

CERTIFICATION OF ENROLLMENT

SENATE BILL 5878

60th Legislature
2008 Regular Session

Passed by the Senate March 10, 2008
YEAS 46 NAYS 0

President of the Senate

Passed by the House March 4, 2008
YEAS 95 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5878** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5878

AS AMENDED BY THE HOUSE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Senators Hargrove, Kline, Eide, Marr, Shin, Jacobsen, Kohl-
Welles, Rasmussen and Keiser

Read first time 02/05/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to identity theft; amending RCW 9.35.001 and
2 9.35.020; adding a new section to chapter 9.35 RCW; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature enacts sections 3 and 4 of
6 this act to expressly reject the interpretation of *State v. Leyda*, 157
7 Wn.2d 335, 138 P.3d 610 (2006), which holds that the unit of
8 prosecution in identity theft is any one act of either knowingly
9 obtaining, possessing, using, or transferring a single piece of
10 another's identification or financial information, including all
11 subsequent proscribed conduct with that single piece of identification
12 or financial information, when the acts are taken with the requisite
13 intent. The legislature finds that proportionality of punishment
14 requires the need for charging and punishing for obtaining, using,
15 possessing, or transferring any individual person's identification or
16 financial information, with the requisite intent. The legislature
17 specifically intends that each individual who obtains, possesses, uses,
18 or transfers any individual person's identification or financial

1 information, with the requisite intent, be classified separately and
2 punished separately as provided in chapter 9.94A RCW.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.35 RCW
4 to read as follows:

5 (1) A person who has learned or reasonably suspects that his or her
6 financial information or means of identification has been unlawfully
7 obtained, used by, or disclosed to another, as described in this
8 chapter, may file an incident report with a law enforcement agency, by
9 contacting the local law enforcement agency that has jurisdiction over
10 his or her actual residence, place of business, or place where the
11 crime occurred. The law enforcement agency shall create a police
12 incident report of the matter and provide the complainant with a copy
13 of that report, and may refer the incident report to another law
14 enforcement agency.

15 (2) Nothing in this section shall be construed to require a law
16 enforcement agency to investigate reports claiming identity theft. An
17 incident report filed under this section is not required to be counted
18 as an open case for purposes of compiling open case statistics.

19 **Sec. 3.** RCW 9.35.001 and 1999 c 368 s 1 are each amended to read
20 as follows:

21 The legislature finds that means of identification and financial
22 information ~~((is))~~ are personal and sensitive information such that if
23 unlawfully obtained, possessed, used, or transferred by others may
24 ~~((do))~~ result in significant harm to a person's privacy, financial
25 security, and other interests. The legislature finds that unscrupulous
26 persons find ever more clever ways, including identity theft, to
27 improperly obtain ~~((and))~~, possess, use, and transfer another person's
28 means of identification or financial information. The legislature
29 intends to penalize ~~((unscrupulous people))~~ for each unlawful act of
30 improperly obtaining, possessing, using, or transferring means of
31 identification or financial information of an individual person. The
32 unit of prosecution for identity theft by use of a means of
33 identification or financial information is each individual unlawful use
34 of any one person's means of identification or financial information.
35 Unlawfully obtaining, possessing, or transferring each means of
36 identification or financial information of any individual person, with

1 the requisite intent, is a separate unit of prosecution for each victim
2 and for each act of obtaining, possessing, or transferring of the
3 individual person's means of identification or financial information.

4 **Sec. 4.** RCW 9.35.020 and 2004 c 273 s 2 are each amended to read
5 as follows:

6 (1) No person may knowingly obtain, possess, use, or transfer a
7 means of identification or financial information of another person,
8 living or dead, with the intent to commit, or to aid or abet, any
9 crime.

10 (2) Violation of this section when the accused or an accomplice
11 ~~((uses the victim's means of identification or financial information))~~
12 violates subsection (1) of this section and obtains ~~((an aggregate~~
13 ~~total of))~~ credit, money, goods, services, or anything else of value in
14 excess of one thousand five hundred dollars in value shall constitute
15 identity theft in the first degree. Identity theft in the first degree
16 is a class B felony punishable according to chapter 9A.20 RCW.

17 ~~(3) ((Violation of this section when the accused or an accomplice~~
18 ~~uses the victim's means of identification or financial information and~~
19 ~~obtains an aggregate total of credit, money, goods, services, or~~
20 ~~anything else of value that is less than one thousand five hundred~~
21 ~~dollars in value, or when no credit, money, goods, services, or~~
22 ~~anything of value is obtained shall constitute identity theft in the~~
23 ~~second degree.))~~ A person is guilty of identity theft in the second
24 degree when he or she violates subsection (1) of this section under
25 circumstances not amounting to identity theft in the first degree.
26 Identity theft in the second degree is a class C felony punishable
27 according to chapter 9A.20 RCW.

28 (4) Each crime prosecuted under this section shall be punished
29 separately under chapter 9.94A RCW, unless it is the same criminal
30 conduct as any other crime, under RCW 9.94A.589.

31 (5) Whenever any series of transactions involving a single person's
32 means of identification or financial information which constitute
33 identity theft would, when considered separately, constitute identity
34 theft in the second degree because of value, and the series of
35 transactions are a part of a common scheme or plan, then the
36 transactions may be aggregated in one count and the sum of the value of

1 all of the transactions shall be the value considered in determining
2 the degree of identity theft involved.

3 (6) Every person who, in the commission of identity theft, shall
4 commit any other crime may be punished therefor as well as for the
5 identity theft, and may be prosecuted for each crime separately.

6 (7) A person who violates this section is liable for civil damages
7 of one thousand dollars or actual damages, whichever is greater,
8 including costs to repair the victim's credit record, and reasonable
9 attorneys' fees as determined by the court.

10 ~~((+5))~~ (8) In a proceeding under this section, the crime will be
11 considered to have been committed in any locality where the person
12 whose means of identification or financial information was appropriated
13 resides, or in which any part of the offense took place, regardless of
14 whether the defendant was ever actually in that locality.

15 ~~((+6))~~ (9) The provisions of this section do not apply to any
16 person who obtains another person's driver's license or other form of
17 identification for the sole purpose of misrepresenting his or her age.

18 ~~((+7))~~ (10) In a proceeding under this section in which a person's
19 means of identification or financial information was used without that
20 person's authorization, and when there has been a conviction, the
21 sentencing court may issue such orders as are necessary to correct a
22 public record that contains false information resulting from a
23 violation of this section.

--- END ---