WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 2571

By Delegate Williams

[Introduced February 17, 2021; Referred to the Committee on the Judiciary]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 6L. THEFT OF CONSUMER IDENTITY PROTECTIONS.

§46A-6L-101. Definitions.

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

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

(2) “Consumer” means an individual.

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

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

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

(A) Credit or insurance to be used primarily for a personal, family, household or agricultural purpose, except that nothing in this article authorizes or prohibits the use of credit evaluations, credit scoring or insurance scoring in the underwriting of personal lines of property or casualty insurance;

(B) Employment purposes; or

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

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

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

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

~~(6)~~ (9) “Reviewing the account” or “account review” includes activities related to account 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.

(a) Any person who possesses or uses, through any means, identifying information of another person without the consent of that other person to further any unlawful purpose for personal financial gain commits the offense of identity theft of another person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or confined in jail not more than one year, or both fined and confined.

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

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

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