

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2488

FISCAL  
NOTE

BY DELEGATE WILLIAMS

[Introduced January 17, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §46A-6L-101 of the Code of West Virginia, 1931, as amended; and  
2 to amend said code by adding thereto a new section, designated §46A-6L-104a, all  
3 relating to the theft of consumer identity protections; including protection for theft of identity  
4 information of persons 60 years of age or older or individuals under 18 years of age;  
5 adding definitions; providing that a report to law-enforcement agency is prima facie  
6 evidence of identity theft; and providing both misdemeanor and felony penalties for  
7 violations.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 6L. THEFT OF CONSUMER IDENTITY PROTECTIONS.**

### **§46A-6L-101. Definitions.**

1 For the purposes of this article, the following terms have the following meanings:

2 (1) "Person" means any individual, partnership, corporation, trust, estate, cooperative,  
3 association, government or governmental subdivision or agency or other entity.

4 (2) "Consumer" means an individual.

5 (3) "Consumer-reporting agency" means any entity which, for monetary fees, dues or on  
6 a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling  
7 or evaluating consumer credit information or other information on consumers for the purpose of  
8 furnishing credit reports to third parties.

9 (4) "Credit card" has the same meaning as in section 103 of the Truth in Lending Act, 15  
10 U.S.C. § 1601 et. seq.

11 ~~(4)~~ (5) "Credit report" means any written, oral or other communication of any information  
12 by a consumer-reporting agency bearing on a consumer's credit worthiness, credit standing,  
13 credit capacity, character, general reputation, personal characteristics or mode of living which is  
14 used or expected to be used or collected, in whole or in part, for the purpose of serving as a factor  
15 in establishing the consumer's eligibility for:

16 (A) Credit or insurance to be used primarily for a personal, family, household or agricultural

17 purpose, except that nothing in this article authorizes or prohibits the use of credit evaluations,  
18 credit scoring or insurance scoring in the underwriting of personal lines of property or casualty  
19 insurance;

20 (B) Employment purposes; or

21 (C) Any other purpose authorized under Section 15 U.S.C. §1681b as in effect on the  
22 effective date of this article.

23 (6) "Document" means any writing, including, but not limited to, birth certificate, Social  
24 Security card, driver's license, nondriver government-issued identification card, baptismal  
25 certificate, access device card, employee identification card, school identification card or other  
26 identifying information recorded by any other method, including, but not limited to, information  
27 stored on any computer, computer disc, computer printout, computer system, or part thereof, or  
28 by any other mechanical or electronic means.

29 (7) "Identifying information" means any document, photographic, pictorial or computer  
30 image of another person, or any fact used to establish identity, including, but not limited to, a  
31 name, birth date, Social Security number, driver's license number, nondriver governmental  
32 identification number, telephone number, checking account number, savings account number,  
33 student identification number, employee or payroll number or electronic signature.

34 ~~(5)~~ (8) "Security freeze" means a notice, at the request of the consumer and subject to  
35 certain exceptions, that prohibits the consumer-reporting agency from releasing all or any part of  
36 the consumer's credit report or any information derived from it without the express authorization  
37 of the consumer.

38 ~~(6)~~ (9) "Reviewing the account" or "account review" includes activities related to account  
39 maintenance, monitoring, credit line increases and account upgrades and enhancements.

**§46A-6L-104a. Criminal violations; penalties; report to law enforcement prima facie  
evidence of identity theft.**

1 (a) Any person who possesses or uses, through any means, identifying information of

2 another person without the consent of that other person to further any unlawful purpose for  
3 personal financial gain commits the offense of identity theft of another person is guilty of a  
4 misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in jail  
5 not more than one year, or both fined and confined.

6 (b) Each time a person possesses or uses identifying information in violation of subsection  
7 (a) of this section constitutes a separate offense under this section.

8 (c) Any person who commits an offense under subsection (a) of this section and the victim  
9 of the offense is 60 years of age or older, a care-dependent person or an individual under 18  
10 years of age, is guilty of a felony and, upon conviction thereof, shall be fined not more than  
11 \$10,000 or imprisoned in a state correctional facility not less than five nor more than 10 years, or  
12 both fined and imprisoned.

13 A report to a law-enforcement agency by a person stating that the person's identifying  
14 information has been lost or stolen or that the person's identifying information has been used  
15 without the person's consent is prima facie evidence that the identifying information was  
16 possessed or used without the person's consent.

NOTE: The purpose of this bill is to include protection for theft of identity information of persons 60 years of age or older or individuals under 18 years of age. The bill; adds definitions; provides that a report to law-enforcement agency that a person's identifying information has been lost or stolen is prima facie evidence of identity theft. And the bill provides both misdemeanor and felony penalties for violations.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.