



Ohio Legislative Service Commission

Bill Analysis

David M. Gold

H.B. 471

130th General Assembly
(As Introduced)

Reps. Dovilla and Blair, Terhar, J. Adams, Retherford, Johnson, Grossman

BILL SUMMARY

- Expressly provides for a civil cause of action based on most types of criminal identity fraud and for injunctive relief in such a case.
- Requires that a civil action based on most types of identity fraud be brought within five years from the date on which the identity of the offender was discovered or reasonably should have been discovered.
- Provides that in a civil action based on most types of identity fraud, the plaintiff may recover damages up to \$5,000 for each violation or three times the amount of actual damages, whichever is greater, and reasonable attorney's fees.
- Raises the level of the offenses of identity fraud, theft, and securing writings by deception one degree if the victim is an active duty member of the armed forces or the spouse of an active duty member.
- Requires the consolidation of criminal theft or identity fraud cases involving a victim who is an active duty service member or spouse of an active duty service member when the offender commits the offense in the offender's same employment, capacity, or relationship to another.
- Permits the consolidation of criminal theft or identity fraud cases involving a victim who is an active duty service member or spouse of an active duty service member pursuant to a scheme or course of conduct.
- Modifies the dollar-value categories on which findings made by the trier of fact must be based in certain theft, identity fraud, and other criminal cases.

CONTENT AND OPERATION

Identity fraud – civil

Cause of action

The bill expressly states that an owner of the identifying information involved in the commission of identity fraud who is injured in person or property by the commission of the offense has a civil action against the offender. The types of identity fraud affected by this provision are described in paragraphs (1), (3), and (4) under "**Statute of limitations**," below. The bill further provides that the owner may bring a civil action to enjoin or restrain future acts that would constitute a commission of such identity fraud.¹

Current law creates a general civil cause of action for injury to person or property by a criminal act, but does not contain a cause of action expressly for identity fraud.²

Statute of limitations

The bill extends the period within which a civil action may be brought for an injury to person or property resulting from the commission of most types of identity fraud. Identity fraud, which is a felony, consists of any of the following:³

(1) Using, obtaining, or possessing any personal identifying information of another person, without that person's express or implied consent, with intent to hold oneself out to be the other person or to represent the other person's personal identifying information as one's own personal identifying information;

(2) Creating, obtaining, possessing, or using the personal identifying information of any person with the intent to aid or abet another person in committing the acts described in paragraph (1);

(3) With intent to defraud, permitting another person to use one's own personal identifying information;

¹ R.C. 2913.49(J).

² R.C. 2307.60(A)(1), not in the bill.

³ R.C. 2913.49(B), (C), (D), and (E).



(4) With intent to defraud by doing an act described in paragraph (1), using, obtaining, or possessing another person's personal identifying information that one has permission to use.

A civil action based on a criminal act is a tort action.⁴ Under current law, a tort action based on identity fraud must be brought within five years after the cause of action accrues.⁵ A cause of action in tort usually accrues when the wrongful act is committed.⁶ Under the bill, a tort action based on identity fraud as described in paragraph (1), (3), or (4) must be brought within five years from the date on which the identity of the offender was discovered or reasonably should have been discovered.⁷

Damages

Traditionally, under the common law, the plaintiff in a tort action may seek compensatory (or "actual") damages and in some cases may also recover punitive damages.⁸ The general rule may be modified by statute. The bill provides that in an action based on identity fraud as described in paragraph (1), (3), or (4) under "**Statute of limitations**," the plaintiff may recover damages up to \$5,000 for each violation or three times the amount of actual damages, whichever is greater, and reasonable attorney's fees.⁹

Identity fraud and theft offenses against service members and spouses

Identity fraud – criminal

Identity fraud is normally a felony of the fifth degree, but the level of the offense increases with the value of the credit, property, services, debt, or other legal obligation involved, as follows:¹⁰

(1) Felony of the fourth degree if the value is \$1,000 or more but less than \$7,500;

⁴ R.C. 2307.60(B)(1)(a), not in the bill.

⁵ R.C. 2305.09(C), not in the bill.

⁶ *Lynch v. Dial Fin. Co. of Ohio No. 1, Inc.*, 101 Ohio App.3d 742, *appeal dismissed*, 73 Ohio St.3d 1410 (1995).

⁷ R.C. 2305.112.

⁸ *Mogle v. Black*, 3 Ohio Cir. Dec. 27 (1890), *aff'd*, 51 Ohio St. 582 (1894); *see* R.C. 2315.21.

⁹ R.C. 2307.611.

¹⁰ R.C. 2913.49(I)(3).



(2) Felony of the third degree if the value is \$7,500 or more but less than \$150,000;

(3) Felony of the second degree if the value is \$150,000 or more.

Under current law, identity fraud is an offense of the next highest degree if the victim is an elderly person or disabled adult. The bill similarly raises the level of the offense if the victim is an active duty service member or the service member's spouse, and it refers to active duty service members, their spouses, elderly persons, and disabled adults collectively as protected classes. The bill defines "active duty service member" as a uniformed member ordered to or performing active duty under federal law in the United States Army, Marine Corps, Navy, Air Force, or Coast Guard, a member of a reserve component of any of those services on active duty or reserve duty, and any individual performing full-time National Guard duty under federal law.¹¹

Theft

Theft is normally a misdemeanor of the first degree, but the level of the offense is higher under certain circumstances. Under current law, theft is at least a felony of the fifth degree if the victim is an elderly person or disabled adult and increases if in addition the value of the stolen property or services exceeds specified thresholds, as follows:¹²

(1) Felony of the fourth degree if the value is \$1,000 or more but less than \$7,500;

(2) Felony of the third degree if the value is \$7,500 or more but less than \$37,500;

(3) Felony of the second degree if the value is \$37,500 or more but less than \$150,000;

(4) Felony of the first degree if the value is \$150,000 or more.

The bill applies these higher offense levels when the victim is an active duty service member or the service member's spouse, and it refers to active duty service members, their spouses, elderly persons, and disabled adults collectively as protected classes.¹³

¹¹ R.C. 2913.49(I)(3) and 2913.01(NN).

¹² R.C. 2913.02(B)(2) and (3).

¹³ R.C. 2913.02(B)(3).

Securing writings by deception

The offense of securing writings by deception (causing another to execute any writing that disposes of or encumbers property or by which a pecuniary obligation is incurred) is normally a misdemeanor of the first degree or a felony of the fifth, fourth, or third degree, depending on the value of the property involved or the obligation incurred. However, the level of the offense is one degree higher in each instance if the victim is an elderly person or disabled adult. The bill retains these increases and also raises the level of the offense one degree if the victim is an active duty service member or spouse of an active duty service member.¹⁴

Consolidated theft and identity fraud cases

Mandatory consolidation

Under current law, when a series of theft offenses, or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of the theft statute, identity fraud statute, or certain other criminal statutes involving a victim who is an elderly person or a disabled adult, is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses must be tried as a single offense. The value of the property or services involved in the series of offenses is aggregated in determining the value for purposes of the factual findings described below under "**Factual findings in theft cases.**"

The bill retains these provisions and also requires that a series of offenses under the theft statute, or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of the theft or identity fraud statutes involving a victim who is an active duty service member or spouse of an active duty service member committed by the offender in the offender's same employment, capacity, or relationship to another, all be tried as a single offense. The existing rule of aggregation of value applies.¹⁵

Discretionary consolidation

Under current law, if an offender commits a series of offenses under the theft statute that involves a common course of conduct to defraud multiple victims, all of the offenses may be tried as a single offense. If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of the theft statute, identity fraud statute, or certain other

¹⁴ R.C. 2913.43.

¹⁵ R.C. 2913.61(C)(1).



criminal statutes, whether committed against one victim or more than one victim, involving a victim who is an elderly person or disabled adult, pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved in the series of offenses is aggregated in determining the value for purposes of the factual findings described below under "**Factual findings in theft cases.**"

The bill retains these provisions and also permits the trial as a single offense the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of the theft or identity fraud statute, whether committed against one victim or more than one victim, involving a victim who is an active duty service member or spouse of an active duty service member pursuant to a scheme or course of conduct. In such a case, the rule of aggregation applies.¹⁶

Factual findings in theft cases

The bill modifies the statute governing factual findings in criminal theft cases and in cases involving victims who are elderly persons or disabled adults in which solicitors for charities commit deceptive acts or practices. The Revised Code requires the finder of fact to determine the value of the property or services involved as of the time of the offense and, if a guilty verdict is returned, to return the finding of value as part of the verdict. However, if the value of the property or services involved is \$1,000 or more, the finder of fact need not find the exact value. It is sufficient if the finding is to the effect that the value of the property or services involved was one of the following, whichever is relevant regarding the offense:¹⁷

- \$1,000 or more and less than \$7,500 (separated by the bill into two categories, *\$1,000 or more* and *\$1,000 or more and less than \$7,500*);
- \$1,500 or more and less than \$7,500 (a new category created by the bill);
- \$7,500 or more and less than \$37,500 (listed twice in current law, with the second instance deleted by the bill);
- \$7,500 or more and less than \$150,000;
- \$37,500 or more and less than \$150,000 (listed twice in current law, with the second instance changed by the bill to \$37,500 or more);

¹⁶ R.C. 2913.61(C)(2).

¹⁷ R.C. 2913.61(A).



- \$150,000 or more;
- \$150,000 or more and less than \$750,000;
- \$750,000 or more and less than \$1,500,000;
- \$1,500,000 or more.

HISTORY

ACTION	DATE
Introduced	03-11-14

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