

As Reported by the Senate Judiciary--Criminal Justice Committee

126th General Assembly

Regular Session

2005-2006

Sub. H. B. No. 48

**Representatives Hughes, Aslanides, Combs, C. Evans, D. Evans, Faber,
Flowers, Gibbs, Hoops, Kearns, Latta, McGregor, Oelslager, Schaffer,
J. Stewart, Taylor, Trakas, Webster, DeGeeter, Otterman, Perry, Gilb, Seaver,
Willamowski, D. Stewart, Barrett, Brown, Buehrer, Calvert, Carano, Cassell,
Chandler, Collier, Distel, Driehaus, Garrison, Hagan, Harwood, Martin,
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Walcher, Widener, Williams, Wolpert, Yuko
Senators Clancy, Jordan, Austria, Grendell, Schuring, Zurz, Goodman**

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A B I L L

To amend section 2913.49 and to enact section 109.94 1
of the Revised Code to increase the penalty for 2
identity fraud in certain circumstances, including 3
when it is committed against an elderly person or 4
disabled adult, to modify the affirmative defenses 5
available for that offense, and to create the 6
Identity Fraud Passport. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2913.49 be amended and section 109.94 8
of the Revised Code be enacted to read as follows: 9

Sec. 109.94. (A) The attorney general, in cooperation with 10
any law enforcement agency, may issue an identity fraud passport 11
to a person who is a victim in this state of identity fraud or 12
identity fraud against an elderly person or disabled adult and has 13

filed a police report with any law enforcement agency citing that
the person is a victim of a violation of section 2913.49 of the
Revised Code. Once a police report of that nature has been filed
with any law enforcement agency, the victim may apply for an
identity fraud passport through any law enforcement agency. The
law enforcement agency shall send a copy of the police report and
the application for an identity fraud passport to the attorney
general. The attorney general shall process the application and
supporting police report and may issue the victim of identity
fraud or identity fraud against an elderly person or disabled
adult an identity fraud passport in the form of a card or
certificate.

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(B)(1) A victim of identity fraud or identity fraud against
an elderly person or disabled adult may present the victim's
identity fraud passport issued by the attorney general in
accordance with division (A) of this section to both of the
following:

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(a) A law enforcement agency to help prevent the victim's
arrest or detention for offenses committed by someone other than
the victim who is using the victim's identity;

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(b) Any of the victim's creditors to aid in the creditors'
investigation and establishment of whether fraudulent charges were
made against accounts in the victim's name or whether accounts
were opened using the victim's identity.

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(2) Acceptance of the identity fraud passport presented by
the victim to a law enforcement agency or creditors pursuant to
division (B)(1) of this section is at the discretion of the law
enforcement agency or creditor. A law enforcement agency or
creditor may consider the surrounding circumstances and available
information regarding the offense of identity fraud pertaining to
the victim.

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(C)(1) Subject to its use for statistical purposes pursuant to division (C)(2) of this section, an application made with the attorney general pursuant to division (A) of this section, including any supporting documentation, is not a public record pursuant to section 149.43 of the Revised Code. The attorney general may provide access to the applications and supporting documentation filed with the attorney general's office to other criminal justice agencies in this or another state.

(2) The attorney general shall maintain statistics with respect to the number of applications for identity fraud passports submitted, and the number of identity fraud passports issued, pursuant to division (A) of this section. Not later than the first day of November in each year, the attorney general shall submit a statistical report to the governor, the president and minority leader of the senate, and the speaker and minority leader of the house of representatives indicating the number of applications for identity fraud passports submitted, and the number of identity fraud passports issued, pursuant to division (A) of this section in the previous fiscal year. Nothing in the statistics maintained or the statistical report submitted by the attorney general pursuant to this division shall identify, or enable the identification of, any individual who applied for, was issued, or was denied an identity fraud passport. The statistics and the statistical report are public records for the purpose of section 149.43 of the Revised Code.

Sec. 2913.49. (A) As used in this section, "personal identifying information" includes, but is not limited to, the following: the name, address, telephone number, driver's license, driver's license number, commercial driver's license, commercial driver's license number, state identification card, state identification card number, social security card, social security

number, birth certificate, place of employment, employee 76
identification number, mother's maiden name, demand deposit 77
account number, savings account number, money market account 78
number, mutual fund account number, other financial account 79
number, personal identification number, password, or credit card 80
number of a living or dead individual. 81

(B) No person, without the express or implied consent of the 82
other person, shall use, obtain, or possess any personal 83
identifying information of another person with intent to do either 84
of the following: 85

(1) Hold the person out to be the other person; 86

(2) Represent the other person's personal identifying 87
information as the person's own personal identifying information. 88

(C) No person shall create, obtain, possess, or use the 89
personal identifying information of any person with the intent to 90
aid or abet another person in violating division (B) of this 91
section. 92

(D) No person, with intent to defraud, shall permit another 93
person to use the person's own personal identifying information. 94

(E) No person who is permitted to use another person's 95
personal identifying information as described in division (D) of 96
this section shall use, obtain, or possess the other person's 97
personal identifying information with intent to defraud any person 98
by doing any act identified in division (B)(1) or (2) of this 99
section. 100

(F)(1) It is an affirmative defense to a charge under 101
division (B) of this section that the person using the personal 102
identifying information is acting in accordance with a legally 103
recognized guardianship or conservatorship or as a trustee or 104
fiduciary. 105

(2) It is an affirmative defense to a charge under division 106
(B), (C), (D), or (E) of this section that either of the following 107
applies: 108

(a) The person or entity using, obtaining, possessing, or 109
creating the personal identifying information or permitting it to 110
be used is a law enforcement agency, authorized fraud personnel, 111
or a representative of or attorney for a law enforcement agency or 112
authorized fraud personnel and is using, obtaining, possessing, or 113
creating the personal identifying information or permitting it to 114
be used, with prior consent given as specified in this division, 115
in a bona fide investigation, an information security evaluation, 116
a pretext calling evaluation, or a similar matter. The prior 117
consent required under this division shall be given by the person 118
whose personal identifying information is being used, obtained, 119
possessed, or created or is being permitted to be used or, if the 120
person whose personal identifying information is being used, 121
obtained, possessed, or created or is being permitted to be used 122
is deceased, by that deceased person's executor, or a member of 123
that deceased person's family, or that deceased person's attorney. 124
The prior consent required under this division may be given orally 125
or in writing by the person whose personal identifying information 126
is being used, obtained, possessed, or created or is being 127
permitted to be used or that person's executor, or family member, 128
or attorney. 129

(b) The personal identifying information was obtained, 130
possessed, ~~or~~ used, created, or permitted to be used for a lawful 131
purpose, provided that division (F)(2)(b) of this section does not 132
apply if the person or entity using, obtaining, possessing, or 133
creating the personal identifying information or permitting it to 134
be used is a law enforcement agency, authorized fraud personnel, 135
or a representative of or attorney for a law enforcement agency or 136
authorized fraud personnel that is using, obtaining, possessing, 137

or creating the personnel identifying information or permitting it 138
to be used in an investigation, an information security 139
evaluation, a pretext calling evaluation, or similar matter. 140

(G) It is not a defense to a charge under this section that 141
the person whose personal identifying information was obtained, 142
possessed, ~~or~~ used, created, or permitted to be used was deceased 143
at the time of the offense. 144

(H)(1) If ~~the~~ an offender commits a violation of division 145
(B), (D), or (E) of this section and the violation occurs as part 146
of a course of conduct involving other violations of division (B), 147
(D), or (E) of this section or violations of, attempts to violate, 148
conspiracies to violate, or complicity in violations of division 149
(C) of this section or section 2913.02, 2913.04, 2913.11, 2913.21, 150
2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code, the 151
court, in determining the degree of the offense pursuant to 152
division (I) of this section, may aggregate all credit, property, 153
or services obtained or sought to be obtained by the offender and 154
all debts or other legal obligations avoided or sought to be 155
avoided by the offender in the violations involved in that course 156
of conduct. The course of conduct may involve one victim or more 157
than one victim. 158

(2) If ~~the~~ an offender commits a violation of division (C) of 159
this section and the violation occurs as part of a course of 160
conduct involving other violations of division (C) of this section 161
or violations of, attempts to violate, conspiracies to violate, or 162
complicity in violations of division (B), (D), or (E) of this 163
section or section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 164
2913.42, 2913.43, or 2921.13 of the Revised Code, the court, in 165
determining the degree of the offense pursuant to division (I) of 166
this section, may aggregate all credit, property, or services 167
obtained or sought to be obtained by the person aided or abetted 168
and all debts or other legal obligations avoided or sought to be 169

avoided by the person aided or abetted in the violations involved 170
in that course of conduct. The course of conduct may involve one 171
victim or more than one victim. 172

(I)(1) Whoever violates this section is guilty of identity 173
fraud. ~~Except~~ 174

(2) ~~Except~~ as otherwise provided in this division or division 175
(I)(3) of this section, identity fraud is a ~~misdemeanor~~ felony of 176
the ~~first~~ fifth degree. If the value of the credit, property, 177
services, debt, or other legal obligation involved in the 178
violation or course of conduct is five hundred dollars or more and 179
is less than five thousand dollars, except as otherwise provided 180
in division (I)(3) of this section, identity fraud is a felony of 181
the fourth degree. If the value of the credit, property, services, 182
debt, or other legal obligation involved in the violation or 183
course of conduct is five thousand dollars or more and is less 184
than one hundred thousand dollars, except as otherwise provided in 185
division (I)(3) of this section, identity fraud is a felony of the 186
third degree. If the value of the credit, property, services, 187
debt, or other legal obligation involved in the violation or 188
course of conduct is one hundred thousand dollars or more, except 189
as otherwise provided in division (I)(3) of this section, identity 190
fraud is a felony of the second degree. 191

(3) If the victim of the offense is an elderly person or 192
disabled adult, a violation of this section is identity fraud 193
against an elderly person or disabled adult. Except as otherwise 194
provided in this division, identity fraud against an elderly 195
person or disabled adult is a felony of the fifth degree. If the 196
value of the credit, property, services, debt, or other legal 197
obligation involved in the violation or course of conduct is five 198
hundred dollars or more and is less than five thousand dollars, 199
identity fraud against an elderly person or disabled adult is a 200
felony of the third degree. If the value of the credit, property, 201

<u>services, debt, or other legal obligation involved in the</u>	202
<u>violation or course of conduct is five thousand dollars or more</u>	203
<u>and is less than one hundred thousand dollars, identity fraud</u>	204
<u>against an elderly person or disabled adult is a felony of the</u>	205
<u>second degree. If the value of the credit, property, services,</u>	206
<u>debt, or other legal obligation involved in the violation or</u>	207
<u>course of conduct is one hundred thousand dollars or more,</u>	208
<u>identity fraud against an elderly person or disabled adult is a</u>	209
<u>felony of the first degree.</u>	210
Section 2. That existing section 2913.49 of the Revised Code	211
is hereby repealed.	212