

SB 5878 - H COMM AMD

By Committee on Public Safety & Emergency Preparedness

ADOPTED 03/04/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature enacts sections 3 and 4 of
4 this act to expressly reject the interpretation of *State v. Leyda*, 157
5 Wn.2d 335, 138 P.3d 610 (2006), which holds that the unit of
6 prosecution in identity theft is any one act of either knowingly
7 obtaining, possessing, using, or transferring a single piece of
8 another's identification or financial information, including all
9 subsequent proscribed conduct with that single piece of identification
10 or financial information, when the acts are taken with the requisite
11 intent. The legislature finds that proportionality of punishment
12 requires the need for charging and punishing for obtaining, using,
13 possessing, or transferring any individual person's identification or
14 financial information, with the requisite intent. The legislature
15 specifically intends that each individual who obtains, possesses, uses,
16 or transfers any individual person's identification or financial
17 information, with the requisite intent, be classified separately and
18 punished separately as provided in chapter 9.94A RCW.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.35 RCW
20 to read as follows:

21 (1) A person who has learned or reasonably suspects that his or her
22 financial information or means of identification has been unlawfully
23 obtained, used by, or disclosed to another, as described in this
24 chapter, may file an incident report with a law enforcement agency, by
25 contacting the local law enforcement agency that has jurisdiction over
26 his or her actual residence, place of business, or place where the
27 crime occurred. The law enforcement agency shall create a police
28 incident report of the matter and provide the complainant with a copy

1 of that report, and may refer the incident report to another law
2 enforcement agency.

3 (2) Nothing in this section shall be construed to require a law
4 enforcement agency to investigate reports claiming identity theft. An
5 incident report filed under this section is not required to be counted
6 as an open case for purposes of compiling open case statistics.

7 **Sec. 3.** RCW 9.35.001 and 1999 c 368 s 1 are each amended to read
8 as follows:

9 The legislature finds that means of identification and financial
10 information ~~((is))~~ are personal and sensitive information such that if
11 unlawfully obtained, possessed, used, or transferred by others may
12 ~~((do))~~ result in significant harm to a person's privacy, financial
13 security, and other interests. The legislature finds that unscrupulous
14 persons find ever more clever ways, including identity theft, to
15 improperly obtain ~~((and))~~, possess, use, and transfer another person's
16 means of identification or financial information. The legislature
17 intends to penalize ~~((unscrupulous people))~~ for each unlawful act of
18 improperly obtaining, possessing, using, or transferring means of
19 identification or financial information of an individual person. The
20 unit of prosecution for identity theft by use of a means of
21 identification or financial information is each individual unlawful use
22 of any one person's means of identification or financial information.
23 Unlawfully obtaining, possessing, or transferring each means of
24 identification or financial information of any individual person, with
25 the requisite intent, is a separate unit of prosecution for each victim
26 and for each act of obtaining, possessing, or transferring of the
27 individual person's means of identification or financial information.

28 **Sec. 4.** RCW 9.35.020 and 2004 c 273 s 2 are each amended to read
29 as follows:

30 (1) No person may knowingly obtain, possess, use, or transfer a
31 means of identification or financial information of another person,
32 living or dead, with the intent to commit, or to aid or abet, any
33 crime.

34 (2) Violation of this section when the accused or an accomplice
35 ~~((uses the victim's means of identification or financial information))~~
36 violates subsection (1) of this section and obtains ~~((an aggregate~~

1 ~~total of~~) credit, money, goods, services, or anything else of value in
2 excess of one thousand five hundred dollars in value shall constitute
3 identity theft in the first degree. Identity theft in the first degree
4 is a class B felony punishable according to chapter 9A.20 RCW.

5 ~~(3) ((Violation of this section when the accused or an accomplice~~
6 ~~uses the victim's means of identification or financial information and~~
7 ~~obtains an aggregate total of credit, money, goods, services, or~~
8 ~~anything else of value that is less than one thousand five hundred~~
9 ~~dollars in value, or when no credit, money, goods, services, or~~
10 ~~anything of value is obtained shall constitute identity theft in the~~
11 ~~second degree.)) A person is guilty of identity theft in the second
12 degree when he or she violates subsection (1) of this section under
13 circumstances not amounting to identity theft in the first degree.
14 Identity theft in the second degree is a class C felony punishable
15 according to chapter 9A.20 RCW.~~

16 (4) Each crime prosecuted under this section shall be punished
17 separately under chapter 9.94A RCW, unless it is the same criminal
18 conduct as any other crime, under RCW 9.94A.589.

19 (5) Whenever any series of transactions involving a single person's
20 means of identification or financial information which constitute
21 identity theft would, when considered separately, constitute identity
22 theft in the second degree because of value, and the series of
23 transactions are a part of a common scheme or plan, then the
24 transactions may be aggregated in one count and the sum of the value of
25 all of the transactions shall be the value considered in determining
26 the degree of identity theft involved.

27 (6) Every person who, in the commission of identity theft, shall
28 commit any other crime may be punished therefor as well as for the
29 identity theft, and may be prosecuted for each crime separately.

30 (7) A person who violates this section is liable for civil damages
31 of one thousand dollars or actual damages, whichever is greater,
32 including costs to repair the victim's credit record, and reasonable
33 attorneys' fees as determined by the court.

34 ~~((+5+))~~ (8) In a proceeding under this section, the crime will be
35 considered to have been committed in any locality where the person
36 whose means of identification or financial information was appropriated
37 resides, or in which any part of the offense took place, regardless of
38 whether the defendant was ever actually in that locality.

1 (~~(6)~~) (9) The provisions of this section do not apply to any
2 person who obtains another person's driver's license or other form of
3 identification for the sole purpose of misrepresenting his or her age.

4 (~~(7)~~) (10) In a proceeding under this section in which a person's
5 means of identification or financial information was used without that
6 person's authorization, and when there has been a conviction, the
7 sentencing court may issue such orders as are necessary to correct a
8 public record that contains false information resulting from a
9 violation of this section."

10 Correct the title.

EFFECT: Adds language from SHB 2638 to SB 5878 which:

(1) Clarifies that the relevant unit of prosecution for identity theft is each unlawful use of a means of identification or financial information. In other words, a defendant may be prosecuted and punished separately for every instance he or she unlawfully uses the means of identification or financial information, unless the instances constitute the same criminal conduct. Likewise, unlawfully obtaining, possessing, or transferring the means of identification or financial information of any individual is a separate unit of prosecution for each victim and for each unlawful act.

(2) Allows, under certain circumstances, the value of separate incidents of identity theft to be aggregated for purposes of determining the degree of identity theft. Whenever any series of transactions involving a single person's identification or financial information would, when considered separately, constitute identity theft in the second degree because of value, and the series of transactions are part of a common scheme or plan, the transactions may be aggregated for purposes of determining the degree of identity theft involved. If a person commits another crime during the commission of identity theft, he or she may be prosecuted and punished separately for the other crime as well as for the identity theft.

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