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CRIMES AND OFFENSES Amend Provisions Relating to Identity Fraud and the Collection and Dissemination of Personal Identifying and Financial Information; Change Provisions Relating to Definitions, Financial Identity Fraud, and Racketeer Influenced and Corrupt Organizations; Change Provisions Relating to Law Enforcement Officers and Data Collection for Identity Fraud Cases; Change Provisions Relating to Motor Vehicles and Traffic Regarding Penalties for Identity Fraud; Establish Guidelines for Proper Discarding and Disposal of Certain Business Documents Containing Personal Information

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CRIMES AND OFFENSES

Amend Provisions Relating to Identity Fraud and the Collection and Dissemination of Personal Identifying and Financial Information; Change Provisions Relating to Definitions, Financial Identity Fraud, and Racketeer Influenced and Corrupt Organizations; Change Provisions Relating to Law Enforcement Officers and Data Collection for Identity Fraud Cases; Change Provisions Relating to Motor Vehicles and Traffic Regarding Penalties for Identity Fraud; Establish Guidelines for Proper Discarding and Disposal of Certain Business Documents Containing Personal Information

CODE SECTIONS: O.C.G.A. §§ 16-9-4, -120 to -127 (amended), -128 to -132 (new), 16-4-3 (amended), 35-1-13 (new), 40-5-104, -125, -179 (amended), 10-15-1 to -4 (new)

BILL NUMBER: SB 475

ACT NUMBER: 750

GEORGIA LAWS: 2002 Ga. Laws 551

SUMMARY: The Act amends provisions of the Georgia Code as they relate to identity fraud and the collection and dissemination of personal identifying and financial information so as to protect such information from being utilized in an unlawful manner. The Act amends the Georgia Code so as to change provisions relating to definitions, financial identity fraud, and racketeer influenced and corrupt organizations, and changes provisions relating to data collection for law enforcement officers for identity fraud cases. The Act also establishes guidelines for proper discarding and disposal of certain business documents containing personal information and

provides for civil liability and criminal penalties.

EFFECTIVE DATE:

Sections 1 through 7 and Section 10 on May 2, 2002, Section 8 on July 1, 2002

History

Identity theft is one of the fastest growing crimes in the nation.¹ Perpetrators of this fraud use the identities of others to steal money, obtain loans, and generally violate the law.² The emergence of the Internet and the increasing number of commercial transactions conducted electronically has made personal information more accessible, including tax identification numbers, Social Security numbers, driver's license information, and fingerprints.³

Criminals often use people's personal records to open false accounts under their names or to create false identities in order to commit other crimes.⁴ The thief may open credit card accounts, an account for telephone or utility services, lease an apartment or automobile, or some similar credit extension.⁵ The thief then obtains money, goods, or services, charges them to the newly created account, and then disappears.⁶

Thieves can obtain personal and financial information by "dumpster diving," or going through trash, particularly at businesses.⁷ Likewise, thieves can obtain personal information by going through personal trash left on the curb or stealing bills and credit card statements from mailboxes.⁸ Besides the obvious financial difficulties victims of identity theft face, victims also

1. Audio Recording of Senate Proceedings, Mar. 26, 2002 (remarks by Sen. Charlie Tanksley), at <http://www.state.ga.us/services/leg/audio/2002archive.html> [hereinafter Senate Audio]; see also Lynn LoPucki, *Human Identification Theory and the Identity Theft Problem*, 80 TEX. L. REV. 89, 89 (Nov. 2001).

2. Kurt Saunders & Bruce Zucker, *Counteracting Identity Fraud in the Information Age: The Identity Theft and Assumption Deterrence Act*, 8 CORNELL J.L. & PUB. POL'Y 661, 662 (Spring 1999).

3. *Id.*

4. See *Identity Theft: Senate Approves ID Theft Penalties*, ATLANTA J. CONST., Mar. 27, 2002, at B6.

5. LoPucki, *supra* note 1, at 91; Saunders & Zucker, *supra* note 2, at 662.

6. LoPucki, *supra* note 1, at 91.

7. Senate Audio, *supra* note 1 (remarks by Sen. Tanksley).

8. Nicole Buba, *Waging War Against Identity Theft: Should the United States Borrow from the European Union's Battalion?*, 23 SUFFOLK TRANSNAT'L L. REV. 633, 633 (Summer 2000).

experience stress, emotional trauma, time lost, and a damaged credit reputation.⁹

SB 475

Introduction

Senators Steve Thompson, Connie Stokes, and Charlie Tanksley of the 33rd, 43rd, and 32nd Districts respectively, sponsored SB 475.¹⁰ Senator Tanksley introduced the bill on the Senate floor on February 20, 2002.¹¹ The Senate assigned the bill to its Senate Judiciary Committee, which favorably reported the bill, as substituted, on March 8, 2002.¹² The Senate adopted the Committee substitute, adopted two floor amendments, and passed the bill on March 26, 2002.¹³

On March 26, 2002, the House assigned SB 475 to its Judiciary Committee, which created its own substitute, and favorably reported the bill on April 9, 2002.¹⁴ The House adopted the Committee substitute, adopted two floor amendments, and passed the bill on April 10, 2002.¹⁵

The Senate agreed to the House version of the bill on April 12, 2002.¹⁶ The General Assembly forwarded the bill to Governor Roy Barnes, who signed SB 475 into law on May 2, 2002.¹⁷

Consideration by the Senate Judiciary Committee

After introduction, the Senate assigned the bill to its Judiciary Committee.¹⁸ The Committee favorably reported the bill, as

9. LoPucki, *supra* note 1, at 94.

10. SB 475, as introduced, 2002 Ga. Gen. Assem.

11. State of Georgia Final Composite Status Sheet, SB 475, Apr. 12, 2002.

12. *Id.*

13. Georgia Senate Voting Record, SB 475 (Mar. 26, 2002); State of Georgia Final Composite Status Sheet, SB 475, Apr. 12, 2002; *see also* Senate Audio, *supra* note 1.

14. State of Georgia Final Composite Status Sheet, SB 475, Apr. 12, 2002.

15. Georgia House of Representatives Voting Record, SB 475 (Apr. 10, 2002); State of Georgia Final Composite Status Sheet, SB 475, Apr. 12, 2002; *see also* Audio Recording of House Proceedings, Apr. 10, 2002, at <http://www.state.ga.us/services/leg/audio/2002archive.html> [hereinafter House Audio].

16. State of Georgia Final Composite Status Sheet, SB 475, Apr. 12, 2002.

17. *Id.*

18. *Id.*

substituted, on March 8, 2002.¹⁹ The Judiciary Committee substitute replaced subsection (b)(1) of the proposed Code section 16-9-4 by adding an affirmative defense to the manufacturing, selling, or distributing of identification documents containing false information if the person manufacturing, selling, or distributing the documents used due diligence to ascertain the truth of the information.²⁰ The Committee substitute also changed subsection (b)(6) of the proposed Code section 16-9-4 by clarifying the affirmative defenses to the possession of another person's identification document.²¹ Specifically, if the possessor had permission from the identification's owner to possess the document, the Committee substitute added language stating that the document must also otherwise be available as a public record.²²

In subsection (a) of proposed Code section 16-9-130, the Committee changed "exemplary damages" to "punitive damages."²³ The Senate Judiciary Committee also amended the definition of "personally identifiable" in subsection (6) of proposed Code section 10-15-1 to not include a customer's name, address, and telephone number unless one or more of them are used in conjunction with the other identifiers spelled out in the definition.²⁴ The Committee substitute also added language for an affirmative defense in proposed Code section 10-15-4 to the wrongful disposing of a customer's record that contains personal information if the business can show it used due diligence in its attempt to properly dispose of or discard such records.²⁵ Likewise, the Committee substitute changed the effective date to July 1, 2002 for Section 8 regarding business liability for failing to properly discard the personal information of customers.²⁶

Senate Passage and Floor Amendments

19. *Id.*

20. Compare SB 475, as introduced, 2002 Ga. Gen. Assem., with SB 475 (SCS), 2002 Ga. Gen. Assem.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

The Senate passed the Committee substitute to SB 475, with floor amendments, on March 26, 2002.²⁷ Six floor amendments were introduced.²⁸ Senators Jack Hill of the 4th District, Tim Golden of the 8th District, and Don Cheeks of the 23rd District offered the first three amendments.²⁹ However, Senator Hill withdrew these floor amendments.³⁰ The amendments decreased the per occurrence business liability from \$1,000 per occurrence to \$500, provided a cap for business liability at \$10,000, provided an affirmative defense for a business's due diligence in its attempt to properly dispose of customer's records, and limited the remedy to actual damages, not damages such as pain and suffering.³¹ The first three floor amendments were withdrawn because the concerns were met by Floor Amendments Four and Five or had already been addressed in the Committee substitute.³²

Senators Jack Hill of the 4th District and Charlie Tanksley of the 32nd District offered Floor Amendments Four and Five.³³ Amendment Four changed proposed Code section 10-15-3 by providing for business liability for actual damages when a business negligently or intentionally discarded or disposed of personal customer information in violation of proposed Code section 10-15-2.³⁴ Floor Amendment Four also changed the proposed Code section 10-15-3 by allowing three times actual damages and expenses of litigation for a business intentionally discarding personal customer information in violation of proposed Code section 10-15-2.³⁵ Likewise, Floor Amendment Four lowered business liability from \$1,000 per occurrence to \$500.³⁶ Floor Amendment Five amended

27. Georgia Senate Voting Record, SB 475 (Mar. 26, 2002); State of Georgia Final Composite Status Sheet, SB 475, Apr. 12, 2002; Senate Audio, *supra* note 1.

28. Senate Audio, *supra* note 1.

29. *Id.*

30. *Id.*

31. Withdrawn Senate Floor Amendments to SB 475, introduced by Senators Jack Hill, Tim Golden, and Don Cheeks, Mar. 26, 2002.

32. Proposed Amendment Two, which created an affirmative defense for businesses using due diligence in properly disposing of customer's records, had been included in proposed Code section 10-15-4 by the Senate Judiciary Committee. See SB 475 (SCS), 2002 Ga. Gen. Assem.

33. SB 475 (SCSFA), 2002 Ga. Gen. Assem.; see also Senate Audio, *supra* note 1.

34. Compare SB 475 (SCS), 2002 Ga. Gen. Assem., with SB 475 (SCSFA), 2002 Ga. Gen. Assem.

35. *Id.*

36. *Id.*

proposed Code section 10-15-4 by including a maximum fine on businesses of \$50,000.³⁷

Senator Joe Burton of the 5th District offered Floor Amendment Six to change the forms of identification authorized to identify electors at the polls.³⁸ Floor Amendment Six was ruled not germane.³⁹

Consideration by the House Judiciary Committee

The House Judiciary Committee favorably reported SB 475, as substituted, on April 9, 2002.⁴⁰ The Judiciary Committee substitute struck language in proposed subsection (b)(1) of Code section 16-9-4, removing the affirmative defense for manufacturing, selling, or distributing identification documents containing false information if the person manufacturing, selling, or distributing such documents used due diligence to ascertain the truth of the information, and included it in newly proposed subsection (i) of Code section 16-9-4.⁴¹ The Judiciary Committee substitute also struck the affirmative defense in proposed subsection (b)(6) of Code section 16-9-4, including instead language allowing possession or use of another person's identification only with the intent to restore it to the other person, or the government agency, or other entity that issued the identification document.⁴²

The Judiciary Committee substitute also added language to proposed subsection (g) of Code section 16-9-4 regarding novelty false identifications by requiring declaration of the word "novelty" on the identification in indelible ink.⁴³ The Judiciary Committee substitute also amended proposed Code section 16-9-121 by adding the use of another person's identification information with the intent to cause physical harm definition of identity fraud.⁴⁴ Also, the Judiciary Committee substitute amended proposed Code section 10-

37. *Id.*

38. Withdrawn Senate Floor Amendment to SB 475, introduced by Sen. Joe Burton, Mar. 26, 2002.

39. Senate Audio, *supra* note 1.

40. State of Georgia Final Composite Status Sheet, SB 475, Apr. 12, 2002.

41. *Compare* SB 475 (SCSFA), 2002 Ga. Gen. Assem., *with* SB 475 (HCS), 2002 Ga. Gen. Assem.

42. *Id.*

43. *Id.*

44. *Id.*

15-4 by lowering the cap on business liability from \$50,000 to \$10,000.⁴⁵

The Judiciary Committee substitute also added proposed Code section 10-15-5 to provide that the rights and remedies provided in this chapter were not exclusive, but rather cumulative with other laws.⁴⁶

House Passage and Floor Amendments

The House adopted the Committee substitute and passed SB 475 with floor amendments on April 10, 2002.⁴⁷ The House floor amendments reserved proposed Code section 10-15-3, removing language providing for business liability to the customer for either negligent or intentional discarding of personal information in violation of proposed Code section 10-15-2.⁴⁸ Proposed Code section 10-15-5, which provided that the remedies and rights were cumulative and not exclusive, was removed by the floor amendment.⁴⁹

The Senate agreed to the House substitute on April 12, 2002.⁵⁰ Governor Roy Barnes signed SB 475 into law on May 2, 2002.⁵¹

The Act

Section 1 of the Act strikes Code section 16-9-4, replacing it in its entirety with much more detailed definitions of “access device,” “description,” “government agency,” and “identification document.”⁵² Code section 16-9-4(a) defines these terms.⁵³ Code section 16-9-4(b) makes it unlawful to knowingly possess, display, use, manufacture, alter, sell, or distribute a false, fraudulent, or fictitious identification document, or any other identification document containing the logo or legal or official seal of a

45. *Id.*

46. *Id.*

47. Georgia House of Representatives Voting Record, SB 475 (Apr. 10, 2002); State of Georgia Final Composite Status Sheet, SB 475, Apr. 12, 2002; House Audio, *supra* note 15.

48. Compare SB 475 (HCS), 2002 Ga. Gen. Assem., with SB 475 (HCSFA), 2002 Ga. Gen. Assem.

49. *Id.*

50. State of Georgia Final Composite Status Sheet, SB 475, Apr. 12, 2002.

51. *Id.*

52. 2002 Ga. Laws 551, § 1, at 551.

53. O.C.G.A. § 16-9-4(a) (Supp. 2002).

government agency, or any colorable imitation thereof without prior written consent of the agency.⁵⁴

Code section 16-9-4(c) provides that a violation of this section is a misdemeanor.⁵⁵ Likewise, Code section 16-9-4(c) provides that those convicted for second or subsequent violations of this Code section shall be guilty of a felony punishable by three to ten years in prison and a \$25,000 fine.⁵⁶ Code section 16-9-4(d) states that each violation of this Code section shall constitute a separate offense.⁵⁷ Code section 16-9-4(e) regards jurisdiction, providing that any violation shall be considered to have been committed in any county of this state in which the identification document was manufactured, sold, displayed, distributed, or possessed.⁵⁸ Code section 16-9-4(f) provides that the section will not apply to authorized investigative, protective, or intelligence activity.⁵⁹ Code section 16-9-4(g) sets rules for the use of novelty identifications.⁶⁰ Code section 16-9-4(h) refers to the seizure of property used in violation of this Code section.⁶¹ Code section 16-9-4(i) provides an affirmative defense to the manufacturing, selling, or distributing of identification documents containing false information if the person manufacturing, selling, or distributing used due diligence to ascertain the truth of the information.⁶²

Section 2 of the Act amends Article 8 of Chapter 9 relating to identity fraud.⁶³ Code section 16-9-120 defines “administrator,” “business victim,” “consumer victim,” “identifying information,” and “resources.”⁶⁴ Code section 16-9-121 defines the offense of identity fraud.⁶⁵ Code section 16-9-122 makes attempting or conspiring to commit identify fraud a punishable offense.⁶⁶ Code section 16-9-123

54. O.C.G.A. § 16-9-4(b) (Supp. 2002).

55. O.C.G.A. § 16-9-4(c) (Supp. 2002).

56. *Id.*

57. O.C.G.A. § 16-9-4(d) (Supp. 2002).

58. O.C.G.A. § 16-9-4(e) (Supp. 2002).

59. O.C.G.A. § 16-9-4(f) (Supp. 2002).

60. O.C.G.A. § 16-9-4(g) (Supp. 2002).

61. O.C.G.A. § 16-9-4(h) (Supp. 2002).

62. O.C.G.A. § 16-9-4(i) (Supp. 2002).

63. 2002 Ga. Laws 551, § 2, at 554.

64. *Compare* 1998 Ga. Laws 865, § 2, at 865 (formerly found at O.C.G.A. § 16-9-120 (Supp. 2001)), with O.C.G.A. § 16-9-120 (Supp. 2002).

65. *Compare* 1998 Ga. Laws 865, § 2, at 865-66 (formerly found at O.C.G.A. § 16-9-121 (Supp. 2001)), with O.C.G.A. § 16-9-121 (Supp. 2002).

66. O.C.G.A. § 16-9-122 (Supp. 2002).

provides that the Governor's Office of Consumer Affairs shall maintain a repository for all complaints in the state regarding identity fraud.⁶⁷ Code section 16-9-124 provides that the Attorney General and prosecuting attorneys shall have the authority to conduct the criminal prosecution of all cases of identity fraud.⁶⁸ Code section 16-9-125 provides that the crime of identity fraud will be committed in any county where the person whose means of identification or financial information was appropriated resides or is found, regardless of whether the defendant was ever actually in that particular county.⁶⁹ Code section 16-9-126 provides penalties for violation of this section of one to ten years in prison or up to \$100,000 in fines or both.⁷⁰ An individual convicted of a second or subsequent violation of this section shall be punished with three to fifteen years imprisonment, fines up to \$250,000, or both.⁷¹

Code section 16-9-127 provides that the administrator shall have authority to initiate any proceedings regarding violations or potential violations of this article.⁷² Code section 16-9-128 provides exceptions to the prohibitions set forth in this section.⁷³ Section 16-9-129 was added to provide a business victim a cause of action for actual damages, and where appropriate, punitive damages.⁷⁴ Code section 16-9-130 provides that any consumer victim may receive attorney's fees and expenses of litigation and three times actual damages for an intentional violation.⁷⁵ Code section 16-9-131 provides that the administrator shall forward any results of investigations to the Attorney General or other prosecuting attorney who may commence any appropriate criminal prosecution.⁷⁶ Code

67. Compare 1998 Ga. Laws 865, § 2, at 866 (formerly found at O.C.G.A. § 16-9-122 (Supp. 2001)), with O.C.G.A. § 16-9-123 (Supp. 2002).

68. Compare 1998 Ga. Laws 865, § 2, at 866 (formerly found at O.C.G.A. § 16-9-123 (Supp. 2001)), with O.C.G.A. § 16-9-124 (Supp. 2002).

69. Compare 1998 Ga. Laws 865, § 2, at 866 (formerly found at O.C.G.A. § 16-9-124 (Supp. 2001)), with O.C.G.A. § 16-9-125 (Supp. 2002).

70. Compare 1998 Ga. Laws 865, § 2, at 867 (formerly found at O.C.G.A. § 16-9-125 (Supp. 2001)), with O.C.G.A. § 16-9-126 (Supp. 2002).

71. *Id.*

72. Compare 1998 Ga. Laws 865, § 2, at 867 (formerly found at O.C.G.A. § 16-9-126 (Supp. 2001)), with O.C.G.A. § 16-9-127 (Supp. 2002).

73. Compare 1998 Ga. Laws 865, § 2, at 867 (formerly found at O.C.G.A. § 16-9-127 (Supp. 2001)), with O.C.G.A. § 16-9-128 (Supp. 2002).

74. O.C.G.A. § 16-9-129 (Supp. 2002).

75. O.C.G.A. § 16-9-130 (Supp. 2002).

76. O.C.G.A. § 16-9-131 (Supp. 2002).

section 16-9-132 provides that the article is cumulative with other laws and not exclusive.⁷⁷

Section 3 of the Act adds to the definitions in Code section 16-14-3 division (xxxvi), including Article 8 of Chapter 9 of this title relating to identity fraud, and Section 1028 of Title 18 of the United States Code relating to fraudulent identification documents and information.⁷⁸

Section 4 of the Act creates Code section 35-1-13 to provide that when law enforcement agencies receive reports from Georgia residents of identity fraud, the agency shall prepare an incident report and transmit that report to the Governor's Office of Consumer Affairs identity fraud repository.⁷⁹

Section 5 of the Act amends Code section 40-5-104, relating to motor vehicles and traffic, providing that any person who knowingly makes a false statement in an application for an identification card shall be guilty of a violation of Code section 16-10-20.⁸⁰

Section 6 of the Act amends Code section 40-5-125.⁸¹ The section now provides that it is a misdemeanor to lend an identification card or driver's license to another person, to display or represent as one's own any driver's license or identification card not issued to him or her, or to knowingly making any false statement in an application for a driver's license.⁸² Any such acts also violate Code section 16-10-20.⁸³

Section 7 of the Act amends Code section 40-5-179 relating to penalties for use of identification cards for persons with disabilities.⁸⁴

Section 8 of the Act creates Chapter 15 of the Georgia Code.⁸⁵ Code section 10-15-1 defines "business," "customer," "discard," "dispose," "personal information," and "record."⁸⁶ Code section 10-

77. O.C.G.A. § 16-9-132 (Supp. 2002).

78. Compare 1998 Ga. Laws 270, § 7, at 275 (formerly found at O.C.G.A. § 16-4-3(9)(A) (Supp. 2001)), with O.C.G.A. § 16-14-3(9)(A) (Supp. 2002).

79. O.C.G.A. § 35-1-13 (Supp. 2002).

80. Compare 1990 Ga. Laws 2048, § 4, at 2216 (formerly found at O.C.G.A. § 40-5-104 (Supp. 2001)), with O.C.G.A. § 40-5-104 (Supp. 2002).

81. O.C.G.A. § 40-5-125 (Supp. 2002).

82. *Id.*

83. Compare 2000 Ga. Laws 951, § 5-50, at 1006-07 (formerly found at O.C.G.A. § 40-5-125 (Supp. 2001)), with O.C.G.A. § 40-5-125 (Supp. 2002).

84. Compare 1995 Ga. Laws 1302, § 7, at 1323 (formerly found at O.C.G.A. § 40-5-179 (Supp. 2001)), with O.C.G.A. § 40-5-179 (Supp. 2002).

85. See 2002 Ga. Laws. 551, § 8, at 560.

86. O.C.G.A. § 10-15-1 (Supp. 2002).

15-2 provides that a business must take reasonable actions to ensure that no unauthorized person will have access to the personal information contained in the customer's record prior to the record's destruction.⁸⁷ Code section 10-15-3 is reserved.⁸⁸ Code section 10-15-4 provides a fine of \$500 for each customer's record that contains personal information that is wrongfully disposed or discarded, setting a cap at \$10,000.⁸⁹

Section 9 of the Act provides that Sections 1 through 7 and 10 shall become effective immediately upon its approval by the Governor, but Section 8 will become effective on July 1, 2002.⁹⁰

Opposition to SB 475

Senator Jack Hill of the 4th District expressed three concerns that the business community had with the legislation.⁹¹ First, the business community felt the \$1,000 fine per occurrence was too high.⁹² Second, the business community wanted language ensuring that remedies would be limited to actual damage, and not pain and suffering.⁹³ However, the final version of the bill removed any business liability to customers.⁹⁴ Third, the business community wanted a cap on the damages for negligently or intentionally discarding customer personal information.⁹⁵ The original version of the bill contained no cap on damages.⁹⁶ The business community originally proposed a \$10,000 cap, which was included in the final version.⁹⁷

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87. O.C.G.A. § 10-15-2 (Supp. 2002).

88. O.C.G.A. § 10-15-3 (Supp. 2002).

89. O.C.G.A. § 10-15-4 (Supp. 2002).

90. 2002 Ga. Laws 551, §9, at 562.

91. Senate Audio, *supra* note 1.

92. *Id.*; see also Telephone Interview with Bert Fridlin, Ga. State Dir., Nat'l Fed'n of Indep. Bus. (Apr. 30, 2002).

93. *Id.*

94. Compare SB 475 (HCS), 2002 Ga. Gen. Assem., with SB 475 (HCSFA), 2002 Ga. Gen. Assem.

95. Senate Audio, *supra* note 1.

96. SB 475, as introduced, 2002 Ga. Gen. Assem.

97. See Senate Audio, *supra* note 1; compare SB 475 (SCSFA), 2002 Ga. Gen. Assem., with SB 475 (HCSFA), 2002 Ga. Gen. Assem.