders will spend four months in a residential facility.
7. Data is not available to estimate the average length of time these offenders will spend on probation or parole, however, the marginal cost per day is \$1.53.
8. Data is not available on the average length of stay in county jails to estimate the savings to counties.
9. Defense costs (to the State Public Defender's Office) and prosecution costs are expected to be the same. The cost to defend or prosecute a Class D felony is \$1,200. The cost to defend or prosecute an aggravated misdemeanor is \$1,000.
10. The number of cases in which defendants will use a Public Defender versus

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hiring their own attorney is unknown.

CORRECTIONAL IMPACT

House File 659 will increase the admissions to the Department of Corrections programs. The projected effects on admissions are:

	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2004</u>
Jails	0	1	1
Probation/Parole	3	7	7
CBC Facilities	0	1	1
Prisons	1	2	2

FISCAL IMPACT

House File 659 will result in increased costs as follows:

State General Fund Impact:

	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2004</u>
Public Defender	Unknown	Unknown	Unknown
Probation/Parole	Unknown	Unknown	Unknown
CBC Facilities	\$ 0	\$ 1,700	\$ 1,700
Prisons	4,000	9,000	13,000
Total State	<u>\$ 4,000</u>	<u>\$10,700</u>	<u>\$14,700</u>

County Impact:

County Attorneys	\$ 5,400	\$16,000	\$16,000
County Jails	Unknown	Unknown	Unknown

SOURCES

Department of Human Rights, CJJP
 Department of Corrections
 Department of Justice
 Office of the State Public Defender

(LSB 1081HV, CRS)

FILED MARCH 17, 1999

BY DENNIS PROUTY, FISCAL DIRECTOR

AN ACT
ESTABLISHING THE CRIME OF IDENTITY THEFT AND PROVIDING
PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 714.16B IDENTITY THEFT -- CIVIL
CAUSE OF ACTION.

In addition to any other remedies provided by law, a person as defined under section 714.16, subsection 1, suffering a pecuniary loss as a result of an identity theft by another person under section 715A.8, may bring an action against such other person to recover the following:

1. One thousand dollars or three times the actual damages, whichever is greater.

2. Reasonable attorney fees and court costs.

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1. For purposes of this section, "identification information" means the name, address, date of birth, telephone number, driver's license number, nonoperator's identification number, social security number, place of employment, employee identification number, parent's legal surname prior to marriage, demand deposit account number, savings or checking account number, or credit card number of a person.

2. A person commits the offense of identity theft if the person with the intent to obtain a benefit fraudulently obtains identification information of another person and uses or attempts to use that information to obtain credit, property, or services without the authorization of that other person.

3. If the value of the credit, property, or services exceeds one thousand dollars, the person commits a class "D" felony. If the value of the credit, property, or services does not exceed one thousand dollars, the person commits an aggravated misdemeanor.

4. A violation of this section is an unlawful practice under section 714.16.

Sec. 3. NEW SECTION. 715A.9 VALUE FOR PURPOSES OF
IDENTITY THEFT.

The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes but is not limited to market value within the community, actual value, or replacement value.

If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are

attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 659, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved April 21, 1999

THOMAS J. VILSACK
Governor