~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 20, 2013

**H. 3248**

Introduced by Reps. Rutherford, King, Loftis, Gilliard, Jefferson and Williams

S. Printed 3/20/13--S.

Read the first time January 17, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3248) to amend Section 16-13-510, as amended, Code of Laws of South Carolina, 1976, relating to financial identity fraud, so as to add conforming language, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 16‑13‑510 of the 1976 Code is amended to read:

“Section 16‑13‑510. (A) It is unlawful for a person to commit the offense of financial identity fraud or identity fraud.

(B) A person is guilty of financial identity fraud when ~~he~~ the person, without the authorization or permission of another ~~person~~ individual, and with the intent of unlawfully:

(1) appropriating the financial resources of ~~that person~~ the other individual to ~~his~~ the person’s own use or the use of a third party ~~knowingly and wilfully:~~;

(2) devising a scheme or artifice to defraud; or

(3) obtaining money, property, or services by means of false or fraudulent pretenses, representations, or promises

~~(1)~~ obtains or records identifying information which would assist in accessing the financial records of the other ~~person;~~ individual or

~~(2)~~ accesses or attempts to access the financial resources of the other ~~person~~ individual through the use of identifying information as defined in subsection (D).

(C) A person is guilty of identity fraud when ~~he~~ the person uses identifying information, as defined in subsection (D), of another ~~person~~ individual for the purpose of obtaining employment or avoiding identification by a law enforcement officer, criminal justice agency, or another governmental agency, including, but not limited to, law enforcement, detention, and correctional agencies or facilities.

(D) ‘Personal identifying information’ ~~means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this State, when the data elements are neither encrypted nor redacted~~ includes, but is not limited to:

(1) social security ~~number~~ numbers;

(2) driver’s license ~~number~~ numbers or state identification card ~~number~~ numbers issued instead of a driver’s license;

(3) ~~financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident’s financial account~~ checking account numbers; ~~or~~

(4) savings account numbers;

(5) credit card numbers;

(6) debit card numbers;

(7) personal identification (PIN) numbers;

(8) electronic identification numbers;

(9) digital signatures;

(10) dates of birth;

(11) current or former names, including first and last names, middle and last names, or first, middle, and last names, but only when the names are used in combination with, and linked to, other identifying information provided in this section;

(12) current or former addresses, but only when the addresses are used in combination with, and linked to, other identifying information provided in this section; or

(13) other numbers, passwords, or information which may be used to access a person’s financial ~~accounts or~~ resources, numbers, or information issued by a governmental or regulatory entity that uniquely will identify an individual or an individual’s financial resources.

~~The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to the general public.~~

(E) ‘Financial resources’ includes:

(1) existing money and financial wealth contained in a checking account, savings account, line of credit, or otherwise;

(2) a pension plan, retirement fund, annuity, or other fund which makes payments monthly or periodically to the recipient; and

(3) the establishment of a line of credit or an amount of debt whether by loan, credit card, or otherwise for the purpose of obtaining goods, services, or money.

(F) A person who violates ~~the provisions of~~ this section is guilty of a felony, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The court may order restitution to the victim pursuant to the provisions of Section 17‑25‑322.

(G) Venue for the prosecution of offenses pursuant to this section is in the county in which:

(1) the victim resided at the time the information was obtained or used; or

(2) the information is obtained or used.

(H) In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.”

SECTION 2. Section 37-20-130 of the 1976 Code is amended to read:

“Section 37-20-130. A person who learns or reasonably suspects that ~~he~~ the person is the victim of identity theft may initiate a law enforcement investigation by reporting to a local law enforcement agency that has jurisdiction over ~~his~~ the person’s actual legal residence. The law enforcement agency shall take the report, provide the complainant with a copy of the report, and begin an investigation ~~or refer the matter to the law enforcement agency where the crime was committed for an investigation~~.”

SECTION 3. Section 39-1-90(D) of the 1976 Code is amended to read:

“(D) For purposes of this section:

(1) ‘Breach of the security of the system’ means unauthorized access to and acquisition of computerized data that was not rendered unusable through encryption, redaction, or other methods that compromises the security, confidentiality, or integrity of personal identifying information maintained by the person, when illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to a resident. Good faith acquisition of personal identifying information by an employee or agent of the person for the purposes of its business is not a breach of the security of the system if the personal identifying information is not used or subject to further unauthorized disclosure.

(2) ‘Person’ has the same meaning as in Section 37‑20‑110(10).

(3) ‘Personal identifying information’ ~~has the same meaning as "personal identifying information" in Section 16‑13‑510(D)~~ means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this State, when the data elements are neither encrypted nor redacted:

(1) social security number;

(2) driver's license number or state identification card number issued instead of a driver's license;

(3) financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident's financial account; or

(4) other numbers or information which may be used to access a person's financial accounts or numbers or information issued by a governmental or regulatory entity that uniquely will identify an individual.

The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to the general public.”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

C. BRADLEY HUTTO for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department and the Prosecution Coordination Commission indicate that this bill will have a minimal impact on the General Fund of the State, which both agencies can absorb at their current levels of funding.

**LOCAL GOVERNMENT IMPACT:**

The State Budget Division surveyed local governments to access the impact of this bill. To date, no responses have been received.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND SECTION 16-13-510, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FINANCIAL IDENTITY FRAUD, SO AS TO ADD CONFORMING LANGUAGE CONTAINED IN FINANCIAL TRANSACTION CARD CRIME TO PROVIDE THAT IT IS NOT A DEFENSE WHEN SOME OF THE ACTS OF THE CRIME DID NOT OCCUR IN THIS STATE OR WITHIN A CITY, COUNTY, OR LOCAL JURISDICTION; AND TO AMEND SECTION 37-20-130, RELATING TO THE INITIATION OF A LAW ENFORCEMENT INVESTIGATION OF IDENTITY THEFT, SO AS TO DELETE THE LANGUAGE ALLOWING REFERRAL OF THE MATTER TO THE LAW ENFORCEMENT AGENCY WHERE THE CRIME WAS COMMITTED FOR INVESTIGATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑13‑510 of the 1976 Code, as last amended by Act 190 of 2008, is further amended to read:

“Section 16‑13‑510. (A) It is unlawful for a person to commit the offense of financial identity fraud or identity fraud.

(B) A person is guilty of financial identity fraud when he, without the authorization or permission of another person and with the intent of unlawfully appropriating the financial resources of that person to his own use or the use of a third party ~~knowingly and wilfully~~:

(1) obtains or records identifying information which would assist in accessing the financial records of the other person; or

(2) accesses or attempts to access the financial resources of the other person through the use of identifying information as defined in subsection (D).

(C) A person is guilty of identity fraud when he uses identifying information, as defined in subsection (D), of another person for the purpose of obtaining employment or avoiding identification by a law enforcement officer, criminal justice agency, or another governmental agency including, but not limited to, law enforcement, detention, and correctional agencies or facilities.

(D) ‘Personal identifying information’ ~~means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this State, when the data elements are neither encrypted nor redacted~~ includes, but is not limited to:

(1) social security ~~number~~ numbers;

(2) driver’s license ~~number~~ numbers or state identification card ~~number~~ numbers issued instead of a driver’s license;

(3) ~~financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident’s financial account~~ checking account numbers; ~~or~~

(4) savings account numbers;

(5) credit card numbers;

(6) debit card numbers;

(7) personal identification (PIN) numbers;

(8) electronic identification numbers;

(9) digital signatures;

(10) date of birth;

(11) name of another person, whether current name or former name used by another person including a first and last name, middle and last name, or first, middle, and last name, but only when these names are used in combination with, and linked to, any other identifying information provided in this section;

(12) address of another person, whether current address or former address, but only when this address is used in combination with, and linked to, any other identifying information provided in this section; or

(13) other numbers, passwords, or other information which may be used to access a person’s financial ~~accounts or~~ resources, numbers, or information issued by a governmental or regulatory entity that uniquely will identify an individual or an individual’s financial resources.

~~The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to the general public.~~

(E) ‘Financial resources’ is defined as including not only existing money and financial wealth, whether contained in a checking account, a savings account, a line of credit or otherwise, but also includes:

(1) a pension plan, retirement fund, annuity, or other fund which makes payments monthly or periodically to the recipient; and

(2) the establishment of a line of credit or an amount of debt whether by loan, credit card, or otherwise for the purpose of obtaining goods, services, or money.

(F) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The court may order restitution to the victim pursuant to the provisions of Section 17‑25‑322.

(G) Venue for the prosecution of offenses pursuant to this section is in the county in which the victim resided at the time the information was obtained or used.

(H) In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.”

SECTION 2. Section 37-20-130 of the 1976 Code, as added by Act 190 of 2008, is amended to read:

“Section 37-20-130. A person who learns or reasonably suspects that he is the victim of identity theft may initiate a law enforcement investigation by reporting to a local law enforcement agency that has jurisdiction over his actual legal residence. The law enforcement agency shall take the report, provide the complainant with a copy of the report, and begin an investigation ~~or refer the matter to the law enforcement agency where the crime was committed for an investigation~~.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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