

House Study Bill 638 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ANDERSON)

A BILL FOR

1 An Act relating to identity theft, providing penalties, and
2 making penalties applicable.

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

1 Section 1. Section 715A.8, Code 2011, is amended to read as
2 follows:

3 **715A.8 Identity theft — offenses — penalties.**

4 1. *a.* For purposes of this section, “*identification*
5 *information*” includes, but is not limited to, the name,
6 address, date of birth, telephone number, driver’s license
7 number, nonoperator’s identification card number, social
8 security number, student identification number, military
9 identification number, alien identification or citizenship
10 status number, employer identification number, signature,
11 electronic mail signature, electronic identifier or screen
12 name, biometric identifier, genetic identification information,
13 access device, logo, symbol, trademark, place of employment,
14 employee identification number, parent’s legal surname prior to
15 marriage, demand deposit account number, savings or checking
16 account number, or credit card number of a person.

17 *b.* For purposes of this section, “*financial institution*”
18 means the same as defined in section 527.2, and includes an
19 insurer organized under Title XIII, subtitle 1, of this Code,
20 or under the laws of any other state or the United States.

21 2. *a.* A person commits the offense of identity theft
22 if the person ~~fraudulently uses or attempts to fraudulently~~
23 ~~use identification information of another person, with the~~
24 ~~intent to obtain credit, property, services, or other benefit~~
25 fraudulently or knowingly takes, purchases, manufactures,
26 records, possesses, uses, or attempts to take, purchase,
27 manufacture, record, possess, or use identification information
28 of another person or entity, including a real or fictitious
29 person or entity, without the consent of the other person or
30 entity, with the intent to obtain or use the identification
31 information for any unlawful purpose, or to cause loss to
32 the other person or entity, or with the intent to obtain or
33 continue employment. An offense is committed regardless
34 of whether the other person or entity actually suffers any
35 economic loss as a result of the offense.

1 b. A person commits the offense of knowingly accepting
2 the identity of another person if the person, in hiring an
3 employee, knowingly does both of the following:

4 (1) Accepts any identification information of another
5 person with knowledge that the other person presenting the
6 identification information is not the actual person identified
7 by that identification information.

8 (2) Uses the identification information for the purpose of
9 determining whether the person who presented the identification
10 information has the legal right or authorization under federal
11 law to work in the United States as described and determined
12 pursuant to the processes and procedures under 8 U.S.C. §
13 1324a.

14 c. (1) A person commits the offense of aggravated identity
15 theft if the person does either of the following:

16 (a) Fraudulently or knowingly takes, purchases,
17 manufactures, records, possesses, uses, or attempts to take,
18 purchase, manufacture, record, possess, or use identification
19 information of five or more other persons or entities,
20 including real or fictitious persons or entities, without the
21 consent of the other persons or entities, with the intent to
22 obtain or use the identification information for any unlawful
23 purpose, or to cause loss to the persons or entities. An
24 offense is committed regardless of whether the persons or
25 entities actually suffer any economic loss as a result of the
26 offense.

27 (b) Commits the offense of identity theft under paragraph
28 "a" and causes another person or entity to suffer an economic
29 loss of three thousand dollars or more.

30 (2) In an action for aggravated identity theft pursuant to
31 this paragraph "c", proof of possession outside the regular
32 course of business of identification information of five or
33 more persons or entities may give rise to an inference that
34 the identification information was possessed for an unlawful
35 purpose.

1 d. A person commits the offense of trafficking identity
2 theft if the person fraudulently or knowingly sells, transfers,
3 or transmits any identification information of another person
4 or entity, including a real or fictitious person or entity,
5 without the consent of the other person or entity for any
6 unlawful purpose or to cause loss to the person or entity
7 regardless of whether the other person or entity actually
8 suffers any economic loss as a result of the offense.

9 ~~3. If the value of the credit, property, or services~~
10 ~~exceeds one thousand dollars, the person commits a class "D"~~
11 ~~felony. If the value of the credit, property, or services~~
12 ~~does not exceed one thousand dollars, the person commits an~~
13 ~~aggravated misdemeanor. A violation of this subsection shall~~
14 be punishable as follows:

15 a. A person who violates subsection 2, paragraph "a",
16 commits a class "D" felony.

17 b. A person who violates subsection 2, paragraph "b",
18 commits a class "D" felony, and notwithstanding section 902.9,
19 subsection 5, shall be punished by confinement for no more than
20 seven years and a fine of at least eight hundred fifty dollars
21 but not more than eight thousand five hundred dollars.

22 c. A person who violates subsection 2, paragraph "c",
23 commits a class "C" felony.

24 d. A person who violates subsection 2, paragraph "d",
25 commits a class "C" felony, and notwithstanding section 902.9,
26 subsection 4, shall be punished by confinement for no more than
27 twelve years and a fine of at least one thousand two hundred
28 fifty dollars but not more than ten thousand two hundred fifty
29 dollars.

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

32 5. Violations of this section shall be prosecuted in any of
33 the following venues:

34 a. In the county in which the violation occurred.

35 b. If the violation was committed in more than one county,

1 or if the elements of the offense were committed in more than
2 one county, then in any county where any violation occurred or
3 where an element of the offense occurred.

4 c. In the county where the victim resides.

5 d. In the county where the property that was ~~fraudulently~~
6 ~~used or attempted to be used~~ subject to the violation was
7 located at the time of the violation.

8 6. Any real or personal property obtained by a person as
9 a result of a violation of this section, including but not
10 limited to any money, interest, security, claim, contractual
11 right, or financial instrument that is in the possession of the
12 person, shall be subject to seizure and forfeiture pursuant to
13 chapter 809A. A victim injured by a violation of this section,
14 or a financial institution that has indemnified a victim
15 injured by a violation of this section, may file a claim as
16 an interest holder pursuant to section 809A.11 for payment of
17 damages suffered by the victim including costs of recovery and
18 reasonable attorney fees.

19 7. A financial institution may file a complaint regarding a
20 violation of this section on behalf of a victim and shall have
21 the same rights and privileges as the victim if the financial
22 institution has indemnified the victim for such violations.

23 8. Upon the request of a victim, a peace officer in any
24 jurisdiction described in subsection 5 shall take a report
25 regarding an alleged violation of this section and shall
26 provide a copy of the report to the victim. The report may also
27 be provided to any other law enforcement agency in any of the
28 jurisdictions described in subsection 5.

29

EXPLANATION

30 This bill modifies current provisions constituting identity
31 theft, and adds additional forms of identity theft subject to
32 penalty.

33 Code section 715A.8 currently specifies that a person
34 commits the offense of identity theft if the person
35 fraudulently uses or attempts to fraudulently use

1 identification information, as defined in the Code section, of
2 another person, with the intent to obtain credit, property,
3 services, or other benefit. The bill modifies the Code section
4 by creating four separate offenses constituting identity theft.

5 The bill provides that a person commits the offense of
6 identity theft if the person fraudulently or knowingly
7 takes, purchases, manufactures, records, possesses, uses, or
8 attempts to take, purchase, manufacture, record, possess, or
9 use identification information of another person or entity,
10 including a real or fictitious person or entity, without the
11 consent of the other person or entity, with the intent to
12 obtain or use the identification information for any unlawful
13 purpose, or to cause loss to the other person or entity, or
14 with the intent to obtain or continue employment. The bill
15 states that an offense is committed regardless of whether the
16 other person or entity actually suffers any economic loss as a
17 result of the offense.

18 The bill provides that a person commits the offense
19 of knowingly accepting the identity of another person if
20 the person, in hiring an employee, knowingly accepts any
21 identification information of another person with knowledge
22 that the other person is not the actual person identified by
23 that information, or uses the information for the purpose of
24 determining whether the person who presented the information
25 has the legal right or authorization under federal law to work
26 in the United States as described and determined pursuant to
27 the processes and procedures under 8 U.S.C. § 1324a dealing
28 with the unlawful employment of aliens.

29 The bill provides that a person commits the offense of
30 aggravated identity theft if the person either commits the
31 offense of identity theft in relation to the identification
32 information of five or more persons or entities, or commits
33 the offense of identity theft and causes another person or
34 entity to suffer an economic loss of \$3,000 or more. The
35 bill adds that in an action for aggravated identity theft

1 proof of possession outside the regular course of business
2 of identification information of five or more persons or
3 entities may give rise to an inference that the identification
4 information was possessed for an unlawful purpose.

5 The bill provides that a person commits the offense of
6 trafficking identity theft if the person fraudulently or
7 knowingly sells, transfers, or transmits any identification
8 information of another person or entity, including a real or
9 fictitious person or entity, without the consent of the other
10 person or entity for any unlawful purpose or to cause loss to
11 the person or entity regardless of whether the other person or
12 entity actually suffers any economic loss.

13 The bill also modifies penalties applicable to the offense
14 of identity theft. Currently penalties vary depending upon
15 the value of the credit, property, or services subject to the
16 offense. If the value of the credit, property, or services
17 exceeds \$1,000, the person commits a class "D" felony. If the
18 value of the credit, property, or services does not exceed
19 \$1,000, the person commits an aggravated misdemeanor. The bill
20 replaces these provisions with separate penalties applicable
21 for each of the four types of identity theft. The bill
22 provides that the "basic" form of identity theft is punishable
23 as a class "D" felony. A class "D" felony is punishable
24 by confinement for no more than five years and a fine of
25 at least \$750 but not more than \$7,500. The bill provides
26 that knowingly accepting the identity of another person is
27 punishable as a class "D" felony, but with increased potential
28 terms of confinement and fines in the form of no more than
29 seven years confinement and a fine of at least \$850 but not
30 more than \$8,500. The bill provides that aggravated identity
31 theft is punishable as a class "C" felony. A class "C" felony
32 is punishable by confinement for no more than 10 years and a
33 fine of at least \$1,000 but not more than \$10,000. The bill
34 provides that trafficking identity theft is punishable as a
35 class "C" felony, but again with increased potential terms of

1 confinement and fines in the form of no more than 12 years
2 confinement and a fine of at least \$1,250 but not more than
3 \$10,250.

4 In addition to the penalties provided in the bill, all forms
5 of identity theft will be subject to the existing civil cause
6 of action provisions of Code section 714.16B, which provide
7 that a person suffering a pecuniary loss as a result of an
8 identity theft by another person under Code section 715A.8,
9 or a financial institution on behalf of an account holder
10 suffering a pecuniary loss as a result of an identity theft
11 by another person under the Code section, may bring an action
12 against such other person to recover specified costs and fees,
13 and the amount of \$5,000 or three times the actual damages,
14 whichever is greater. Existing Code section 715A.9 provides a
15 method for the determination of the value of credit, property,
16 or services subject to an identity theft.

17 Additionally, Code section 715A.8 provides that identity
18 theft constitutes an unlawful practice under the consumer
19 fraud provisions of Code section 714.16. In addition to
20 other specified remedies, Code section 714.16 provides that
21 the attorney general may request and the court may impose a
22 civil penalty not to exceed \$40,000 per violation against
23 a person found by the court to have engaged in a method,
24 act, or practice declared unlawful, and that the court may
25 impose a civil penalty of not more than \$5,000 for each day
26 of intentional violation of a temporary restraining order,
27 preliminary injunction, or permanent injunction issued under
28 the Code section.