

HOUSE BILL 791

By Matlock

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 14 and Title 47, Chapter 18, relative to
identity theft.

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

SECTION 1. Tennessee Code Annotated, Section 39-14-150, is amended by deleting subsections (b) through (e) in their entirety and substituting instead the following:

(b) A person commits the offense of identity theft who knowingly obtains, possesses, buys, or uses, the personal identifying information of another:

(1) With the intent to commit any unlawful act including, but not limited to, obtaining or attempting to obtain credit, goods, services, employment or medical information in the name of such other person; and

(2)

(A) Without the consent of such other person; or

(B) Without the lawful authority to obtain, possess, buy or use that identifying information.

(3) For purposes of the offense of identity theft, an activity involving a possession, use or transfer that is permitted by the Tennessee Financial Records Privacy Act, codified in title 45, chapter 10; Title V of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102; or the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactional Act, (15 U.S.C. § 1681 et seq.) shall not be considered an "unlawful act".

(c)

(1) A person commits the offense of identity theft trafficking who knowingly sells, transfers, gives, trades, loans or delivers, or possesses with the intent to sell, transfer, give, trade, loan or deliver, the personal identifying information of another:

(A) With the intent that the information be used by someone else to commit any unlawful act including, but not limited to, obtaining or attempting to obtain credit, goods, services, employment or medical information in the name of the other person; or

(B) Under circumstances such that the person should have known that the identifying information would be used by someone else to commit any unlawful act including, but not limited to, obtaining or attempting to obtain credit, goods, services, employment or medical information in the name of the other person; and

(C) The person does not have the consent of the person who is identified by the information to sell, transfer, give, trade, loan or deliver, or possess with the intent to sell, transfer, give, trade, loan or deliver, that information; and

(D) The person does not have lawful authority to sell, transfer, give, trade, loan or deliver, or possess with the intent to sell, transfer, give, loan or deliver, the personal identifying information.

(2) For purposes of the offense of identity theft trafficking, an activity involving a possession, use or transfer that is permitted by the Tennessee Financial Records Privacy Act, codified in title 45, chapter 10; Title V of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102; or the Fair Credit Reporting Act,

as amended by the Fair and Accurate Credit Transactional Act, (15 U.S.C. § 1681 et seq.) shall not be considered an "unlawful act".

(d) In a prosecution under subsection (c), the trier of fact may infer from the defendant's simultaneous possession of the personal identifying information of five (5) or more different individuals that the defendant possessed the personal identifying information with the intent to sell, transfer, give, trade, loan or deliver the information. However, if the defendant had the consent of one (1) or more of the individuals to possess the personal identifying information of that individual, the consenting individual shall not be counted in determining whether an inference of possession for sale may be drawn by the trier of fact.

(e)

(1) As used in subsections (a) through (e) of this section:

(A) "Employment" means any work engaged in for compensation in money or other valuable consideration and for which a person paying the compensation for the work performed would be required to file a W-2 wage and tax statement with the federal internal revenue service; and

(B) "Personal identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a living, dead or fictitious individual, including:

(i) Name, social security number, date of birth, official state or government issued driver license or identification number, alien registration number, passport number, employer or taxpayer identification number;

(ii) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(iii) Unique electronic identification number, address, routing code or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data; or

(iv) Telecommunication identifying information or access device.

(2)

(A) For purposes of subsections (b) and (c), when “other person” is used, it shall include any living, dead or fictitious person.

(B) For purposes of subdivision (b)(2)(A) and (c)(1)(C), a person has not given consent if the person is no longer living and prior to such person’s death, the person did not give consent, or the person is a fictitious person.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.