



A PRACTICAL GUIDE TO IDENTITY THEFT

BY KEVIN A. SNIDER, J.D., C.F.E.
Attorney at Law and Certified Fraud Examiner

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*This book is dedicated to those of us
who have been the victims of identity theft...*

ABOUT THE AUTHOR



Kevin Snider is a licensed attorney in the State of Tennessee and also a Certified Fraud Examiner. He concentrates on Consumer Law and Consumer Protection matters but he is also active in many other areas of both civil and criminal litigation. Mr. Snider has gained substantial experience in local, state, and federal courts as well as at administrative hearings. In addition, he serves as a legal consultant and television commentator for the "3 On Your Side" consumer assistance segments on WREG News Channel 3; he conducts legal seminars and lectures for the National Business Institute, SCORE and other local entities; he has testified before the Tennessee House Standing Committee of Consumer and Employee Affairs in regard to new consumer rights legislation; he is the author of *Selected Statutes of Tennessee Consumer Law* (2003); he was instrumental in the drafting and subsequent passage of the 2003 amendments to the Tennessee Lemon Law; he is the host of "Legal Ease" a local legal television show; he works as a part-time Public Defender for the City of Germantown; he serves as a Special Judge for the Shelby County General Sessions Civil Court and the Shelby County General Sessions Criminal Court and he was the featured columnist for the Shelby Sun Times "Ask a Lawyer" newspaper column from 2000-2002.

Mr. Snider received his B.S. degree in Business Administration from Southern College in Collegedale, Tennessee where he served as an Auxiliary Probation Officer for the Hamilton County Juvenile Court and as a volunteer firefighter. He then completed the Graduate Summer Scholar Program at George Washington University in Washington, D.C. Later, he received his law degree from the University of Memphis School of Law in Memphis, Tennessee where he was a member of the Moot Court Board and listed in Who's Who Among American Law Students and subsequently received accreditation as a Certified Fraud Examiner from the Association of Certified Fraud Examiners. Mr. Snider has been recognized as an "Advocate" by the Association of Trial Lawyers of America's National College of Advocacy after completing extensive civil trial seminars and courses conducted at Emory University School of Law in Atlanta, Georgia and at Harvard Law School in Cambridge, Massachusetts.

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He is admitted to practice before the U.S. Supreme Court, all of the courts in the State of Tennessee, the U.S. District Court and U.S. Bankruptcy Court for the Western District of Tennessee, and the U.S. Court of Appeals for the Sixth Circuit. Mr. Snider has been awarded a prestigious “BV” attorney rating in the Martindale-Hubbell Legal Directory which has recognized him as a highly respected and ethical member of the Bar. In addition, he has served as President of the East Shelby County Bar Association and is a member of the Tennessee Trial Lawyers Association, the Association of Trial Lawyers of America, the Memphis Bar Association, the Tennessee Bar Association, and the American Bar Association. Mr. Snider served as the general legal counsel for the Shelby County Republican Party (1999-2003), currently serves as the legal counsel for the Greater Mid-South Area Jaycees, and is a board member of the Memphis and Shelby County Bar Foundation. In addition, he is an active member of the Association of Certified Fraud Examiners, an active member of the National Association of Consumer Advocates and has given legal opinions on CNN’s “Talk Back Live” television show.

Mr. Snider was appointed to the Financial Advisory, Education, Library, and Youth Commissions for the City of Germantown and sits on the board of directors of the Germantown Area Chamber of Commerce, Better Business Bureau of the Mid-South, Andrew's Entertainment Incorporated where he serves as Chairman, Germantown Legal Resources, Inc. where he serves as Chairman, the University of Memphis School of Law Alumni Association, the University of Memphis Germantown Alumni Association (1997-1999), and the University of Memphis Greater Memphis Alumni Club (1999-2000). Additionally, he is a member of the U.S. Junior Chamber of Commerce, Germantown Lions Club, United States Tennis Association, Memphis Tennis Association, Germantown Kiwanis Club, National Rifle Association, Ducks Unlimited, and the University of Memphis Alumni Association (Life Member) and Tiger Club. He is also active in the local community with numerous charity events and fundraisers.

In 2002, Mr. Snider’s law firm was awarded the prestigious “Small Business of the Year” award by the Germantown Area Chamber of Commerce. In 1996, Mr. Snider was nominated "Entrepreneur of the Year" in the Memphis Business Journal's Small Business Awards. In 1997, he was nominated for the “Top 40 Under Forty” in the Memphis Business Journal’s annual awards for individuals who have excelled in business and professional areas. In addition, Mr. Snider was appointed to the Business Advisory Council of the National Republican Congressional Committee, selected for listing in “Who's Who in Executives and Professionals”, selected for listing in “Outstanding Young Men of America”, selected for listing in “Who’s Who in Germantown”, and is a graduate of the 1998 Class of Leadership Germantown. In 2000, he was awarded and named a “Hometown Hero” by the City of Germantown.

He resides in Germantown, Tennessee.

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Be aware that Kevin A. Snider nor any attorney at Snider, Horner & New, PLLC is certified as a Civil Trial, Criminal Trial, Business Bankruptcy, Consumer Bankruptcy, Creditor's Rights Specialist, Elder Law, Estate Planning, and Family Law Specialist by the Tennessee Commission on Continuing Legal Education and Specialization. Certification as an Administrative Law, Commercial Law and Consumer Protection Specialist is not currently available in Tennessee.

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This publication is designed to provide authoritative information concerning the subject matter covered. Always use the most current edition and supplement (if available), and use other sources for more recent developments or for special rules for individual jurisdictions. Although we strive to have the most accurate and current information available, we cannot and do not guarantee the accuracy and current applicability of the information contained herein. More importantly, this publication cannot substitute for the independent judgment and skills of a competent attorney. Non-attorneys are strongly cautioned against using these materials to conduct a lawsuit without advice or assistance from an attorney. Non-attorneys are also strongly cautioned against engaging in conduct which might be considered the unauthorized practice of law.

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WHAT IS IDENTITY THEFT

It is estimated that over one million Americans are the victims of identity theft each year. Identity theft or identity fraud are terms that are used to describe all types of crime in which someone unlawfully obtains and uses another person's information and data in a form that involves fraud, deception and theft. The crime of identity theft is quite often time delayed in that a victim may not know that he or she has become a victim of identity theft for many months after the fact. In fact, a victim usually does not discover the crime until they are denied an extension of credit.

Your personal information and data can be obtained and used by someone else with striking ease. For example, identity theft can occur when someone else obtains your social security number, your bank account number, your date of birth, your credit card number, and other similar data. This personal information and data can be used by someone else to profit at your expense by taking funds out of your bank account, making fraudulent charges on your credit card or taking over your identity altogether. In fact, it is not uncommon for a criminal committing identity theft to obtain large credit lines and make staggering purchases in a victim's name. The costs and expenses in restoring your reputation and correcting erroneous transactions can be staggering.

The crime of identity theft is growing in such a rapid fashion that the federal government and state governments are continuing to implement new legislation to address this rapidly occurring problem.

HOW DOES IDENTITY THEFT OCCUR

Identity theft can occur in any number of situations or transactions. Six of the most common methods can occur in ordinary consumer transactions on almost a daily basis.

First, by mail theft. For example, if a victim leaves a credit card payment envelope in a mail box for the postal carrier to pick up, this can be stolen by a thief and used to obtain credit in the victim's name. Keep in mind that there are usually two forms of personal information in that envelope (your credit card statement information and your banking information if you are paying by check).

Second, by trash rummaging. For example, if a consumer or a business discards documents containing personal information, this information can be retrieved by a thief who engages in "dumpster diving" and used to obtain credit in the victim's name.

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Third, by the internet. For example, personal information that is used and available on the internet can be accessed by a thief and used to obtain credit in the victim's name.

Fourth, by loss or theft of a purse and wallet. For example, a victim may lose or a thief may steal the victim's purse or wallet. The thief can then use the personal information to obtain credit in the victim's name.

Fifth, by dishonest third parties. For example, an employee of a business may unlawfully retrieve personal information that the business has collected for legitimate reasons and sell it to a thief. The thief can then use the personal information to obtain credit in the victim's name.

Sixth, in public places. For example, a thief may engage in "shoulder surfing" by watching the victim from a nearby location as they provide a credit card or other personal information to a merchant or a machine. The thief can then use the personal information to obtain credit in the victim's name.

HOW TO AVOID BECOMING A VICTIM

You need to take all reasonable precautions to reduce the risk of having your personal information and data being taken or misused. However, keep in mind that it is impossible for you to prevent all distribution of your personal information and data because of its many uses in so many transactions. I would recommend the following twenty precautions that every individual should take.

First, never provide personal information and data unless it is absolutely required. Moreover, if you are contacted by telephone or mail from someone claiming to be from your bank or credit card company, do not release any information unless you can confirm that they are actually working for your bank or credit card company. Keep in mind that banks and credit card companies already have your information on file and do not need to call and verify it.

Second, do not carry your social security card in your purse or wallet. In addition, do not have your social security number listed on your checks, drivers license, or any other form of identification or document. Finally, if your employer asks you to provide this information for your paycheck, ask if you can use an alternate number to appear on your paystub. This is one of the most important numbers that needs to be protected as it is your identity to the world.

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Third, maintain very detailed and careful records of your bank accounts, credit card accounts and other similar transactions. In addition, always take your ATM, debit and credit card receipts with you. If you do not need them, destroy them at your home with a paper shredder or similar device.

Fourth, keep track of when you are to receive your bank and credit card statements as well as your telephone and utility bills. If you do not timely receive one of these statements, contact your bank or credit card company and verify your address and when the statement was sent. Keep in mind that this can be an early sign of trouble.

Fifth, be very careful with the mail in your mailbox. Never leave a credit card or similar payment in your mailbox from the postal carrier to pick up. If you are traveling out of town, have your mail held at your local post office or ask someone that you know and trust to retrieve your mail on a daily basis. Finally, if you live in an area where mail theft is a problem discuss with your local post office about installing a lock on your mailbox.

Sixth, if you are talking to someone on the telephone and absolutely need to provide personal information or data, do not do it in a public place, in a telephone booth, or on a cellular telephone.

Seventh, destroy or shred any and all reprobated credit card, loan solicitations and convenience checks that you may receive in the mail but never use. These can be used by a thief to assume your identity.

Eighth, if you are contacted by telephone by an individual or company claiming that you are entitled to receive a credit card, prize or other item ask them to mail you information but do not provide any personal information or data. If it is a legitimate company or enterprise, they will have nothing to hide.

Ninth, obtain a copy of your credit report at least once a year from all three of the major credit bureaus (see Contact Information on page 13). Review each report very carefully to determine any erroneous information and to ensure its accuracy. Pay particular attention to the name, address and social security number used in the reports; any mention of unknown transactions or merchants and credit accounts that you did not open; charges or purchase that you did not incur; any defaults and delinquencies; and any credit inquiries that you did not initiate.

Tenth, review your Social Security Earnings and Benefits statement each year to determine if someone else is using your social security number for employment purposes.

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Eleventh, be very careful with purchases on the internet. Always use a secure browser which encrypts or otherwise encodes the personal information and data. In addition, be extremely leery of unknown or recently established companies or enterprises. Finally, install a firewall and virus protection software on your home computer to prevent hackers from obtaining your personal information and data from your hard drive and to prevent any virus from sending your information to other parties.

Twelfth, do not send new bank checks to your residence through the mail. Advise your bank to have your checks sent directly to the bank so that you can pick them up.

Thirteenth, close and cancel any and all credit or other accounts that you are no longer using or that may be inactive. This will usually need to be completed by a letter to the merchant and always ask for written confirmation once it is complete.

Fourteenth, I would highly recommend that you not list your residence address and telephone number in the telephone book. If you do decide to list your name and residence telephone number in the telephone book, do not list your address.

Fifteenth, I would recommend that you remove your name from any marketing or other mailing lists. This would certainly include notifying the three major credit bureaus that you do not wish to participate in any marketing reporting that they may participate in.

Sixteenth, register for the Direct Marketing Association's Mail Preference Service and the Telephone Preference Service (see Contact Information on page 13) which adds your name to the deletion lists used by marketers and telemarketers nationwide. In addition, register for your state's do not call list.

Seventeenth, make a total and complete inventory of all credit and bank cards as well as other important data and contact information that you keep in your purse or wallet. In this regard, if your purse or wallet is stolen, you can immediately contact all of the parties involved.

Eighteenth, store all of your personal information and data in a secure place at your residence.

Nineteenth, when you are transacting business with any individual or company, find out how your records will be kept and how they will be disposed. If you sense that the business will not keep your information confidential or dispose of it properly, do your business elsewhere.

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Twentieth, protect your passwords and personal identification numbers “PINS” from unauthorized access by shielding the keypad when you enter them into any machine or telephone. In addition, memorize this information and do not keep it in your purse or wallet. Finally, do not use passwords and PINS that contain any part of your social security number, birth date, middle name, family member’s name, pet’s name, address, or consecutive numbers. Always remember that “simple” personal information and data can easily be obtained by a thief to access your accounts.

WHAT TO DO IF YOU BECOME A VICTIM

If you suspect that someone may have stolen your identity, you need to act very quickly as time is clearly of the essence. More importantly, the quicker you act the more your identity can be protected and the more likely that the perpetrator can be caught.

First, you will want to contact the fraud departments of the three major credit bureaus (see Contact Information on page 13). These credit bureaus maintain information and reports about any credit accounts that have been opened in your name. I would strongly recommend that you first contact them by telephone and then confirm that contact in writing by registered mail. Please be sure to retain a copy of this letter for future reference.

Be sure to request that a “fraud alert” be placed in your credit report, request that a statement be placed in your credit report that creditors must contact you before opening any new accounts or changing any of your existing accounts, and request a current copy of your credit report to determine if any fraudulent accounts have been opened or any unauthorized changes have been made. In addition, please ask how long the “fraud alert” will remain in your file.

If you find that there has been fraudulent accounts opened or that there were other unauthorized changes made, you will want to contact these banks or lenders to likewise report the fraudulent activity. As stated above, I would strongly recommend that you first contact them by telephone and then confirm that contact in writing by registered mail. Please be sure to retain a copy of this letter for future reference. More importantly, you will want to close these accounts and place passwords on any new accounts that you open. Finally, make a written request that the credit reporting agency remove all erroneous information that appears in your credit report as a result of the identity theft and that the credit reporting agency send you a corrected credit report.

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Second, you will want to contact your other current creditors to determine if there has been any unauthorized changes to your account. This would include your current credit card companies, bank or other financial institutions, telephone and utility service, and many others. Ask the creditor to place a password on your account which will be used before any inquiries or changes can be made. As stated above, I would strongly recommend that you first contact them by telephone and then confirm that contact in writing by registered mail. Please be sure to retain a copy of this letter for future reference.

Third, you will want to file a report with your local police department and/or the police in the community where the identity theft took place. You will want to obtain a copy of the police report as many banks and other lenders require that they be provided a copy before they take any action.

Fourth, you will want to contact the Identity Theft Clearing House at the Federal Trade Commission (see Contact Information on page 13). After the FTC obtains your information they will place it into a secure consumer fraud database which may be used by local law enforcement agencies in apprehending perpetrators of this crime.

Fifth, depending on the particular type of identity theft or other circumstances, you may also need to contact (see Contact Information on page 13): your local office of the Postal Inspection Service (if you suspect that a thief has used a change of address form to redirect your mail or has used the mail system to perpetrate this fraud); the Social Security Administration (if you suspect that your social security number is being used); the Internal Revenue Service (if you suspect that there is improper use of identification information); and/or contact the major check verification companies (if you suspect that you have had checks stolen or bank accounts originated by a thief).

Sixth, you will want to organize your identity theft case and retain copies of all documents for your file. This would include police reports, a chronological and detailed journal of events, credit reports, telephone records, all costs that you have incurred, copies of any letters that you have sent or received, copies of any court documents, copies of any other victim's statements, and any other tangible proof of the fraud.

Seventh, if you are having trouble completing any of the above mentioned recommendations, seek professional help. I would recommend that you contact your local bar association to identify any local attorneys who engage in consumer rights matters or identity theft matters.

Finally and after the above mentioned items are complete, you will want to periodically contact the major credit reporting companies to review your credit report and make certain that the information is correct.

CONTACT INFORMATION

TransUnion, LLC (Credit Reporting Company)
P.O. Box 97328
Jackson, MS 39288
(888) 567-8688
www.transunion.com

Equifax Information Services, LLC (Credit Reporting Company)
P.O. Box 740256
Atlanta, GA 30374
(888) 567-8688
www.experian.com

Experian (Credit Reporting Company)
P.O. Box 919
Allen, TX 75013
(888) 567-8688
www.equifax.com

Memphis Consumer Credit (Credit Reporting Company)
4066 Summer Avenue
Memphis, TN 38122
(901) 321-6769

Identity Theft Clearinghouse
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington D.C. 20580
(877) FTCHELP
(877) IDTHEFT
www.consumer.gov/idtheft

Local Police Department, U.S. Secret Service and/or Postal Inspection Service
Look in your local phone book under government

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Internal Revenue Service (Fraud Division)
(800) 829-0433

FBI Fraud Complaint Center
www.ifccfbi.gov

Social Security Administration
Data Operations Center
P.O. Box 7004
Wilkes Barre, PA 18767
(800) 269-0271

Direct Marketing Association
Mail Preference Service
P.O. Box 9008
Farmingdale, NY 11735

Direct Marketing Association
Telephone Preference Service
P.O. Box 9014
Farmingdale, NY 11735

Major Credit Reporting Bureaus Opt Out Plan
(888) 5OPTOUT

Check Verification Companies (major):
Check Rite (800) 766-2748
ChexSystems (800) 428-9623
CrossCheck (707) 586-0551
Equifax (800) 437-5120
National Processing Company (800) 526-5380
SCAN (800) 262-7771
Telecheck (800) 366-2425

SAMPLE DISPUTE LETTER

January 1, 2003

Your Name
Your Address
Your City, State, Zip Code

Name of Credit Reporting Agency
Their Address
Their City, State, Zip Code

Re: Your name and Account Number

To Whom it May Concern:

I have recently reviewed my credit report with your company and I have noticed some erroneous, inaccurate and/or fraudulent activity. Consider this letter written notice to your company that I am disputing the items that are highlighted, circled or otherwise marked on the enclosed copy of my credit report.

In particular...(list and describe the item(s)).

The item(s) is(are) erroneous, inaccurate and/or fraudulent because...(specifically describe why the item(s) is(are) inaccurate).

Please begin an investigation into this matter and delete or otherwise correct the disputed information as soon as possible. Once the investigation and/or modifications are made, please notify me in writing at the above mentioned address and provide me with an updated copy of my credit report with your company.

Sincerely,

Your Name

Enclosures

FEDERAL CRIMINAL STATUTE

18 U.S.C. § 1028. Fraud and related activity in connection with identification documents and information.

(a) Whoever, in a circumstance described in subsection (c) of this section —

(1) knowingly and without lawful authority produces an identification document or a false identification document;

(2) knowingly transfers an identification document or a false identification document knowing that such document was stolen or produced without lawful authority;

(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor) or false identification documents;

(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, with the intent such document be used to defraud the United States;

(5) knowingly produces, transfers, or possesses a document-making implement with the intent such document-making implement will be used in the production of a false identification document or another document-making implement which will be so used;

(6) knowingly possesses an identification document that is or appears to be an identification document of the United States which is stolen or produced without lawful authority knowing that such document was stolen or produced without such authority; or

(7) knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law; shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is —

(1) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 15 years, or both, if the offense is —

(A) the production or transfer of an identification document or false identification document that is or appears to be —

(i) an identification document issued by or under the authority of the United States; or

(ii) a birth certificate, or a driver's license or personal identification card;

(B) the production or transfer of more than five identification documents or false identification documents;

(C) an offense under paragraph (5) of such subsection; or

(D) an offense under paragraph (7) of such subsection that involves the transfer or use of 1 or more means of identification if, as a result of the offense, any individual committing the offense obtains anything of value aggregating \$1,000 or more during any 1-year period;

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(2) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than three years, or both, if the offense is —

(A) any other production, transfer, or use of a means of identification, an identification document, or a false identification document; or

(B) an offense under paragraph (3) or (7) of such subsection;

(3) a fine under this title or imprisonment for not more than 20 years, or both, if the offense is committed —

(A) to facilitate a drug trafficking crime (as defined in section 929(a)(2));

(B) in connection with a crime of violence (as defined in section 924(c)(3)); or

(C) after a prior conviction under this section becomes final;

(4) a fine under this title or imprisonment for not more than 25 years, or both, if the offense is committed to facilitate an act of international terrorism (as defined in section 2331(1) of this title);

(5) in the case of any offense under subsection (a), forfeiture to the United States of any personal property used or intended to be used to commit the offense; and

(6) a fine under this title or imprisonment for not more than one year, or both, in any other case.

(c) The circumstance referred to in subsection (a) of this section is that —

(1) the identification document or false identification document is or appears to be issued by or under the authority of the United States or the document-making implement is designed or suited for making such an identification document or false identification document;

(2) the offense is an offense under subsection (a)(4) of this section; or

(3) either —

(A) the production, transfer, possession, or use prohibited by this section is in or affects interstate or foreign commerce, including the transfer of a document by electronic means; or

(B) the means of identification, identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, possession, or use prohibited by this section.

(d) In this section —

(1) the term "document-making implement" means any implement, impression, template, computer file, computer disc, electronic device, or computer hardware or software, that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement;

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(2) the term "identification document" means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(3) the term "false identification document" means a document of a type intended or commonly accepted for the purposes of identification of individuals that —

(A) is not issued by or under the authority of a governmental entity; and

(B) appears to be issued by or under the authority of the United States Government, a State, a political subdivision of a State, a foreign government, a political subdivision of a foreign government, or an international governmental or quasi-governmental organization;

(4) the term "means of identification" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any —

(A) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

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

(C) unique electronic identification number, address, or routing code; or

(D) telecommunication identifying information or access device (as defined in section 1029(e));

(5) the term "personal identification card" means an identification document issued by a State or local government solely for the purpose of identification;

(6) the term "produce" includes alter, authenticate, or assemble;

(7) the term "transfer" includes selecting an identification document, false identification document, or document-making implement and placing or directing the placement of such identification document, false identification document, or document-making implement on an online location where it is available to others; and

(8) the term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States.

(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

(f) Attempt and Conspiracy. — Any person who attempts or conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

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(g) Forfeiture Procedures. — The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. section 853).

(h) Rule of Construction. — For purpose of subsection (a)(7), a single identification document or false identification document that contains 1 or more means of identification shall be construed to be 1 means of identification.

TENNESSEE CRIMINAL STATUTE

39-14-150. Identity theft.

(a) A person commits identity theft who knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or otherwise promote, carry on, or facilitate any unlawful activity.

(b) As used in this section, "means of identification" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including:

(1) 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;

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

(3) 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

(4) Telecommunication identifying information or access device.

(c) A violation of this section is a Class D felony.

TENNESSEE CIVIL STATUTES

47-18-2101. Short title.

This part shall be known and may be cited as the "Tennessee Identity Theft Deterrence Act of 1999."

47-18-2102. Definitions.

As used in this part and in the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, unless the context otherwise requires:

- (1) "Ascertainable loss" means an identifiable deprivation, detriment or injury arising from the identity theft or from any unfair, misleading or deceptive act or practice even when the precise amount of the loss is not known. Whenever a violation of this part has occurred, an ascertainable loss shall be presumed to exist;
- (2) "Attorney general" means the office of the Tennessee attorney general and reporter;
- (3) "Division" means the division of consumer affairs of the department of commerce and insurance;
- (4) "Financial document" means any credit card, debit card, check or checking account information or number, savings deposit slip or savings account information or number, or similar financial account or account number, including but not limited to, a money market account, certificate of deposit, or other type of interest generating account with a bank, savings and loan or credit union account, or any other financial institution, mutual fund account, 401K account, individual retirement account, retirement account, or other stock account information, savings bond or other bond, credit line, equity line or other line of credit which the possessor of the account has the right to draw against;
- (5) "Identification documents" means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be a driver license, nondriver identification cards, birth certificates, marriage certificates, divorce certificates, passports, immigration documents, social security cards, employee identification cards, cards issued by the government to provide benefits of any sort, health care benefit cards, or health benefit organization, insurance company or managed care organization cards for the purpose of identifying a person eligible for services;

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(6) "Identity theft" means:

(A) Obtaining, possessing, transferring, using or attempting to obtain, posses, transfer or use, for unlawful economic benefit, one or more identification documents or personal identification numbers of another person; or

(B) Otherwise obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, for unlawful economic benefit, one (1) or more financial documents of another person;

(7) "Person" means a natural person, consumer, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized;

(8) "Personal identification number" means any number that is assigned by the government to identify a particular person, including, but not limited to, social security number, federal tax payer identification number, Medicaid, Medicare or TennCare number which identifies a particular person eligible for benefits, any number assigned to a person as part of a licensure or registration process, such as a board of professional responsibility number, driver license number and passport number and any number assigned by an insurance company, health maintenance organization, managed care organization or other health benefit organization, for the purposes of identifying a particular person eligible for services; and

(9) "Tennessee Consumer Protection Act" means the Tennessee Consumer Protection Act of 1977, as amended, as compiled in part 1 of this chapter and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this definition, related statutes include but are not limited to: the Prize and Promotion Act, § 47-18-120; Health Club Act, as compiled in part 3 of this chapter; Buyer's Clubs Act, as compiled in part 5 of this chapter; Home Solicitations Sales Act of 1974, as compiled in part 7 of this chapter; Tennessee Credit Services Businesses Act, as compiled in part 10 of this chapter; Consumer Telemarketing Protection Act of 1990, as compiled in part 15 of this chapter; Unsolicited Telefacsimile Advertising Act, as compiled in part 16 of this chapter; Tennessee Employment Agency Act, as compiled in part 17 of this chapter; and Membership Camping Act, as compiled in title 66, chapter 32, part 3.

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47-18-2103. Prohibited practices.

It is unlawful for any person to directly or indirectly:

- (1) Engage in identity theft; or
- (2) Engage in any unfair, deceptive, misleading act or practice for the purpose of directly or indirectly engaging in identity theft.

47-18-2104. Private rights of action.

(a) Any party commencing a private action pursuant to this part must provide a copy of the complaint and all other initial pleadings to the division of consumer affairs and upon entry of any judgment, order or decree of the action, shall mail a copy of such judgment, order or decree to the division of consumer affairs within five (5) days of entry of the judgment, order or decree.

(b) A copy of any notice of appeal shall be served by the appellant upon the director of the division, who in the public interest may intervene.

(c) A private action to enforce any liability created under this part may be brought within two (2) years from the date the liability arises, except that where a defendant has concealed the liability to that person, under this part, the action may be brought within two (2) years after discovery by the person of the liability. No action brought by the division shall be subject to the limitation of actions contained herein.

(d) In any private action commenced under this part, if the private party establishes that identity theft was engaged in willfully or knowingly, the court may award three (3) times the actual damages and may provide such other relief as it considers necessary and proper.

(e) The action may be brought in a court of competent jurisdiction in the county where the identity theft or unfair, deceptive or misleading act or practice took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

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(f) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part; provided, that such action shall not be filed once the division has commenced a proceeding pursuant to this part or the Tennessee Consumer Protection Act, as compiled in part 1 of this chapter.

(g) Upon a finding by the court that a provision of this part has been violated, the court may award to the person bringing such action reasonable attorneys' fees and costs.

47-18-2105. Civil penalties and remedies.

(a) Whenever the division has reason to believe that any person has engaged in, is engaging in, or based upon information received from another law enforcement agency, is about to engage in any act or practice declared unlawful by this part and that proceedings would be in the public interest, the attorney general and reporter, at the request of the division, may bring an action in the name of the state against such person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such act or practice. Additionally, the state may request an asset freeze or any other appropriate and necessary orders against such person.

(b) The action may be brought in the chancery or circuit court in Davidson County or in a court of competent jurisdiction in the county where the identity theft, unfair, misleading or deceptive act or practice took place or is about to take place or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(c) The courts are authorized to issue orders and injunctions to restrain and prevent violations of this part or issue any other necessary or appropriate relief or orders. Such orders and injunctions shall be issued without bond to the state of Tennessee.

(d) Notwithstanding any other provision of law, a violation of this part shall be punishable by a civil penalty of whichever of the following is greater: ten thousand dollars (\$10,000), five thousand dollars (\$5,000) per day for each day that a person's identity has been assumed or ten (10) times the amount obtained or attempted to be obtained by the person using the identity theft. This civil penalty is supplemental, cumulative and in addition to any other penalties and relief available under the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, or other laws, regulations or rules.

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(e) In any successful action commenced under this part, any ascertainable loss that a person has incurred as a result of the identity theft or misleading, deceptive or unfair practices used to engage in identify theft shall be recovered as restitution for each such person. The person shall also be awarded statutory interest on that ascertainable loss.

(f) In any successful action commenced by the division under this part, the court shall also order reimbursement to the division of the reasonable attorneys' fees, costs and expenses of the investigation and prosecution under this part.

(g) No court costs or litigation fees or costs of any sort can be taxed against the state in any action commenced under this part.

(h) Any knowing or willful violation of the terms of an injunction or order issued pursuant to this part in an action commenced by the attorney general and reporter shall be punishable by a civil penalty of not more than five thousand dollars (\$5,000) for each and every violation of the order recoverable by the state, in addition to any other appropriate relief, including, but not limited to, contempt sanctions and the awarding of attorneys' fees and costs to the state for any filings relating to violations of any order under this part.

(i) An order or judgment issued as a result of an action commenced by the division shall in no way affect individual rights of action which may exist independent of the recovery of money or property received under such order or judgment. If a particular person receives restitution as a result of an action commenced by the attorney general and reporter, those funds shall act only as a set-off against any award of money received in the person's private right of action proceedings.

47-18-2106. Violation of Tennessee Consumer Protection Act.

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in that act, in addition to the penalties and remedies set forth in this part.

(c) If the division has reason to believe that any person has violated any provision of this part, the attorney general and reporter, at the request of the division, may institute a proceeding under this chapter.

ADDITIONAL LAWS TO CONSIDER

Fair Credit Reporting Act - This Act establishes procedures for correcting inaccurate information on your credit record and requires that your record only be provided in very limited situations.

Fair Credit Billing Act - This Act establishes procedures for resolving credit card billing errors.

Fair Debt Collection Practices Act - This Act prevents debt collectors from using unfair or deceptive practices in collecting accounts that your creditor has turned over for collection.

Electronic Funds Transfer Act - This Act provides consumer protection for transactions using a debit card or other electronic means and also limits your liability for unauthorized electronic transfers.

Tennessee Consumer Protection Act - This Act provides consumer protection from individuals and companies that engage in unfair and/or deceptive trade practices.