

# 2C:21-17.2

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2003                    **CHAPTER:** 184

**NJSA:** 2C:21-17.2            (Identity theft—penalties)

**BILL NO:** A3226/3290        (Substituted for S2338)

**SPONSOR(S):** Burzichelli and others

**DATE INTRODUCED:** February 3, 2003

**COMMITTEE:**                    **ASSEMBLY:** Judiciary

**SENATE:** Judiciary

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**            **ASSEMBLY:** June 23, 2003

**SENATE:** May 29, 2003

**DATE OF APPROVAL:** September 25, 2003

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute for A3226/3290 (2R) enacted)  
(Amendments during passage denoted by superscript numbers)

#### A3226/3290

[SPONSORS STATEMENT \(A3226\)](#): (Begins on page 15 of original bill) [Yes](#)

[SPONSORS STATEMENT \(A3290\)](#): (Begins on page 9 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                                    [ASSEMBLY:](#) [Yes](#)

[SENATE:](#) [Yes](#)

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:** No

#### S2238

[SPONSORS STATEMENT](#): (Begins on page 15 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A3226

**COMMITTEE STATEMENT:**                                    **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

Yes

"Identity theft penalties stiffened in NJ," 9-26-2003 The Times, p.A9  
"Civil penalties target identity thieves," 9-26-2003 Star Ledger, p.36  
"Identity theft law signed by governor," 9-26-2003 The Record, p. L1.

## CHAPTER 184

AN ACT concerning theft of identity, amending N.J.S.2C:1-3, P.L.1983, c.565, N.J.S.2C:21-17, N.J.S.2C:44-1, P.L.1997, c.172 and supplementing Title 2C of the New Jersey Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:1-3 is amended to read as follows:

Territorial applicability.

2C:1-3. Territorial applicability.

a. Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(1) Either the conduct which is an element of the offense or the result which is such an element occurs within this State;

(2) Conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit a crime within the State;

(3) Conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of such conspiracy occurs within the State;

(4) Conduct occurring within the State establishes complicity in the commission of, or an attempt, or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this State;

(5) The offense consists of the omission to perform a legal duty imposed by the law of this State with respect to domicile, residence or a relationship to a person, thing or transaction in the State; or

(6) The offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows or should know that his conduct is likely to affect that interest.

b. Subsection a.(1) does not apply when either causing a specified result or a purpose to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

c. Except as provided in subsection g., subsection a. (1) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the State which would not constitute an offense if the result had occurred there, unless the actor purposely or knowingly caused the result within the State.

d. When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result," within the meaning of subsection a.(1) and if the body of a homicide victim is found within the State, it may be inferred that such result occurred within the State.

e. This State includes the land and water, including the waters set forth in N.J.S.40A:13-2 and the air space above such land and water with respect to which the State has legislative jurisdiction. It also includes any territory made subject to the criminal jurisdiction of this State by compacts between it and another state or between it and the Federal Government.

f. Notwithstanding that territorial jurisdiction may be found under this section, the court may dismiss, hold in abeyance for up to six months, or, with the permission of the defendant, place on the inactive list a criminal prosecution under the law of this State where it appears that such action is in the interests of justice because the defendant is being prosecuted for an offense based on the same conduct in another jurisdiction and this State's interest will be adequately served by a prosecution in the other jurisdiction.

g. When the result which is an element of an offense consists of inflicting a harm upon a resident of this State or depriving a resident of this State of a benefit, the result occurs within this State, even if the conduct occurs wholly outside this State and any property that was affected by the offense was located outside this State.

2. Section 1 of P.L.1983, c.565 (C.2C:21-2.1) is amended to read as follows:

## C.2C:21-2.1 Offenses involving false government documents, degree of crime.

1. a. A person who knowingly sells, offers or exposes for sale, or otherwise transfers, or possesses with the intent to sell, offer or expose for sale, or otherwise transfer, a document, printed form or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the second degree.

b. A person who knowingly makes, or possesses devices or materials to make, a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the second degree.

c. A person who knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the third degree. A violation of R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) for using the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this subsection if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

d. A person who knowingly possesses a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the fourth degree.

e. In addition to any other disposition authorized by this Title, the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other statute indicating the dispositions that may be ordered for an adjudication of delinquency, and, notwithstanding the provisions of subsection c. of N.J.S.2C:43-2, every person convicted of or adjudicated delinquent for a violation of any offense defined in this section shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period to be fixed by the court at not less than six months or more than two years which shall commence on the day the sentence is imposed. In the case of any person who at the time of the imposition of the sentence is less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years. If the driving privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this Title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension or postponement.

The court before whom any person is convicted of or adjudicated delinquent for a violation of any offense defined in this section shall collect forthwith the New Jersey driver's license or licenses of that person and forward the license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. The report shall include the complete name, address, date of birth, eye color and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or postponement imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40. A person shall be required to acknowledge receipt of the written notice

in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license, but shall notify forthwith the director who shall notify the appropriate officials in that licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privileges in this State.

In addition to any other condition imposed, a court, in its discretion, may suspend, revoke or postpone the driving privileges of a person admitted to supervisory treatment under N.J.S.2C:36A-1 or N.J.S.2C:43-12 without a plea of guilty or finding of guilt.

3. N.J.S.2C:21-17 is amended to read as follows:

Impersonation; theft of identity; crime.

2C:21-17. Impersonation; Theft of Identity; crime.

a. A person is guilty of an offense if the person:

(1) Impersonates another or assumes a false identity and does an act in such assumed character or false identity for purpose of obtaining a benefit for himself or another or to injure or defraud another;

(2) Pretends to be a representative of some person or organization and does an act in such pretended capacity for the purpose of obtaining a benefit for himself or another or to injure or defraud another;

(3) Impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services; or

(4) Obtains any personal identifying information pertaining to another person and uses that information, or assists another person in using the information, in order to assume the identity of or represent themselves as another person, without that person's authorization and with the purpose to fraudulently obtain or attempt to obtain a benefit or services, or avoid the payment of debt or other legal obligation or avoid prosecution for a crime by using the name of the other person.

As used in this section:

"Benefit" means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value.

b. A person is guilty of an offense if, in the course of making an oral or written application for services, the person impersonates another, assumes a false identity or makes a false or misleading statement with the purpose of avoiding payment for prior services. Purpose to avoid payment for prior services may be presumed upon proof that the person has not made full payment for prior services and has impersonated another, assumed a false identity or made a false or misleading statement regarding the identity of any person in the course of making oral or written application for services.

c. (1) If the actor obtains a benefit or deprives another of a benefit in an amount less than \$500 and the offense involves the identity of one victim, the actor shall be guilty of a crime of the fourth degree.

(2) For a second or subsequent offense, or if the actor obtains a benefit or deprives another of a benefit in an amount of at least \$500 but less than \$75,000, or the offense involves the identity of at least two but less than five victims, the actor shall be guilty of a crime of the third degree.

(3) If the actor obtains a benefit or deprives another of a benefit in the amount of \$75,000 or more, or the offense involves the identity of more than five victims, the actor shall be guilty of a crime of the second degree.

d. A violation of R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) for using the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not

constitute an offense under this section if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

e. The sentencing court shall issue such orders as are necessary to correct any public record that contains false information as a result of a theft of identity. The sentencing court may provide restitution to the victim in accordance with the provisions of section 4 of P.L.2002, c.85 (C.2C:21-17.1).

4. N.J.S.2C:44-1 is amended to read as follows:

Criteria for withholding or imposing sentence of imprisonment.

2C:44-1. Criteria for Withholding or Imposing Sentence of Imprisonment. a. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court shall consider the following aggravating circumstances:

- (1) The nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner;
- (2) The gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance;
- (3) The risk that the defendant will commit another offense;
- (4) A lesser sentence will depreciate the seriousness of the defendant's offense because it involved a breach of the public trust under chapters 27 and 30, or the defendant took advantage of a position of trust or confidence to commit the offense;
- (5) There is a substantial likelihood that the defendant is involved in organized criminal activity;
- (6) The extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted;
- (7) The defendant committed the offense pursuant to an agreement that he either pay or be paid for the commission of the offense and the pecuniary incentive was beyond that inherent in the offense itself;
- (8) The defendant committed the offense against a police or other law enforcement officer, correctional employee or fireman, acting in the performance of his duties while in uniform or exhibiting evidence of his authority; the defendant committed the offense because of the status of the victim as a public servant; or the defendant committed the offense against a sports official, athletic coach or manager, acting in or immediately following the performance of his duties or because of the person's status as a sports official, coach or manager;
- (9) The need for deterring the defendant and others from violating the law;
- (10) The offense involved fraudulent or deceptive practices committed against any department or division of State government;
- (11) The imposition of a fine, penalty or order of restitution without also imposing a term of imprisonment would be perceived by the defendant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the initial decision to resort to unlawful practices;
- (12) The defendant committed the offense against a person who he knew or should have known was 60 years of age or older, or disabled; and
- (13) The defendant, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a stolen motor vehicle.

b. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances:

- (1) The defendant's conduct neither caused nor threatened serious harm;
- (2) The defendant did not contemplate that his conduct would cause or threaten serious harm;
- (3) The defendant acted under a strong provocation;
- (4) There were substantial grounds tending to excuse or justify the defendant's

conduct, though failing to establish a defense;

- (5) The victim of the defendant's conduct induced or facilitated its commission;
- (6) The defendant has compensated or will compensate the victim of his conduct for the damage or injury that he sustained, or will participate in a program of community service;
- (7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;
- (8) The defendant's conduct was the result of circumstances unlikely to recur;
- (9) The character and attitude of the defendant indicate that he is unlikely to commit another offense;
- (10) The defendant is particularly likely to respond affirmatively to probationary treatment;
- (11) The imprisonment of the defendant would entail excessive hardship to himself or his dependents;
- (12) The willingness of the defendant to cooperate with law enforcement authorities;
- (13) The conduct of a youthful defendant was substantially influenced by another person more mature than the defendant.

c. (1) A plea of guilty by a defendant or failure to so plead shall not be considered in withholding or imposing a sentence of imprisonment.

(2) When imposing a sentence of imprisonment the court shall consider the defendant's eligibility for release under the law governing parole, including time credits awarded pursuant to Title 30 of the Revised Statutes, in determining the appropriate term of imprisonment.

d. Presumption of imprisonment. The court shall deal with a person who has been convicted of a crime of the first or second degree by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others. Notwithstanding the provisions of subsection e. of this section, the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

e. The court shall deal with a person convicted of an offense other than a crime of the first or second degree, who has not previously been convicted of an offense, without imposing a sentence of imprisonment unless, having regard to the nature and circumstances of the offense and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public under the criteria set forth in subsection a., except that this subsection shall not apply if the person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; eluding; if the person is convicted of a crime of the third degree constituting use of a false government document in violation of subsection c. of section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime of the third degree constituting distribution, manufacture or possession of an item containing personal identifying information in violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-17.3); or if the person is convicted of a crime of the third or fourth degree constituting bias intimidation in violation of N.J.S.2C:16-1; or if the person is convicted of a crime of the third or fourth degree under the provisions of section 1 or 2 of P.L.1997, c.111 (C.2C:11-5.1 or 2C:12-1.1).

f. Presumptive Sentences. (1) Except for the crime of murder, unless the preponderance of aggravating or mitigating factors, as set forth in subsections a. and b., weighs in favor of a higher or lower term within the limits provided in N.J.S.2C:43-6, when a court determines that a sentence of imprisonment is warranted, it shall impose sentence as follows:

(a) To a term of 20 years for aggravated manslaughter or kidnaping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

(b) Except as provided in paragraph (a) of this subsection to a term of 15 years for a crime of the first degree;

(c) To a term of seven years for a crime of the second degree;

- (d) To a term of four years for a crime of the third degree; and
- (e) To a term of nine months for a crime of the fourth degree.

In imposing a minimum term pursuant to 2C:43-6b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

Unless the preponderance of mitigating factors set forth in subsection b. weighs in favor of a lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a presumptive term of life imprisonment. Unless the preponderance of aggravating and mitigating factors set forth in subsections a. and b. weighs in favor of a higher or lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive term of 50 years' imprisonment; sentences imposed pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment; and sentences imposed pursuant to 2C:43-7a.(4) shall have a presumptive term of seven years' imprisonment.

In imposing a minimum term pursuant to 2C:43-7b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

(2) In cases of convictions for crimes of the first or second degree where the court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands, the court may sentence the defendant to a term appropriate to a crime of one degree lower than that of the crime for which he was convicted. If the court does impose sentence pursuant to this paragraph, or if the court imposes a noncustodial or probationary sentence upon conviction for a crime of the first or second degree, such sentence shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

g. Imposition of Noncustodial Sentences in Certain Cases. If the court, in considering the aggravating factors set forth in subsection a., finds the aggravating factor in paragraph a.(2) or a.(12) and does not impose a custodial sentence, the court shall specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.

h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-11), the presumption of imprisonment as provided in subsection d. of this section shall not preclude the admission of a person to the Intensive Supervision Program, established pursuant to the Rules Governing the Courts of the State of New Jersey.

C.2C:21-17.2 Use of personal indentifying information of another, certain; second degree crime.

5. a. A person is guilty of a crime of the second degree if, in obtaining or attempting to obtain a driver's license or other document issued by a governmental agency which could be used as a means of verifying a person's identity, age or any other personal identifying information, that person knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency or which belongs or pertains to a person other than the person who possesses the document.

b. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction under this section shall not merge with a conviction of any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of this section and any other criminal offense.

c. A violation of R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) for using the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this section if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

C.2C:21-17.3 Trafficking in personal indentifying information pertaining to another person, certain; crime degrees; terms defined.

6. a. A person who knowingly distributes, manufactures or possesses any item containing personal identifying information pertaining to another person, without that person's



authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone is guilty of a crime of the fourth degree.

b. (1) If the person distributes, manufactures or possesses 20 or more items containing personal identifying information pertaining to another person, or five or more items containing personal information pertaining to five or more separate persons, without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone the person is guilty of a crime of the third degree.

(2) If the person distributes, manufactures or possesses 50 or more items containing personal identifying information pertaining to another person, or ten or more items containing personal identifying information pertaining to five or more separate persons, without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone the person is guilty of a crime of the second degree.

c. Distribution, manufacture or possession of 20 or more items containing personal identifying information pertaining to another person or of items containing personal identifying information pertaining to five or more separate persons without authorization shall create an inference that the items were distributed, manufactured or possessed with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone.

d. As used in this section:

"Distribute" means, but is not limited to, any sale, purchase, transfer, gift, delivery, or provision to another, regardless of whether the distribution was for compensation.

"Item" means a writing or document, whether issued by a governmental agency or made by any business or person, recorded by any method that contains personal identifying information. Item includes, but is not limited to, an access device, book, check, paper, card, instrument, or information stored in electronic form by way of e-mail or otherwise, on any computer, computer storage medium, computer program, computer software, computer equipment, computer system or computer network or any part thereof, or by other mechanical or electronic device such as cellular telephone, pager or other electronic device capable of storing information.

C.2C:21-17.4 Action by person defrauded by unauthorized use of personal identifying information.

7. a. Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use of that person's personal identifying information, in violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17, may bring an action in any court of competent jurisdiction. In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award damages in an amount three times the value of all costs incurred by the victim as a result of the person's criminal activity. These costs may include, but are not limited to, those incurred by the victim in clearing his credit history or credit rating, or those incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant. The victim may also recover those costs incurred for attorneys' fees, court costs and any out-of-pocket losses. A financial institution, insurance company, bonding association or business that suffers direct financial loss as a result of the offense shall also be entitled to damages, but damages to natural persons shall be fully satisfied prior to any payment to a financial institution, insurance company, bonding association or business.

b. The standard of proof in actions brought under this section is a preponderance of the evidence, and the fact that a prosecution for a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 is not instituted or, where instituted, terminates without a conviction shall not preclude an action pursuant to this section. A final judgment rendered in favor of the State in any criminal proceeding shall estop the defendant from denying the same conduct in any civil action brought pursuant to this section.

c. The cause of action authorized by this section shall be in addition to and not in lieu of any forfeiture or any other action, injunctive relief or any other remedy available at law, except that where the defendant is convicted of a violation of this act, the court in the criminal action, upon the application of the Attorney General or the prosecutor, shall in addition to any other disposition authorized by this Title sentence the defendant to pay restitution in an amount equal

to the costs incurred by the victim as a result of the defendant's criminal activity, regardless of whether a civil action has been instituted. These costs may include, but are not limited to those incurred by the victim in clearing his credit history or credit rating; those incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant; or those incurred for attorneys' fees, court costs and any out-of-pocket losses. A financial institution, insurance company, bonding association or business that suffers direct financial loss as a result of the offense shall also be entitled to restitution, but restitution to natural persons shall be fully satisfied prior to any payment to a financial institution, insurance company, bonding association or business.

C.2C:21-17.5 Deletion of certain items from victim's consumer reporting files.

8. a. On motion of a person who has been the victim of a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 or on its own motion, the court may, without a hearing, grant an order directing all consumer reporting agencies doing business within the State of New Jersey to delete those items of information from the victim's file that were the result of the unlawful use of the victim's personal identifying information. The consumer reporting agency shall thereafter, provide the victim with a copy of the corrected credit history report at no charge.

b. Following any deletion of information pursuant to this section, the consumer reporting agency shall, at the request of the victim, furnish notification that the item has been deleted, to any person specifically designated by the victim who has within two years prior thereto received a consumer report for employment purposes, or within one year prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

9. Section 10 of P.L.1997, c.172 (C.56:11-37) is amended to read as follows:

C.56:11-37 Imposition of charge on consumer; exceptions.

10. a. Except as provided in subsections b., c., d. and e. of this section, a consumer reporting agency may impose a reasonable charge on a consumer for:

(1) making a disclosure to the consumer pursuant to section 7 of this act if the request is the second or subsequent request in a 12-month period of time and is not made pursuant to subsection b. of this section; the charge for this disclosure shall not exceed \$8 and shall be indicated to the consumer before making the disclosure;

(2) furnishing to a person designated by the consumer pursuant to subsection k. of section 9 of this act a statement, codification, or summary filed or developed under subsection i. or j. of section 9 of this act, after notification of the consumer under subsection f. of section 9 of this act with respect to the reinvestigation; this charge shall not exceed the charge that the agency would impose on each designated recipient for a consumer report and shall be indicated to the consumer before furnishing this information.

b. Each consumer reporting agency that maintains a file on a consumer shall make all disclosures required pursuant to section 7 of this act without charge to the consumer if, not later than 60 days after receipt by the consumer of a notification of an adverse action or notification from a debt collection agency affiliated with the consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 7 of this act.

c. Upon the request of the consumer, a consumer reporting agency shall make all disclosures required pursuant to section 7 of this act once during any 12-month period without charge to the consumer.

d. A consumer reporting agency shall not impose any charge on a consumer for providing any notification required by this act, including but not limited to, the notification required pursuant to subsection k. of section 9 of this act following deletion of information from a consumer's file pursuant to section 9 of this act, or making any disclosure required by this act, except as authorized by subsection a. of this section.

e. Upon request of the consumer, a consumer reporting agency shall make all disclosures required pursuant to section 7 of this act once during any 12-month period without charge to

that consumer if the consumer certifies in writing that the consumer:

- (1) is unemployed and intends to apply for employment in the 60-day period beginning on the date on which certification is made;
- (2) is a recipient of assistance under the Work First New Jersey Program;
- (3) has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud; or
- (4) has been a victim of a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 and the court has ordered the deletion of those items of information that were the result of the unlawful use of the victim's personal identifying information.

10. This act shall take effect immediately.

Approved September 25, 2003.

# ASSEMBLY, No. 3226

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 3, 2003

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Salem, Cumberland and Gloucester)**

**Assemblyman GARY L. GUEAR, SR.**

**District 14 (Mercer and Middlesex)**

**Assemblyman PAUL SARLO**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Co-Sponsored by:**

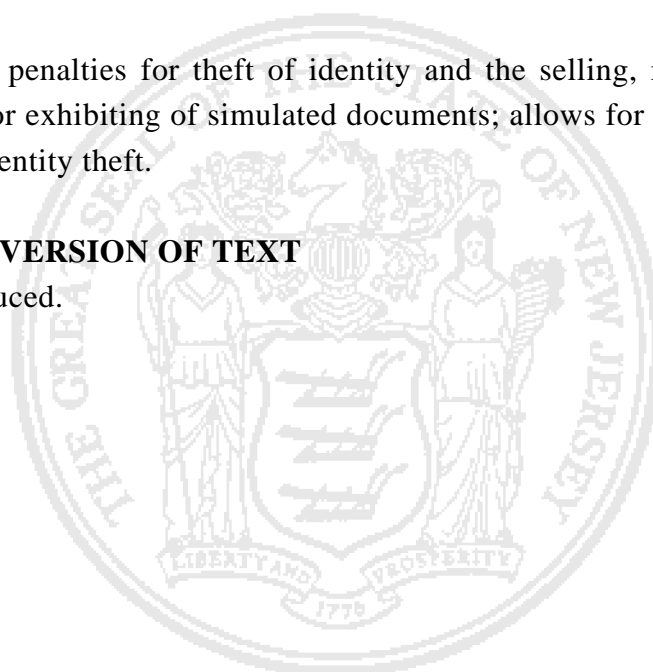
**Assemblywoman Greenstein**

**SYNOPSIS**

Upgrades penalties for theft of identity and the selling, manufacturing, possessing, or exhibiting of simulated documents; allows for civil action for victims of identity theft.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/14/2003)**

1 AN ACT concerning theft of identity, amending N.J.S.2C:1-3,  
2 P.L.1983, c.565, N.J.S.2C:21-17, N.J.S.2C:44-1, P.L.1997, c.172  
3 and supplementing Title 2C of the New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. N.J.S.2C:1-3 is amended to read as follows:  
9 2C:1-3. Territorial applicability.

10 a. Except as otherwise provided in this section, a person may be  
11 convicted under the law of this State of an offense committed by his  
12 own conduct or the conduct of another for which he is legally  
13 accountable if:

14 (1) Either the conduct which is an element of the offense or the  
15 result which is such an element occurs within this State;

16 (2) Conduct occurring outside the State is sufficient under the law  
17 of this State to constitute an attempt to commit a crime within the  
18 State;

19 (3) Conduct occurring outside the State is sufficient under the law  
20 of this State to constitute a conspiracy to commit an offense within  
21 the State and an overt act in furtherance of such conspiracy occurs  
22 within the State;

23 (4) Conduct occurring within the State establishes complicity in the  
24 commission of, or an attempt, or conspiracy to commit, an offense in  
25 another jurisdiction which also is an offense under the law of this  
26 State;

27 (5) The offense consists of the omission to perform a legal duty  
28 imposed by the law of this State with respect to domicile, residence  
29 or a relationship to a person, thing or transaction in the State; or

30 (6) The offense is based on a statute of this State which expressly  
31 prohibits conduct outside the State, when the conduct bears a  
32 reasonable relation to a legitimate interest of this State and the actor  
33 knows or should know that his conduct is likely to affect that interest.

34 b. Subsection a.(1) does not apply when either causing a specified  
35 result or a purpose to cause or danger of causing such a result is an  
36 element of an offense and the result occurs or is designed or likely to  
37 occur only in another jurisdiction where the conduct charged would  
38 not constitute an offense, unless a legislative purpose plainly appears  
39 to declare the conduct criminal regardless of the place of the result.

40 c. **[Subsection a.(1)]** Except as provided in subsection g.,  
41 subsection a. (1) does not apply when causing a particular result is an  
42 element of an offense and the result is caused by conduct occurring  
43 outside the State which would not constitute an offense if the result

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 had occurred there, unless the actor purposely or knowingly caused  
2 the result within the State.

3 d. When the offense is homicide, either the death of the victim or  
4 the bodily impact causing death constitutes a "result," within the  
5 meaning of subsection a.(1) and if the body of a homicide victim is  
6 found within the State, it may be inferred that such result occurred  
7 within the State.

8 e. This State includes the land and water, including the waters set  
9 forth in [R.S.40:18-5] N.J.S.40A:13-2 and the air space above such  
10 land and water with respect to which the State has legislative  
11 jurisdiction. It also includes any territory made subject to the criminal  
12 jurisdiction of this State by compacts between it and another state or  
13 between it and the Federal Government.

14 f. Notwithstanding that territorial jurisdiction may be found under  
15 this section, the court may dismiss, hold in abeyance for up to [6] six  
16 months, or, with the permission of the defendant, place on the inactive  
17 list a criminal prosecution under the law of this State where it appears  
18 that such action is in the interests of justice because the defendant is  
19 being prosecuted for an offense based on the same conduct in another  
20 jurisdiction and this State's interest will be adequately served by a  
21 prosecution in the other jurisdiction.

22 g. When the result which is an element of an offense consists of  
23 inflicting a harm upon a resident of this State or depriving a resident  
24 of this State of a benefit, the result occurs within this State, even if the  
25 conduct occurs wholly outside this State and any property that was  
26 affected by the offense was located outside this State.

27 (cf: P.L.1978, c.95, s.2C:1-3)

28

29 2. Section 1 of P.L.1983, c. 565 (C.2C:21-2.1) is amended to read  
30 as follows:

31 1. a. A person who knowingly sells, offers or exposes for sale, or  
32 otherwise transfers, or possesses with the intent to sell, offer or  
33 expose for sale, or otherwise transfer, a document, printed form or  
34 other writing which falsely purports to be a driver's license or other  
35 document issued by a governmental agency and which could be used  
36 as a means of verifying a person's identity or age or any other personal  
37 identifying information is guilty of a crime of the [third] second  
38 degree.

39 b. A person who knowingly makes, or possesses devices or  
40 materials to make, a document or other writing which falsely purports  
41 to be a driver's license or other document issued by a governmental  
42 agency and which could be used as a means of verifying a person's  
43 identity or age or any other personal identifying information is guilty  
44 of a crime of the [third] second degree.

45 c. A person who knowingly exhibits, displays or utters a  
46 document or other writing which falsely purports to be a driver's

1 license or other document issued by a governmental agency and which  
2 could be used as a means of verifying a person's identity or age or any  
3 other personal identifying information is guilty of a crime of the  
4 ~~[fourth]~~ third degree.

5 d. A person who knowingly possesses a document or other  
6 writing which falsely purports to be a driver's license or other  
7 document issued by a governmental agency and which could be used  
8 as a means of verifying a person's identity or age or any other personal  
9 identifying information is guilty of a ~~[disorderly persons offense]~~  
10 crime of the fourth degree.

11 e. In addition to any other disposition authorized by this Title, the  
12 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other  
13 statute indicating the dispositions that may be ordered for an  
14 adjudication of delinquency, and, notwithstanding the provisions of  
15 subsection c. of N.J.S.2C:43-2, every person convicted of or  
16 adjudicated delinquent for a violation of any offense defined in this  
17 section shall forthwith forfeit his right to operate a motor vehicle over  
18 the highways of this State for a period to be fixed by the court at not  
19 less than six months or more than two years which shall commence on  
20 the day the sentence is imposed. In the case of any person who at the  
21 time of the imposition of the sentence is less than 17 years of age, the  
22 period of the suspension of driving privileges authorized herein,  
23 including a suspension of the privilege of operating a motorized  
24 bicycle, shall commence on the day the sentence is imposed and shall  
25 run for a period as fixed by the court of not less than six months or  
26 more than two years after the day the person reaches the age of 17  
27 years. If the driving privilege of any person is under revocation,  
28 suspension, or postponement for a violation of any provision of this  
29 Title or Title 39 of the Revised Statutes at the time of any conviction  
30 or adjudication of delinquency for a violation of any offense defined  
31 in this chapter or chapter 36 of this Title, the revocation, suspension,  
32 or postponement period imposed herein shall commence as of the date  
33 of termination of the existing revocation, suspension or postponement.

34 The court before whom any person is convicted of or adjudicated  
35 delinquent for a violation of any offense defined in this section shall  
36 collect forthwith the New Jersey driver's license or licenses of that  
37 person and forward the license or licenses to the Director of the  
38 Division of Motor Vehicles along with a report indicating the first and  
39 last day of the suspension or postponement period imposed by the  
40 court pursuant to this section. If the court is for any reason unable to  
41 collect the license or licenses of the person, the court shall cause a  
42 report of the conviction or adjudication of delinquency to be filed with  
43 the director. The report shall include the complete name, address,  
44 date of birth, eye color and sex of the person and shall indicate the  
45 first and last day of the suspension or postponement period imposed  
46 by the court pursuant to this section. The court shall inform the

1 person orally and in writing that if the person is convicted of  
2 personally operating a motor vehicle during the period of license  
3 suspension or postponement imposed pursuant to this section, the  
4 person shall, upon conviction, be subject to the penalties set forth in  
5 R.S.39:3-40. A person shall be required to acknowledge receipt of the  
6 written notice in writing. Failure to receive a written notice or failure  
7 to acknowledge in writing the receipt of a written notice shall not be  
8 a defense to a subsequent charge of a violation of R.S.39:3-40. If the  
9 person is the holder of a driver's license from another jurisdiction, the  
10 court shall not collect the license, but shall notify forthwith the  
11 director who shall notify the appropriate officials in that licensing  
12 jurisdiction. The court shall, however, in accordance with the  
13 provisions of this section, revoke the person's non-resident driving  
14 privileges in this State.

15 In addition to any other condition imposed, a court, in its  
16 discretion, may suspend, revoke or postpone the driving privileges of  
17 a person admitted to supervisory treatment under N.J.S.2C:36A-1 or  
18 N.J.S.2C:43-12 without a plea of guilty or finding of guilt.  
19 (cf: P.L.2002, c.85, s.3)

20

21 3. N.J.S.2C:21-17 is amended to read as follows:

22 2C:21-17. Impersonation; Theft of Identity; [disorderly persons  
23 offense,] crime.

24 a. A person is guilty of an offense [when he] if the person:

25 (1) Impersonates another or assumes a false identity and does an  
26 act in such assumed character or false identity for purpose of obtaining  
27 a [pecuniary] benefit for himself or another or to injure or defraud  
28 another;

29 (2) Pretends to be a representative of some person or organization  
30 and does an act in such pretended capacity for the purpose of  
31 obtaining a benefit for himself or another or to injure or defraud  
32 another;

33 (3) Impersonates another, assumes a false identity or makes a false  
34 or misleading statement regarding the identity of any person, in an oral  
35 or written application for services, for the purpose of obtaining  
36 services; or

37 (4) Obtains any personal identifying information pertaining to  
38 another person and uses that information, or assists another person in  
39 using the information, in order to assume the identity of or represent  
40 themselves as another person, without that person's authorization and  
41 with the purpose to fraudulently obtain or attempt to obtain a  
42 [pecuniary] benefit or services, or avoid the payment of debt or other  
43 legal obligation or avoid prosecution for a crime by using the name of  
44 the other person.

45 As used in this section:

46 "Benefit" means, but is not limited to, any property, any pecuniary



1 amount, any services, any pecuniary amount sought to be avoided or  
2 any injury or harm perpetrated on another where there is no pecuniary  
3 value.

4 b. A person is guilty of an offense if, in the course of making an  
5 oral or written application for services, ~~[he]~~ the person impersonates  
6 another, assumes a false identity or makes a false or misleading  
7 statement with the purpose of avoiding payment for prior services.  
8 Purpose to avoid payment for prior services may be presumed upon  
9 proof that the person has not made full payment for prior services and  
10 has impersonated another, assumed a false identity or made a false or  
11 misleading statement regarding the identity of any person in the course  
12 of making oral or written application for services.

13 c.(1) ~~[ A person who violates subsection a. or b. of this section is~~  
14 ~~guilty of a crime of the second degree if the pecuniary benefit, the~~  
15 ~~value of the services received, the payment sought to be avoided or the~~  
16 ~~injury or fraud perpetrated on another is \$75,000 or more. If the~~  
17 ~~pecuniary benefit, the value of the services received, the payment~~  
18 ~~sought to be avoided or the injury or fraud perpetrated on another is~~  
19 ~~at least \$500 but is less than \$75,000, the offender is guilty of a crime~~  
20 ~~of the third degree. If the pecuniary benefit, the value of the services~~  
21 ~~received, the payment sought to be avoided or the injury or fraud~~  
22 ~~perpetrated on another is at least \$200 but is less than \$500, the~~  
23 ~~offender is guilty of a crime of the fourth degree.~~

24 (2) If the pecuniary benefit, the value of the services received, the  
25 payment sought to be avoided or the injury or fraud perpetrated on  
26 another is less than \$200, or if the benefit or services received or the  
27 injury or fraud perpetrated on another has no pecuniary value, or if the  
28 person was unsuccessful in an attempt to receive a benefit or services  
29 or to injure or perpetrate a fraud on another, then the person is guilty  
30 of a disorderly persons offense] If the actor obtains a benefit or  
31 deprives another of a benefit in an amount less than \$500 and the  
32 offense involves the identity of one victim, the actor shall be guilty of  
33 a crime of the third degree.

34 (2) For a second or subsequent offense, or if the actor obtains a  
35 benefit or deprives another of a benefit in an amount of at least \$500  
36 but less than \$75,000, or the offense involves the identity of at least  
37 two but less than five victims, the actor shall be guilty of a crime of the  
38 second degree.

39 (3) If the actor obtains a benefit or deprives another of a benefit in  
40 the amount of \$75,000 or more, or the offense involves the identity of  
41 more than five victims, the actor shall be guilty of a crime of the first  
42 degree.

43 d. A violation of ~~[R.S.39:3-37 for using the personal information~~  
44 ~~of another to obtain a driver's license or register a motor vehicle or a~~  
45 ~~violation of]~~ R.S.33:1-81 or section 6 of P.L.1968, c.313  
46 (C.33:1-81.7) for using the personal identifying information of another

1 to illegally purchase an alcoholic beverage or for using the personal  
2 identifying information of another to misrepresent his age for the  
3 purpose of obtaining tobacco or other consumer product denied to  
4 persons under 18 years of age shall not constitute an offense under this  
5 section if the actor received only that benefit or service and did not  
6 perpetrate or attempt to perpetrate any additional injury or fraud on  
7 another.

8 e. The sentencing court shall issue such orders as are necessary to  
9 correct any public record that contains false information as a result of  
10 a theft of identity. The sentencing court may provide restitution to  
11 the victim in accordance with the provisions of section 4 of P.L.2002,  
12 c.85 (C.2C:21-17.1).

13 (cf: P.L.2002, c.85, s.5)

14  
15 4. N.J.S.2C:44-1 is amended to read as follows:

16 2C:44-1. Criteria for Withholding or Imposing Sentence of  
17 Imprisonment. a. In determining the appropriate sentence to be  
18 imposed on a person who has been convicted of an offense, the court  
19 shall consider the following aggravating circumstances:

20 (1) The nature and circumstances of the offense, and the role of the  
21 actor therein, including whether or not it was committed in an  
22 especially heinous, cruel, or depraved manner;

23 (2) The gravity and seriousness of harm inflicted on the victim,  
24 including whether or not the defendant knew or reasonably should  
25 have known that the victim of the offense was particularly vulnerable  
26 or incapable of resistance due to advanced age, ill-health, or extreme  
27 youth, or was for any other reason substantially incapable of exercising  
28 normal physical or mental power of resistance;

29 (3) The risk that the defendant will commit another offense;

30 (4) A lesser sentence will depreciate the seriousness of the  
31 defendant's offense because it involved a breach of the public trust  
32 under chapters 27 and 30, or the defendant took advantage of a  
33 position of trust or confidence to commit the offense;

34 (5) There is a substantial likelihood that the defendant is involved  
35 in organized criminal activity;

36 (6) The extent of the defendant's prior criminal record and the  
37 seriousness of the offenses of which he has been convicted;

38 (7) The defendant committed the offense pursuant to an agreement  
39 that he either pay or be paid for the commission of the offense and the  
40 pecuniary incentive was beyond that inherent in the offense itself;

41 (8) The defendant committed the offense against a police or other  
42 law enforcement officer, correctional employee or fireman, acting in  
43 the performance of his duties while in uniform or exhibiting evidence  
44 of his authority; the defendant committed the offense because of the  
45 status of the victim as a public servant; or the defendant committed the  
46 offense against a sports official, athletic coach or manager, acting in

- 1 or immediately following the performance of his duties or because of  
2 the person's status as a sports official, coach or manager;
- 3 (9) The need for deterring the defendant and others from violating  
4 the law;
- 5 (10) The offense involved fraudulent or deceptive practices  
6 committed against any department or division of State government;
- 7 (11) The imposition of a fine, penalty or order of restitution without  
8 also imposing a term of imprisonment would be perceived by the  
9 defendant or others merely as part of the cost of doing business, or as  
10 an acceptable contingent business or operating expense associated  
11 with the initial decision to resort to unlawful practices;
- 12 (12) The defendant committed the offense against a person who he  
13 knew or should have known was 60 years of age or older, or disabled;
- 14 (13) The defendant, while in the course of committing or attempting  
15 to commit the crime, including the immediate flight therefrom, used or  
16 was in possession of a stolen motor vehicle.
- 17 b. In determining the appropriate sentence to be imposed on a  
18 person who has been convicted of an offense, the court may properly  
19 consider the following mitigating circumstances:
- 20 (1) The defendant's conduct neither caused nor threatened serious  
21 harm;
- 22 (2) The defendant did not contemplate that his conduct would  
23 cause or threaten serious harm;
- 24 (3) The defendant acted under a strong provocation;
- 25 (4) There were substantial grounds tending to excuse or justify the  
26 defendant's conduct, though failing to establish a defense;
- 27 (5) The victim of the defendant's conduct induced or facilitated its  
28 commission;
- 29 (6) The defendant has compensated or will compensate the victim  
30 of his conduct for the damage or injury that he sustained, or will  
31 participate in a program of community service;
- 32 (7) The defendant has no history of prior delinquency or criminal  
33 activity or has led a law-abiding life for a substantial period of time  
34 before the commission of the present offense;
- 35 (8) The defendant's conduct was the result of circumstances  
36 unlikely to recur;
- 37 (9) The character and attitude of the defendant indicate that he is  
38 unlikely to commit another offense;
- 39 (10) The defendant is particularly likely to respond affirmatively to  
40 probationary treatment;
- 41 (11) The imprisonment of the defendant would entail excessive  
42 hardship to himself or his dependents;
- 43 (12) The willingness of the defendant to cooperate with law  
44 enforcement authorities;
- 45 (13) The conduct of a youthful defendant was substantially  
46 influenced by another person more mature than the defendant.

1 c. (1) A plea of guilty by a defendant or failure to so plead shall not  
2 be considered in withholding or imposing a sentence of imprisonment.

3 (2) When imposing a sentence of imprisonment the court shall  
4 consider the defendant's eligibility for release under the law governing  
5 parole, including time credits awarded pursuant to Title 30 of the  
6 Revised Statutes, in determining the appropriate term of imprisonment.

7 d. Presumption of imprisonment. The court shall deal with a  
8 person who has been convicted of a crime of the first or second degree  
9 by imposing a sentence of imprisonment unless, having regard to the  
10 character and condition of the defendant, it is of the opinion that his  
11 imprisonment would be a serious injustice which overrides the need to  
12 deter such conduct by others. Notwithstanding the provisions of  
13 subsection e. of this section, the court shall deal with a person who has  
14 been convicted of theft of a motor vehicle or of the unlawful taking of  
15 a motor vehicle and who has previously been convicted of either  
16 offense by imposing a sentence of imprisonment unless, having regard  
17 to the character and condition of the defendant, it is of the opinion that  
18 his imprisonment would be a serious injustice which overrides the need  
19 to deter such conduct by others.

20 e. The court shall deal with a person convicted of an offense other  
21 than a crime of the first or second degree, who has not previously been  
22 convicted of an offense, without imposing sentence of imprisonment  
23 unless, having regard to the nature and circumstances of the offense  
24 and the history, character and condition of the defendant, it is of the  
25 opinion that his imprisonment is necessary for the protection of the  
26 public under the criteria set forth in subsection a., except that this  
27 subsection shall not apply if the person is convicted of any of the  
28 following crimes of the third degree: theft of a motor vehicle; unlawful  
29 taking of a motor vehicle; or eluding; or if the person is convicted of  
30 a crime of the third or fourth degree constituting bias intimidation in  
31 violation of N.J.S.2C:16-1; or if the person is convicted of a crime of  
32 the third degree constituting use of a simulated document in violation  
33 of subsection c. of section 1 of P.L.1983, c.565 (C.2C:21-2.1); or if  
34 the person is convicted of a crime of the third degree constituting  
35 distribution, manufacture or possession of an item containing personal  
36 identifying information in violation of subsection a. of section 6 of  
37 P.L. , c. (C. )(now pending before the Legislature as section 6 of  
38 this bill).

39 f. Presumptive Sentences. (1) Except for the crime of murder,  
40 unless the preponderance of aggravating or mitigating factors, as set  
41 forth in subsections a. and b., weighs in favor of a higher or lower  
42 term within the limits provided in N.J.S.2C:43-6, when a court  
43 determines that a sentence of imprisonment is warranted, it shall  
44 impose sentence as follows:

45 (a) To a term of 20 years for aggravated manslaughter or  
46 kidnaping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1

1 when the offense constitutes a crime of the first degree;

2 (b) Except as provided in paragraph (a) of this subsection to a term  
3 of 15 years for a crime of the first degree;

4 (c) To a term of seven years for a crime of the second degree;

5 (d) To a term of four years for a crime of the third degree; and

6 (e) To a term of nine months for a crime of the fourth degree.

7 In imposing a minimum term pursuant to 2C:43-6b., the sentencing  
8 court shall specifically place on the record the aggravating factors set  
9 forth in this section which justify the imposition of a minimum term.

10 Unless the preponderance of mitigating factors set forth in  
11 subsection b. weighs in favor of a lower term within the limits  
12 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a  
13 presumptive term of life imprisonment. Unless the preponderance of  
14 aggravating and mitigating factors set forth in subsections a. and b.  
15 weighs in favor of a higher or lower term within the limits authorized,  
16 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive  
17 term of 50 years' imprisonment; sentences imposed pursuant to  
18 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;  
19 and sentences imposed pursuant to 2C:43-7a.(4) shall have a  
20 presumptive term of seven years' imprisonment.

21 In imposing a minimum term pursuant to 2C:43-7b., the sentencing  
22 court shall specifically place on the record the aggravating factors set  
23 forth in this section which justify the imposition of a minimum term.

24 (2) In cases of convictions for crimes of the first or second degree  
25 where the court is clearly convinced that the mitigating factors  
26 substantially outweigh the aggravating factors and where the interest  
27 of justice demands, the court may sentence the defendant to a term  
28 appropriate to a crime of one degree lower than that of the crime for  
29 which he was convicted. If the court does impose sentence pursuant  
30 to this paragraph, or if the court imposes a noncustodial or  
31 probationary sentence upon conviction for a crime of the first or  
32 second degree, such sentence shall not become final for 10 days in  
33 order to permit the appeal of such sentence by the prosecution.

34 g. Imposition of Noncustodial Sentences in Certain Cases. If the  
35 court, in considering the aggravating factors set forth in subsection a.,  
36 finds the aggravating factor in paragraph a.(2) or a.(12) and does not  
37 impose a custodial sentence, the court shall specifically place on the  
38 record the mitigating factors which justify the imposition of a  
39 noncustodial sentence.

40 h. Except as provided in section 2 of P.L.1993, c.123  
41 (C.2C:43-11), the presumption of imprisonment as provided in  
42 subsection d. of this section shall not preclude the admission of a  
43 person to the Intensive Supervision Program, established pursuant to  
44 the Rules Governing the Courts of the State of New Jersey.

45 (cf: P.L.2001, c.443, s.7)

1       5. (New section ) a. A person is guilty of a crime of the second  
2 degree if, in obtaining or attempting to obtain a driver's license or  
3 other document issued by a governmental agency which could be used  
4 as a means of verifying a person's identity, age or any other personal  
5 identifying information, that person knowingly exhibits, displays or  
6 utters a document or other writing which falsely purports to be a  
7 driver's license or other document issued by a governmental agency or  
8 which belongs or pertains to a person other than the person who  
9 possesses the document.

10       b. Notwithstanding the provisions of N.J.S.2C:1-8 or any other  
11 law, a conviction under this section shall not merge with a conviction  
12 of any other criminal offense, nor shall such other conviction merge  
13 with a conviction under this section, and the court shall impose  
14 separate sentences upon each violation of this section and any other  
15 criminal offense.

16       c. A violation of R.S.33:1-81 or section 6 of P.L.1968,  
17 c.313(C.33:1-81.7) for using the personal identifying information of  
18 another to illegally purchase an alcoholic beverage or for using the  
19 personal identifying information of another to misrepresent his age for  
20 the purpose of obtaining tobacco or other consumer product denied to  
21 persons under 18 years of age shall not constitute an offense under  
22 this section if the actor received only that benefit or service and did  
23 not perpetrate or attempt to perpetrate any additional injury or fraud  
24 on another.

25

26       6. (New section) a. A person who knowingly distributes,  
27 manufactures or possesses any item containing personal identifying  
28 information pertaining to another person, without that person's  
29 authorization, and with knowledge that the actor is facilitating a fraud  
30 or injury to be perpetrated by anyone is guilty of a crime of the third  
31 degree.

32       b. (1) If the person distributes, manufactures or possesses 20 or  
33 more items containing personal identifying information pertaining to  
34 another person, or five or more items containing personal information  
35 pertaining to five or more separate persons, without authorization, and  
36 with knowledge that the actor is facilitating a fraud or injury to be  
37 perpetrated by anyone is guilty of a crime of the second degree.

38       (2) If the person distributes, manufactures or possesses 50 or more  
39 items containing personal identifying information pertaining to another  
40 person, or ten or more items containing personal identifying  
41 information pertaining to five or more separate persons, without  
42 authorization, and with knowledge that the actor is facilitating a fraud  
43 or injury to be perpetrated by anyone is guilty of a crime of the first  
44 degree.

45       c. Distribution, manufacture or possession of 20 or more items  
46 containing personal identifying information pertaining to another

1 person or of items containing personal identifying information  
2 pertaining to five or more separate persons without authorization shall  
3 create an inference that the items were distributed, manufactured or  
4 possessed with knowledge that the actor is facilitating a fraud or injury  
5 to be perpetrated by anyone.

6 d. As used in this section:

7 "Distribute" means, but is not limited to, any sale, purchase,  
8 transfer, gift, delivery, or provision to another, regardless of whether  
9 the distribution was for compensation.

10 "Item" means a writing or document, whether issued by a  
11 governmental agency or made by any business or person, recorded by  
12 any method that contains personal identifying information. Item  
13 includes, but is not limited to, access device, book, check, paper, card,  
14 instrument, or information stored in electronic form by way of e-mail  
15 or otherwise, on any computer, computer storage medium, computer  
16 program, computer software, computer equipment, computer system  
17 or computer network or any part thereof, or by other mechanical or  
18 electronic device such as cellular telephone, pager or other electronic  
19 device capable of storing information.

20

21 7. (New section) a. Any person who suffers any ascertainable loss  
22 of moneys or property, real or personal, as a result of the use of that  
23 person's personal identifying information, in violation of N.J.S.2C:21-  
24 1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17, may  
25 bring an action in any court of competent jurisdiction. In any action  
26 under this section the court shall, in addition to any other appropriate  
27 legal or equitable relief, award damages in an amount three times the  
28 value of all costs incurred by the victim as a result of the person's  
29 criminal activity. These costs may include, but are not limited to,  
30 those incurred by the victim in clearing his credit history or credit  
31 rating, or those incurred in connection with any civil or administrative  
32 proceeding to satisfy any debt, lien, or other obligation of the victim  
33 arising as a result of the actions of the defendant. The victim may also  
34 recover those costs incurred for attorneys' fees, court costs and any  
35 out-of-pocket losses. A financial institution, insurance company,  
36 bonding association or business that suffers direct financial loss as a  
37 result of the offense shall also be entitled to damages, but damages to  
38 natural persons shall be fully satisfied prior to any payment to a  
39 financial institution, insurance company, bonding association or  
40 business.

41 b. The standard of proof in actions brought under this section is a  
42 preponderance of the evidence, and the fact that a prosecution for a  
43 violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1)  
44 or N.J.S.2C:21-17 is not instituted or, where instituted, terminates  
45 without a conviction shall not preclude an action pursuant to this  
46 section. A final judgment rendered in favor of the State in any

1 criminal proceeding shall estop the defendant from denying the same  
2 conduct in any civil action brought pursuant to this section.

3 c. The cause of action authorized by this section shall be in  
4 addition to and not in lieu of any forfeiture or any other action,  
5 injunctive relief or any other remedy available at law, except that  
6 where the defendant is convicted of a violation of this act, the court in  
7 the criminal action, upon the application of the Attorney General or  
8 the prosecutor, shall in addition to any other disposition authorized by  
9 this Title sentence the defendant to pay restitution in an amount equal  
10 to the costs incurred by the victim as a result of the defendant's  
11 criminal activity, regardless of whether a civil action has been  
12 instituted. These costs may include, but are not limited to those  
13 incurred by the victim in clearing his credit history or credit rating;  
14 those incurred in connection with any civil or administrative  
15 proceeding to satisfy any debt, lien, or other obligation of the victim  
16 arising as a result of the actions of the defendant; or those incurred for  
17 attorneys' fees, court costs and any out-of-pocket losses. A financial  
18 institution, insurance company, bonding association or business that  
19 suffers direct financial loss as a result of the offense shall also be  
20 entitled to restitution, but restitution, but restitution to natural persons  
21 shall be fully satisfied prior to any payment to a financial institution,  
22 insurance company, bonding association or business.

23

24 8. (New section) a. On motion of a person who has been the  
25 victim of a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565  
26 (2C:21-2.1) or N.J.S.2C:21-17 or on its own motion, the court may,  
27 without a hearing, grant an order directing all consumer reporting  
28 agencies doing business within the State of New Jersey to delete those  
29 items of information from the victim's file that were the result of the  
30 unlawful use of the victim's personal identifying information. The  
31 consumer reporting agency shall thereafter, provide the victim with a  
32 copy of the corrected credit history report at no charge.

33 b. Following any deletion of information pursuant to this section,  
34 the consumer reporting agency shall, at the request of the victim,  
35 furnish notification that the item has been deleted, to any person  
36 specifically designated by the victim who has within two years prior  
37 thereto received a consumer report for employment purposes, or  
38 within one year prior thereto received a consumer report for any other  
39 purpose, which contained the deleted or disputed information.

40

41 9. Section 10 of P.L.1997, c.172(C.56:11-37) is amended to read  
42 as follows:

43 10. a. Except as provided in subsections b., c.,d. and e. of this  
44 section, a consumer reporting agency may impose a reasonable charge  
45 on a consumer for:

46 (1) making a disclosure to the consumer pursuant to section 7 of



1 this act if the request is the second or subsequent request in a  
2 12-month period of time and is not made pursuant to subsection b. of  
3 this section; the charge for this disclosure shall not exceed \$8 and shall  
4 be indicated to the consumer before making the disclosure;

5 (2) furnishing to a person designated by the consumer pursuant to  
6 subsection k. of section 9 of this act a statement, codification, or  
7 summary filed or developed under subsection i. or j. of section 9 of  
8 this act, after notification of the consumer under subsection f. of  
9 section 9 of this act with respect to the reinvestigation; this charge  
10 shall not exceed the charge that the agency would impose on each  
11 designated recipient for a consumer report and shall be indicated to the  
12 consumer before furnishing this information.

13 b. Each consumer reporting agency that maintains a file on a  
14 consumer shall make all disclosures required pursuant to section 7 of  
15 this act without charge to the consumer if, not later than 60 days after  
16 receipt by the consumer of a notification of an adverse action or  
17 notification from a debt collection agency affiliated with the consumer  
18 reporting agency stating that the consumer's credit rating may be or  
19 has been adversely affected, the consumer makes a request under  
20 section 7 of this act.

21 c. Upon the request of the consumer, a consumer reporting agency  
22 shall make all disclosures required pursuant to section 7 of this act  
23 once during any 12-month period without charge to the consumer.

24 d. A consumer reporting agency shall not impose any charge on a  
25 consumer for providing any notification required by this act, including  
26 but not limited to, the notification required pursuant to subsection k.  
27 of section 9 of this act following deletion of information from a  
28 consumer's file pursuant to section 9 of this act, or making any  
29 disclosure required by this act, except as authorized by subsection a.  
30 of this section.

31 e. Upon request of the consumer, a consumer reporting agency  
32 shall make all disclosures required pursuant to section 7 of this act  
33 once during any 12-month period without charge to that consumer if  
34 the consumer certifies in writing that the consumer:

35 (1) is unemployed and intends to apply for employment in the  
36 60-day period beginning on the date on which certification is made;

37 (2) is a recipient of assistance under the Work First New Jersey  
38 Program; [or]

39 (3) has reason to believe that the file on the consumer at the  
40 agency contains inaccurate information due to fraud; or

41 (4) has been a victim of a violation of N.J.S.2C:21-1, section 1 of  
42 P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 and the court has  
43 ordered the deletion of those items of information that were the result  
44 of the unlawful use of the victim's personal identifying information.

45 (cf: P.L. 1997, c. 172, s.10)

1       10. This act shall take effect immediately.

2

3

4

#### STATEMENT

5

6       A substantial burden is placed on the New Jersey economy and to  
7 individual citizens as a result of theft of identity. This type of  
8 misconduct inflicts direct and indirect harm on its victims, in terms of  
9 financial loss, damage to reputation and credit history, and personal  
10 inconvenience and aggravation. This bill protects State citizens from  
11 this insidious practice and promotes restitution of losses and  
12 restoration of financial status of victims. The bill amends N.J.S.2C:1-  
13 3, concerning jurisdiction, to expand the reach of prosecutions for  
14 theft of identity to include an actor's conduct which is outside the  
15 State but the victim suffers the harm in or resides in New Jersey.

16       The bill makes theft of identity a third degree offense. However,  
17 the actor would not be entitled to the presumption of non-  
18 incarceration usually associated with a crime of the third degree. A  
19 second or subsequent offense, or an identity theft offense where the  
20 actor obtains a benefit or deprives another of a benefit in an amount  
21 of at least \$500 but less than \$75,000, or an offense which involves the  
22 identity of between two and five victims would be graded as a crime of  
23 the second degree. If the amount involved is \$75,000 or more or more  
24 than five identities are involved in the theft, the offense would be  
25 graded as a crime of the first degree. The bill provides the sentencing  
26 court with the power to correct public records that contain false  
27 information as a result of a theft of identity.

28       The bill upgrades the crimes associated with the sale of simulated  
29 documents to provide second degree crimes for (1) sale of a simulated  
30 driver's license or government document and (2) making or possessing  
31 devices to make a simulated driver's license or government document.  
32 A person who displays the simulated document would be guilty of a  
33 third degree crime but, again, would not be entitled to the presumption  
34 of non-incarceration usually associated with a crime of the third  
35 degree. A person who possesses the simulated document would be  
36 guilty of a crime of the fourth degree.

37       The bill creates a new crime of the second degree if a person, in  
38 obtaining a driver's license or other government document which could  
39 be used to verify a person's identity or any other personal identifying  
40 information, that person uses a false driver's license or other  
41 government document. However, the bill excludes from the offense  
42 a person under 18 years of age who uses personal information of  
43 another solely to purchase alcoholic beverages or tobacco products.

44       The bill further creates a civil remedy for victims of identity theft.  
45 The intent is that a victim have the ability to bring a civil action and  
46 recover that money expended to restore the credit history that was

1 damaged as a result of identity theft.

2 The bill would allow a victim of an identity theft to bring a civil suit  
3 against the person accused of the theft of the victim's identifying  
4 information, to recover damages in an amount up to and including  
5 three times the value of all costs incurred, as well as those costs  
6 incurred for attorneys' fees, court costs and out-of-pocket losses. The  
7 bill would also direct the court, upon application of the Attorney  
8 General or prosecutor, to order the defendant who is convicted of a  
9 violation of this act, to pay restitution to any victim, including  
10 businesses, from any costs associated with theft of identity. The court  
11 could also grant an order directing all consumer reporting agencies to  
12 delete the record of bad credit that was created as a result of the  
13 identity theft. Finally, this bill would direct the consumer reporting  
14 agency, at the request of the victim, to notify all persons so designated  
15 by the victim of the deletion of the negative credit history that was  
16 created as a result of the identity theft.

# ASSEMBLY, No. 3290

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## STATE OF NEW JERSEY

### 210th LEGISLATURE

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INTRODUCED FEBRUARY 4, 2003

**Sponsored by:**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Assemblywoman LINDA R. GREENSTEIN**

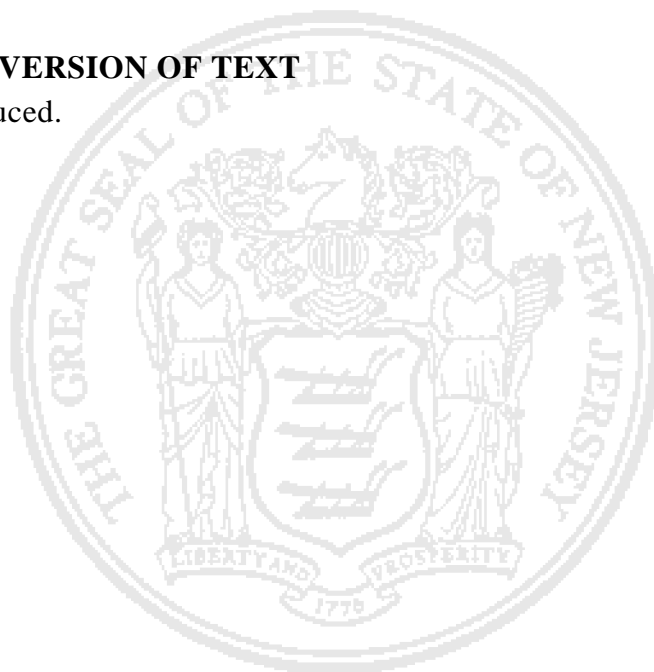
**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Upgrades the penalties for the sale and use of simulated documents and provides a penalty for using simulated documents to obtain a driver's license or another government issued document; increases the penalty for the identity theft and fraudulent use of credit cards under certain circumstances.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/14/2003)**

1 AN ACT concerning fraud and amending P.L.1983, c.565,  
2 N.J.S.2C:21-6 and N.J.S.2C:21-17.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 1 of P.L.1983, c.565 (C.2C:21-2.1) is amended to read  
8 as follows:

9 1. a. A person who knowingly sells, offers or exposes for sale, or  
10 otherwise transfers, or possesses with the intent to sell, offer or  
11 expose for sale, or otherwise transfer, a document, printed form or  
12 other writing which falsely purports to be a driver's license or other  
13 document issued by a governmental agency and which could be used  
14 as a means of verifying a person's identity or age or any other personal  
15 identifying information is guilty of a crime of the [third] second  
16 degree.

17 b. A person who knowingly makes, or possesses devices or  
18 materials to make, a document or other writing which falsely purports  
19 to be a driver's license or other document issued by a governmental  
20 agency and which could be used as a means of verifying a person's  
21 identity or age or any other personal identifying information is guilty  
22 of a crime of the [third] second degree.

23 c. [A] (1) Except as provided in paragraph (2) of this subsection,  
24 a person who knowingly exhibits, displays or utters a document or  
25 other writing which falsely purports to be a driver's license or other  
26 document issued by a governmental agency and which could be used  
27 as a means of verifying a person's identity or age or any other personal  
28 identifying information is guilty of a crime of the fourth degree.

29 (2) A person who knowingly exhibits, displays or utters a  
30 document or other writing which falsely purports to be a driver's  
31 license or other document issued by a governmental agency and who  
32 uses this document to obtain a driver's license or other document  
33 issued by a governmental agency which could be used as a means of  
34 verifying a person's identity or age or any other personal identifying  
35 information is guilty of a crime of the third degree.

36 d.[A] Except as provided in paragraph (2) of this subsection, a  
37 person who knowingly possesses a document or other writing which  
38 falsely purports to be a driver's license or other document issued by a  
39 governmental agency and which could be used as a means of verifying  
40 a person's identity or age or any other personal identifying information  
41 is guilty of a [disorderly persons offense] crime of the fourth degree.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1       (2) A person who knowingly possesses a document, printed form  
2 or other writing which falsely purports to be a certificate, instrument  
3 or license issued by a governmental agency and who uses this  
4 document to obtain a driver's license or other document issued by a  
5 governmental agency which could be used as a means of verifying a  
6 person's identity or age or any other personal identifying information  
7 is guilty of a crime of the third degree.

8       e. In addition to any other disposition authorized by this Title, the  
9 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other  
10 statute indicating the dispositions that may be ordered for an  
11 adjudication of delinquency, and, notwithstanding the provisions of  
12 subsection c. of N.J.S.2C:43-2, every person convicted of or  
13 adjudicated delinquent for a violation of any offense defined in this  
14 section shall forthwith forfeit his right to operate a motor vehicle over  
15 the highways of this State for a period to be fixed by the court at not  
16 less than six months or more than two years which shall commence on  
17 the day the sentence is imposed. In the case of any person who at the  
18 time of the imposition of the sentence is less than 17 years of age, the  
19 period of the suspension of driving privileges authorized herein,  
20 including a suspension of the privilege of operating a motorized  
21 bicycle, shall commence on the day the sentence is imposed and shall  
22 run for a period as fixed by the court of not less than six months or  
23 more than two years after the day the person reaches the age of  
24 17 years. If the driving privilege of any person is under revocation,  
25 suspension, or postponement for a violation of any provision of this  
26 Title or Title 39 of the Revised Statutes at the time of any conviction  
27 or adjudication of delinquency for a violation of any offense defined  
28 in this chapter or chapter 36 of this Title, the revocation, suspension,  
29 or postponement period imposed herein shall commence as of the date  
30 of termination of the existing revocation, suspension or postponement.

31       The court before whom any person is convicted of or adjudicated  
32 delinquent for a violation of any offense defined in this section shall  
33 collect forthwith the New Jersey driver's license or licenses of that  
34 person and forward the license or licenses to the Director of the  
35 Division of Motor Vehicles along with a report indicating the first and  
36 last day of the suspension or postponement period imposed by the  
37 court pursuant to this section. If the court is for any reason unable to  
38 collect the license or licenses of the person, the court shall cause a  
39 report of the conviction or adjudication of delinquency to be filed with  
40 the director. The report shall include the complete name, address,  
41 date of birth, eye color and sex of the person and shall indicate the  
42 first and last day of the suspension or postponement period imposed  
43 by the court pursuant to this section. The court shall inform the  
44 person orally and in writing that if the person is convicted of  
45 personally operating a motor vehicle during the period of license  
46 suspension or postponement imposed pursuant to this section, the

1 person shall, upon conviction, be subject to the penalties set forth in  
2 R.S.39:3-40. A person shall be required to acknowledge receipt of the  
3 written notice in writing. Failure to receive a written notice or failure  
4 to acknowledge in writing the receipt of a written notice shall not be  
5 a defense to a subsequent charge of a violation of R.S.39:3-40. If the  
6 person is the holder of a driver's license from another jurisdiction, the  
7 court shall not collect the license, but shall notify forthwith the  
8 director who shall notify the appropriate officials in that licensing  
9 jurisdiction. The court shall, however, in accordance with the  
10 provisions of this section, revoke the person's non-resident driving  
11 privileges in this State.

12 In addition to any other condition imposed, a court, in its  
13 discretion, may suspend, revoke or postpone the driving privileges of  
14 a person admitted to supervisory treatment under N.J.S.2C:36A-1 or  
15 N.J.S.2C:43-12 without a plea of guilty or finding of guilt.  
16 (cf: P.L.2002, c.85, s.3).

17

18 2. N.J.S.2C:21-6 is amended to read as follows:

19 2C:21-6. Credit Cards.

20 a. Definitions. As used in this section:

21 (1) "Cardholder" means the person or organization named on the  
22 face of a credit card to whom or for whose benefit the credit card is  
23 issued by an issuer.

24 (2) "Credit card" means any tangible or intangible instrument or  
25 device issued with or without fee by an issuer that can be used, alone  
26 or in connection with another means of account access, in obtaining  
27 money, goods, services or anything else of value on credit, including  
28 credit cards, credit plates, account numbers, or any other means of  
29 account access.

30 (3) "Expired credit card" means a credit card which is no longer  
31 valid because the term shown either on it or on documentation  
32 provided to the cardholder by the issuer has elapsed.

33 (4) "Issuer" means the business organization or financial institution  
34 which issues a credit card or its duly authorized agent.

35 (5) "Receives" or "receiving" means acquiring possession or  
36 control or accepting a credit card as security for a loan.

37 (6) "Revoked credit card" means a credit card which is no longer  
38 valid because permission to use it has been suspended or terminated  
39 by the issuer.

40 b. False statements made in procuring issuance of credit card. A  
41 person who makes or causes to be made, either directly or indirectly,  
42 any false statement in writing, knowing it to be false and with intent  
43 that it be relied on, respecting his identity or that of any other person,  
44 firm or corporation, or his financial condition or that of any other  
45 person, firm or corporation, for the purpose of procuring the issuance  
46 of a credit card is guilty of a crime of the fourth degree.

1 c. Credit card theft.

2 (1) A person who takes or obtains a credit card from the person,  
3 possession, custody or control of another without the cardholder's  
4 consent or who, with knowledge that it has been so taken, receives the  
5 credit card with intent to use it or to sell it, or to transfer it to a person  
6 other than the issuer or the cardholder is guilty of a crime of the fourth  
7 degree. Taking a credit card without consent includes obtaining it by  
8 any conduct defined and prescribed in Chapter 20 of this title, Theft  
9 and Related Offenses.

10 A person who has in his possession or under his control (a) credit  
11 cards issued in the names of two or more other persons or, (b) two or  
12 more stolen credit cards is presumed to have violated this paragraph.

13 (2) A person who receives a credit card that he knows to have been  
14 lost, mislaid, or delivered under a mistake as to the identity or address  
15 of the cardholder, and who retains possession with intent to use it or  
16 to sell it or to transfer it to a person other than the issuer or the  
17 cardholder is guilty of a crime of the fourth degree.

18 (3) A person other than the issuer who sells a credit card or a  
19 person who buys a credit card from a person other than the issuer is  
20 guilty of a crime of the fourth degree.

21 (4) A person who, with intent to defraud the issuer, a person or  
22 organization providing money, goods, services or anything else of  
23 value, or any other person, obtains control over a credit card as  
24 security for debt is guilty of a crime of the fourth degree.

25 (5) A person who, with intent to defraud a purported issuer, a  
26 person or organization providing money, goods, services or anything  
27 else of value, or any other person, falsely makes or falsely embosses  
28 a purported credit card or utters such a credit card is guilty of a third  
29 degree offense. A person other than the purported issuer who  
30 possesses two or more credit cards which are falsely made or falsely  
31 embossed is presumed to have violated this paragraph. A person  
32 "falsely makes" a credit card when he makes or draws, in whole or in  
33 part, a device or instrument which purports to be the credit card of a  
34 named issuer but which is not such a credit card because the issuer did  
35 not authorize the making or drawing, or alters a credit card which was  
36 validly issued. A person "falsely embosses" a credit card when,  
37 without the authorization of the named issuer, he completes a credit  
38 card by adding any of the matter, other than the signature of the  
39 cardholder, which an issuer requires to appear on the credit card  
40 before it can be used by a cardholder.

41 (6) A person other than the cardholder or a person authorized by  
42 him who, with intent to defraud the issuer, or a person or organization  
43 providing money, goods, services or anything else of value, or any  
44 other person, signs a credit card, is guilty of a crime of the fourth  
45 degree. A person who possesses two or more credit cards which are  
46 so signed is presumed to have violated this paragraph.



1 d. Intent of cardholder to defraud; penalties; knowledge of  
2 revocation. A person, who, with intent to defraud the issuer, a person  
3 or organization providing money, goods, services or anything else of  
4 value, or any other person, (1) uses for the purpose of obtaining  
5 money, goods, services or anything else of value a credit card obtained  
6 or retained in violation of subsection c. of this section or a credit card  
7 which he knows is forged, expired or revoked, or (2) obtains money,  
8 goods, services or anything else of value by representing without the  
9 consent of the cardholder that he is the holder of a specified card or by  
10 representing that he is the holder of a card and such card has not in  
11 fact been issued, is guilty of a crime of the third degree. Knowledge  
12 of revocation shall be presumed to have been received by a cardholder  
13 four days after it has been mailed to him at the address set forth on the  
14 credit card or at his last known address by registered or certified mail,  
15 return receipt requested, and, if the address is more than 500 miles  
16 from the place of mailing, by air mail. If the address is located outside  
17 the United States, Puerto Rico, the Virgin Islands, the Canal Zone and  
18 Canada, notice shall be presumed to have been received 10 days after  
19 mailing by registered or certified mail.

20 e. Intent to defraud by person authorized to furnish money, goods,  
21 or services; penalties.

22 (1) A person who is authorized by an issuer to furnish money,  
23 goods, services or anything else of value upon presentation of a credit  
24 card by the cardholder, or any agent or employees of such person,  
25 who, with intent to defraud the issuer or the cardholder, furnishes  
26 money, goods, services or anything else of value upon presentation of  
27 a credit card obtained or retained in violation of subsection c. of this  
28 section or a credit card which he knows is forged, expired or revoked  
29 violates this paragraph and is guilty of a crime of the third degree.

30 (2) A person who is authorized by an issuer to furnish money,  
31 goods, services or anything else of value upon presentation of a credit  
32 card by the cardholder, fails to furnish money, goods, services or  
33 anything else of value which he represents in writing to the issuer that  
34 he has furnished is guilty of a crime of the fourth degree.

35 f. Incomplete credit cards; intent to complete without consent. A  
36 person other than the cardholder possessing two or more incomplete  
37 credit cards, with intent to complete them without the consent of the  
38 issuer or a person possessing, with knowledge of its character,  
39 machinery, plates or any other contrivance designed to reproduce  
40 instruments purporting to be the credit cards of an issuer who has not  
41 consented to the preparation of such credit cards, is guilty of a crime  
42 of the third degree. A credit card is "incomplete" if part of the matter  
43 other than the signature of the cardholder, which an issuer requires to  
44 appear on the credit card, before it can be used by a cardholder, has  
45 not yet been stamped, embossed, imprinted or written on it.

1 g. Receiving anything of value knowing or believing that it was  
2 obtained in violation of subsection d. of N.J.S.2C:21-6. A person who  
3 receives money, goods, services or anything else of value obtained in  
4 violation of subsection d. of this section, knowing or believing that it  
5 was so obtained is guilty of a crime of the fourth degree. A person  
6 who obtains, at a discount price a ticket issued by an airline, railroad,  
7 steamship or other transportation company which was acquired in  
8 violation of subsection d. of this section without reasonable inquiry to  
9 ascertain that the person from whom it was obtained had a legal right  
10 to possess it shall be presumed to know that such ticket was acquired  
11 under circumstances constituting a violation of subsection d. of this  
12 section.

13 h. Fraudulent use of credit cards.

14 (1) A person who knowingly uses any counterfeit, fictitious,  
15 altered, forged, lost, stolen or fraudulently obtained credit card to  
16 obtain a driver's license or other document issued by a governmental  
17 agency which could be used as a means of verifying a person's identity  
18 or age or any other personal identifying information is guilty of a crime  
19 of the third degree.

20 (2) A person who knowingly uses any counterfeit, fictitious,  
21 altered, forged, lost, stolen or fraudulently obtained credit card to  
22 obtain money, goods or services, or anything else of value; or who,  
23 with unlawful or fraudulent intent, furnishes, acquires, or uses any  
24 actual or fictitious credit card, whether alone or together with names  
25 of credit cardholders, or other information pertaining to a credit card  
26 account in any form, is guilty of a crime of the third degree.

27 (cf: P.L.1991, c.122, s.1)

28

29 3. N.J.S.2C:21-17 is amended to read as follows:

30 2C:21-17. Impersonation; Theft of Identity; disorderly persons  
31 offense, crime.

32 a. A person is guilty of an offense when he:

33 (1) Impersonates another or assumes a false identity and does an  
34 act in such assumed character or false identity for purpose of obtaining  
35 a pecuniary benefit for himself or another or to injure or defraud  
36 another;

37 (2) Pretends to be a representative of some person or organization  
38 and does an act in such pretended capacity for the purpose of  
39 obtaining a benefit for himself or another or to injure or defraud  
40 another;

41 (3) Impersonates another, assumes a false identity or makes a false  
42 or misleading statement regarding the identity of any person, in an oral  
43 or written application for services, for the purpose of obtaining  
44 services; [or]

45 (4) Obtains any personal identifying information pertaining to  
46 another person and uses that information, or assists another person in

1 using the information, in order to assume the identity of or represent  
2 themselves as another person, without that person's authorization and  
3 with the purpose to fraudulently obtain or attempt to obtain a  
4 pecuniary benefit or services, or avoid the payment of debt or other  
5 legal obligation or avoid prosecution for a crime by using the name of  
6 the other person; or

7 (5) Obtains any personal identifying information pertaining to  
8 another person and uses that information to unlawfully obtain a motor  
9 vehicle drivers license or other instrument, certificate or license issued  
10 by a governmental agency which could be used as a means of  
11 verifying a person's identity or age or any other personal identifying  
12 information.

13 b. A person is guilty of an offense if, in the course of making an  
14 oral or written application for services, he impersonates another,  
15 assumes a false identity or makes a false or misleading statement with  
16 the purpose of avoiding payment for prior services. Purpose to avoid  
17 payment for prior services may be presumed upon proof that the  
18 person has not made full payment for prior services and has  
19 impersonated another, assumed a false identity or made a false or  
20 misleading statement regarding the identity of any person in the course  
21 of making oral or written application for services.

22 c. (1) A person who violates subsection a. or b. of this section is  
23 guilty of a crime of the second degree if the pecuniary benefit, the  
24 value of the services received, the payment sought to be avoided or the  
25 injury or fraud perpetrated on another is \$75,000 or more.

26 (2) If the pecuniary benefit, the value of the services received, the  
27 payment sought to be avoided or the injury or fraud perpetrated on  
28 another is at least \$500 but is less than \$75,000, the offender is guilty  
29 of a crime of the third degree. If the benefit realized or the services  
30 received is the issuance of a drivers license or other instrument,  
31 certificate or license issued by a governmental agency, the offender is  
32 guilty of a crime of the third degree.

33 (3) If the pecuniary benefit, the value of the services received, the  
34 payment sought to be avoided or the injury or fraud perpetrated on  
35 another is at least \$200 but is less than \$500, the offender is guilty of  
36 a crime of the fourth degree.

37 ~~[(2)]~~ (4) If the pecuniary benefit, the value of the services  
38 received, the payment sought to be avoided or the injury or fraud  
39 perpetrated on another is less than \$200, or if the benefit or services  
40 received or the injury or fraud perpetrated on another has no pecuniary  
41 value, or if the person was unsuccessful in an attempt to receive a  
42 benefit or services or to injure or perpetrate a fraud on another, then  
43 the person is guilty of a disorderly persons offense.

44 d. A violation of R.S.39:3-37 for using the personal information of  
45 another to obtain a driver's license or register a motor vehicle or a  
46 violation of R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7)

1 for using the personal information of another to illegally purchase an  
2 alcoholic beverage shall not constitute an offense under this section if  
3 the actor received only that benefit or service and did not perpetrate  
4 or attempt to perpetrate any additional injury or fraud on another.

5 (cf: P.L.2002, c.85, s.5)

6

7 4. (New Section) A person who knowingly possesses a document  
8 which falsely purports to be a certificate, instrument or license issued  
9 by a governmental agency and who uses that document to obtain a  
10 driver's license or other document issued by a governmental agency  
11 which could be used as a means of verifying a person's identity or age  
12 or any other personal identifying information is guilty of a crime of the  
13 third degree.

14

15 5. This act shall take effect immediately.

16

17

#### 18 STATEMENT

19

20 The increased use of simulated documents and the use of false  
21 documents as a means of obtaining a driver's license or other  
22 document issued by a governmental agency poses a threat to the  
23 security of the citizens of this State. It is the sponsor's intent to  
24 address this growing problem by increasing the penalties for selling  
25 simulated documents and by prohibiting the use of simulated  
26 documents as a means of obtaining other documents issued by the  
27 government, such as a driver's license, which can be used as a means  
28 of verifying a person's identity.

29 Under the current provisions of the law, N.J.S.A.2C:21-2.1, it is  
30 a crime of the third degree if a person sells or offers for sale or  
31 possesses with the intent to sell a simulated document which falsely  
32 purports to be driver's license or other document issued by a  
33 governmental agency and which could be used as a means of verifying  
34 a person's identity or age or any other personal identifying information.  
35 It is a crime of the third degree if a person makes, or possesses a  
36 device or materials which makes such a simulated document. This bill  
37 would upgrade these offenses to crimes of the second degree.

38 This law also provides that it a crime of the fourth degree to exhibit  
39 or display or utter a false driver's license or other government issued  
40 document. The bill would supplement this existing provision of the  
41 law and make it a crime of the third degree if the person exhibits or  
42 possesses a false driver's license and uses that simulated document to  
43 obtain another government issued document which could be used as  
44 a means of verifying a person's identity.

45 This law also makes it a disorderly persons offense for a person to  
46 possesses a false driver's license. The bill would upgrade this offense

1 to a crime of the fourth degree. The bill would also provide that if the  
2 person possesses a false driver's license and uses that license to obtain  
3 another government document then the offense would be graded as a  
4 crime of the second degree.

5 This bill would also amend N.J.S.A.2C:21-6 concerning credit card  
6 fraud to make it a crime of the third degree if a person knowingly uses  
7 a forged credit card to obtain a driver's license or other government  
8 issued document.

9 With regards to the crime of identity theft, this bill would amend  
10 the existing statute, N.J.S.A.2C:21-17, to make it a crime of the third  
11 degree to obtain another person's identifying information and using  
12 that information to unlawfully obtain a driver's license or other  
13 government issued instrument which could be used as a means of  
14 verifying a person's identity.

15 Finally, the bill makes it a crime of the third degree for a person to  
16 possess a false government document and use that document to obtain  
17 a driver's license or other government document.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 3226 and 3290

# STATE OF NEW JERSEY

DATED: FEBRUARY 13, 2003

The Assembly Judiciary Committee reports favorably Assembly Committee Substitute for Assembly Bill Nos. 3226 and 3290.

This substitute strengthens the protections against identity theft and promotes restitution of losses and restoration of financial status to victims.

The substitute amends N.J.S.2C:1-3, concerning jurisdiction, to expand the reach of prosecutions for theft of identity to include an actor's conduct which is outside the State when the victim suffers the harm in or resides in New Jersey.

The substitute upgrades the crimes associated with the sale of false government documents to provide that the following are second degree crimes: (1) sale of a false driver's license or government document; and (2) making or possessing devices to make a false driver's license or government document. A person who knowingly displays or exhibits a false document would be guilty of a third degree crime. The possession of a false document would be a crime of the fourth degree.

The substitute would generally upgrade the various identity theft offenses, which currently are the same as theft offenses, to take into account not only the pecuniary amounts involved but also the number of identities involved. For example, under the current law it is a crime of the third degree if the amount involved is at least \$500 but less than \$75,000. This substitute would make it a crime of the third degree if the amount involved is less than \$500 and the offense involves the identity of one victim.

The substitute would make it a crime of the second degree if the actor obtains a benefit or deprives another of a benefit in an amount of at least \$500 but less than \$75,000, or the offense involves the identity of at least two victims but less than five victims or if it is a second or subsequent offense of theft of identity. Under the current provisions of the law, it is a crime of the second degree if the amount involved is \$75,000 or more.

The substitute would make it a crime of the first degree if the amount involved is \$75,000 or more, or the offense involves the identity of more than five victims. The current provisions of the

identity theft law do not provide for a crime of the first degree.

The substitute would also require the sentencing court to make such orders which are necessary to correct any public records that contain false information as a result of a theft of identity. The sentencing court may also provide restitution to the victim in accordance with the recently enacted N.J.S.A.2C:21-17.1.

The substitute would create a new crime of the second degree of using a false driver's license or other government document to obtain a driver's license or other government document which could be used to verify a person's identity or any other personal identifying information. The substitute would exclude from the offense a person under 18 years of age who uses the personal information of another solely to purchase alcoholic beverages or tobacco products.

The substitute would also create a new crime of distributing, manufacturing or possessing any item containing personal identifying information pertaining to another person without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone. Under the provisions of this section, a person would be guilty of a crime of the second degree if the person distributes, manufactures or possesses 20 or more items containing personal identifying information pertaining to another person, or five or more items containing personal information pertaining to five or more separate persons. It would be a crime of the first degree if the person distributes, manufactures or possesses 50 or more items containing personal identifying information pertaining to another person, or ten or more items containing personal identifying information pertaining to five or more separate persons, without authorization.

The substitute also provides that distribution, manufacture or possession of 20 or more items containing personal identifying information pertaining to another person or of items containing personal identifying information pertaining to five or more separate persons without authorization creates an inference that the items were distributed, manufactured or possessed with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone.

The substitute also amends subsection e. of N.J.S.A.2C:44-1 to provide that the following third degree crimes would not be entitled to the presumption of non-incarceration: the third degree crime of using false government document pursuant to the provisions of subsection c. of N.J.S.2C:21-2.1 and the newly created third degree crime, in section 6 of the bill, of distributing, manufacturing or possessing any item containing personal identifying information pertaining to another person without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone.

In addition, the substitute creates a civil remedy for victims of identity theft to recover damages in an amount up to and including three times the value of all costs incurred including attorneys' fees,

court costs and out-of-pocket losses.

The substitute also authorizes the court to grant an order directing all consumer reporting agencies to delete those items of information from the victim's file that were the result of the identity theft. The consumer reporting agency would be required to notify all persons designated by the victim of the deletion of the negative credit history that was created as a result of the identity theft.



# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 3226 and 3290**

with committee amendments

# STATE OF NEW JERSEY

DATED: MARCH 10, 2003

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Committee Substitute Nos. 3226 and 3290.

This substitute strengthens the protections against identity theft and promotes restitution of losses and restoration of financial status to victims.

The substitute amends N.J.S.2C:1-3, concerning jurisdiction, to expand the reach of prosecutions for theft of identity to include an actor's conduct which is outside the State when the victim suffers the harm in or resides in New Jersey.

The substitute upgrades the crimes associated with the sale of false government documents to provide that the following are second degree crimes: (1) sale of a false driver's license or government document; and (2) making or possessing devices to make a false driver's license or government document. A person who knowingly displays or exhibits a false document would be guilty of a third degree crime. The possession of a false document would be a crime of the fourth degree.

The substitute would generally upgrade the various identity theft offenses, which currently are the same as theft offenses, to take into account not only the pecuniary amounts involved but also the number of identities involved. For example, under the current law it is a crime of the third degree if the amount involved is at least \$500 but less than \$75,000. This substitute would make it a crime of the third degree if the amount involved is less than \$500 and the offense involves the identity of one victim.

The substitute would make it a crime of the second degree if the actor obtains a benefit or deprives another of a benefit in an amount of at least \$500 but less than \$75,000, or the offense involves the identity of at least two victims but less than five victims or if it is a second or subsequent offense of theft of identity. Under the current provisions of the law, it is a crime of the second degree if the amount involved is \$75,000 or more.

The substitute would make it a crime of the first degree if the amount involved is \$75,000 or more, or the offense involves the identity of more than five victims. The current provisions of the identity theft law do not provide for a crime of the first degree.

The substitute would also require the sentencing court to make such orders which are necessary to correct any public records that contain false information as a result of a theft of identity. The sentencing court may also provide restitution to the victim in accordance with the recently enacted N.J.S.A.2C:21-17.1.

The substitute would create a new crime of the second degree of using a false driver's license or other government document to obtain a driver's license or other government document which could be used to verify a person's identity or any other personal identifying information. The substitute would exclude from the offense a person under 18 years of age who uses the personal information of another solely to purchase alcoholic beverages or tobacco products.

The substitute would also create a new crime of distributing, manufacturing or possessing any item containing personal identifying information pertaining to another person without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone. Under the provisions of this section, a person would be guilty of a crime of the second degree if the person distributes, manufactures or possesses 20 or more items containing personal identifying information pertaining to another person, or five or more items containing personal information pertaining to five or more separate persons. It would be a crime of the first degree if the person distributes, manufactures or possesses 50 or more items containing personal identifying information pertaining to another person, or ten or more items containing personal identifying information pertaining to five or more separate persons, without authorization.

The substitute also provides that distribution, manufacture or possession of 20 or more items containing personal identifying information pertaining to another person or of items containing personal identifying information pertaining to five or more separate persons without authorization creates an inference that the items were distributed, manufactured or possessed with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone.

The substitute also amends subsection e. of N.J.S.A.2C:44-1 to provide that the following third degree crimes would not be entitled to the presumption of non-incarceration: the third degree crime of using false government document pursuant to the provisions of subsection c. of N.J.S.2C:21-2.1 and the newly created third degree crime, in section 6 of the bill, of distributing, manufacturing or possessing any item containing personal identifying information pertaining to another person without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone.

In addition, the substitute creates a civil remedy for victims of identity theft to recover damages in an amount up to and including three times the value of all costs incurred including attorneys' fees, court costs and out-of-pocket losses.

The substitute also authorizes the court to grant an order directing all consumer reporting agencies to delete those items of information from the victim's file that were the result of the identity theft. The consumer reporting agency would be required to notify all persons designated by the victim of the deletion of the negative credit history that was created as a result of the identity theft.

The committee amendments include an exception for minors who display a false document solely to purchase alcoholic beverages or tobacco products by amending N.J.S.A.2C:21-2.1.

As amended, this substitute is identical to S2238 (1R).

# STATEMENT TO

[First Reprint]

## ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 3226 and 3290**

with Senate Floor Amendments  
(Proposed By Senator ADLER)

ADOPTED: MARCH 20, 2003

This bill strengthens the protections against identity theft and promotes restitution of losses and restoration of financial status to victims.

These floor amendments change the gradation scheme in sections 3 and 6 of the bill which currently grade the crimes from crimes of the third degree to crimes of the first degree. These floor amendments would grade these crimes from crimes of the fourth degree to crimes of the second degree.

Under these floor amendments section 3 of the bill, amending N.J.S.A.2C:21-17, would be amended to make it a crime of the fourth degree if the amount involved is less than \$500 and the offense involves the identity of one victim. It would be a crime of the third degree if the actor obtains a benefit or deprives another of a benefit in an amount of at least \$500 but less than \$75,000, or the offense involves the identity of at least two victims but less than five victims or if it is a second or subsequent offense of theft of identity. It would be a crime of the second degree if the amount involved is \$75,000 or more, or the offense involves the identity of more than five victims.

Section 6 would be amended to make a fourth degree if a person knowingly distributes, manufactures or possesses any item containing personal identifying information pertaining to another person without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone. It would be a crime of the third degree if the person distributes, manufactures or possesses 20 or more items containing personal identifying information pertaining to another person, or five or more items containing personal information pertaining to five or more separate persons. It would be a crime of the second degree if the person distributes, manufactures or possesses 50 or more items containing personal identifying information pertaining to another person, or ten or more items containing personal identifying information pertaining to five or more separate persons, without authorization.

Section 4 is amended to correct an internal reference to section 6 of the bill.

**SENATE, No. 2238**

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**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

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INTRODUCED JANUARY 16, 2003

**Sponsored by:**

**Senator JOSEPH CONIGLIO**

**District 38 (Bergen)**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**SYNOPSIS**

Upgrades penalties for theft of identity and the selling, manufacturing, possessing, or exhibiting of simulated documents; allows for civil action for victims of identity theft.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning theft of identity, amending N.J.S.2C:1-3,  
2 P.L.1983, c.565, N.J.S.2C:21-17, N.J.S.2C:44-1, P.L.1997,  
3 c. 172 and supplementing Title 2C of the New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. N.J.S.2C:1-3 is amended to read as follows:  
9 2C:1-3. Territorial applicability.

10 a. Except as otherwise provided in this section, a person may be  
11 convicted under the law of this State of an offense committed by his  
12 own conduct or the conduct of another for which he is legally  
13 accountable if:

14 (1) Either the conduct which is an element of the offense or the  
15 result which is such an element occurs within this State;

16 (2) Conduct occurring outside the State is sufficient under the law  
17 of this State to constitute an attempt to commit a crime within the  
18 State;

19 (3) Conduct occurring outside the State is sufficient under the law  
20 of this State to constitute a conspiracy to commit an offense within  
21 the State and an overt act in furtherance of such conspiracy occurs  
22 within the State;

23 (4) Conduct occurring within the State establishes complicity in the  
24 commission of, or an attempt, or conspiracy to commit, an offense in  
25 another jurisdiction which also is an offense under the law of this  
26 State;

27 (5) The offense consists of the omission to perform a legal duty  
28 imposed by the law of this State with respect to domicile, residence  
29 or a relationship to a person, thing or transaction in the State; or

30 (6) The offense is based on a statute of this State which expressly  
31 prohibits conduct outside the State, when the conduct bears a  
32 reasonable relation to a legitimate interest of this State and the actor  
33 knows or should know that his conduct is likely to affect that interest.

34 b. Subsection a.(1) does not apply when either causing a specified  
35 result or a purpose to cause or danger of causing such a result is an  
36 element of an offense and the result occurs or is designed or likely to  
37 occur only in another jurisdiction where the conduct charged would  
38 not constitute an offense, unless a legislative purpose plainly appears  
39 to declare the conduct criminal regardless of the place of the result.

40 c. **[Subsection a.(1)]** Except as provided in subsection g.,  
41 subsection a. (1) does not apply when causing a particular result is an  
42 element of an offense and the result is caused by conduct occurring  
43 outside the State which would not constitute an offense if the result

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 had occurred there, unless the actor purposely or knowingly caused  
2 the result within the State.

3 d. When the offense is homicide, either the death of the victim or  
4 the bodily impact causing death constitutes a "result," within the  
5 meaning of subsection a.(1) and if the body of a homicide victim is  
6 found within the State, it may be inferred that such result occurred  
7 within the State.

8 e. This State includes the land and water, including the waters set  
9 forth in [R.S. 40:18-5] N.J.S.40A:13-2 and the air space above such  
10 land and water with respect to which the State has legislative  
11 jurisdiction. It also includes any territory made subject to the criminal  
12 jurisdiction of this State by compacts between it and another state or  
13 between it and the Federal Government.

14 f. Notwithstanding that territorial jurisdiction may be found under  
15 this section, the court may dismiss, hold in abeyance for up to [6] six  
16 months, or, with the permission of the defendant, place on the inactive  
17 list a criminal prosecution under the law of this State where it appears  
18 that such action is in the interests of justice because the defendant is  
19 being prosecuted for an offense based on the same conduct in another  
20 jurisdiction and this State's interest will be adequately served by a  
21 prosecution in the other jurisdiction.

22 g. When the result which is an element of an offense consists of  
23 inflicting a harm upon a resident of this State or depriving a resident  
24 of this State of a benefit, the result occurs within this State, even if the  
25 conduct occurs wholly outside this State and any property that was  
26 affected by the offense was located outside this State.

27 (cf: P.L.1978, c. 95, s. 2C:1-3).

28

29 2. Section 1 of P.L.1983, c. 565 (C.2C:21-2.1) is amended to read  
30 as follows:

31 1. a. A person who knowingly sells, offers or exposes for sale, or  
32 otherwise transfers, or possesses with the intent to sell, offer or  
33 expose for sale, or otherwise transfer, a document, printed form or  
34 other writing which falsely purports to be a driver's license or other  
35 document issued by a governmental agency and which could be used  
36 as a means of verifying a person's identity or age or any other personal  
37 identifying information is guilty of a crime of the [third] second  
38 degree.

39 b. A person who knowingly makes, or possesses devices or  
40 materials to make, a document or other writing which falsely purports  
41 to be a driver's license or other document issued by a governmental  
42 agency and which could be used as a means of verifying a person's  
43 identity or age or any other personal identifying information is guilty  
44 of a crime of the [third] second degree.

45 c. A person who knowingly exhibits, displays or utters a document  
46 or other writing which falsely purports to be a driver's license or other

1 document issued by a governmental agency and which could be used  
2 as a means of verifying a person's identity or age or any other personal  
3 identifying information is guilty of a crime of the [~~fourth~~] third  
4 degree.

5 d. A person who knowingly possesses a document or other writing  
6 which falsely purports to be a driver's license or other document issued  
7 by a governmental agency and which could be used as a means of  
8 verifying a person's identity or age or any other personal identifying  
9 information is guilty of a [~~disorderly persons offense~~] crime of the  
10 fourth degree.

11 e. In addition to any other disposition authorized by this Title, the  
12 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other  
13 statute indicating the dispositions that may be ordered for an  
14 adjudication of delinquency, and, notwithstanding the provisions of  
15 subsection c. of N.J.S.2C:43-2, every person convicted of or  
16 adjudicated delinquent for a violation of any offense defined in this  
17 section shall forthwith forfeit his right to operate a motor vehicle over  
18 the highways of this State for a period to be fixed by the court at not  
19 less than six months or more than two years which shall commence on  
20 the day the sentence is imposed. In the case of any person who at the  
21 time of the imposition of the sentence is less than 17 years of age, the  
22 period of the suspension of driving privileges authorized herein,  
23 including a suspension of the privilege of operating a motorized  
24 bicycle, shall commence on the day the sentence is imposed and shall  
25 run for a period as fixed by the court of not less than six months or  
26 more than two years after the day the person reaches the age of 17  
27 years. If the driving privilege of any person is under revocation,  
28 suspension, or postponement for a violation of any provision of this  
29 Title or Title 39 of the Revised Statutes at the time of any conviction  
30 or adjudication of delinquency for a violation of any offense defined  
31 in this chapter or chapter 36 of this Title, the revocation, suspension,  
32 or postponement period imposed herein shall commence as of the date  
33 of termination of the existing revocation, suspension or postponement.

34 The court before whom any person is convicted of or adjudicated  
35 delinquent for a violation of any offense defined in this section shall  
36 collect forthwith the New Jersey driver's license or licenses of that  
37 person and forward the license or licenses to the Director of the  
38 Division of Motor Vehicles along with a report indicating the first and  
39 last day of the suspension or postponement period imposed by the  
40 court pursuant to this section. If the court is for any reason unable to  
41 collect the license or licenses of the person, the court shall cause a  
42 report of the conviction or adjudication of delinquency to be filed with  
43 the director. The report shall include the complete name, address,  
44 date of birth, eye color and sex of the person and shall indicate the  
45 first and last day of the suspension or postponement period imposed  
46 by the court pursuant to this section. The court shall inform the



1 person orally and in writing that if the person is convicted of  
2 personally operating a motor vehicle during the period of license  
3 suspension or postponement imposed pursuant to this section, the  
4 person shall, upon conviction, be subject to the penalties set forth in  
5 R.S.39:3-40. A person shall be required to acknowledge receipt of the  
6 written notice in writing. Failure to receive a written notice or failure  
7 to acknowledge in writing the receipt of a written notice shall not be  
8 a defense to a subsequent charge of a violation of R.S.39:3-40. If the  
9 person is the holder of a driver's license from another jurisdiction, the  
10 court shall not collect the license, but shall notify forthwith the  
11 director who shall notify the appropriate officials in that licensing  
12 jurisdiction. The court shall, however, in accordance with the  
13 provisions of this section, revoke the person's non-resident driving  
14 privileges in this State.

15 In addition to any other condition imposed, a court, in its  
16 discretion, may suspend, revoke or postpone the driving privileges of  
17 a person admitted to supervisory treatment under N.J.S.2C:36A-1 or  
18 N.J.S.2C:43-12 without a plea of guilty or finding of guilt.  
19 (cf: P.L. 2002, c.85, s.3).

20

21 3. N.J.S.2C:21-17 is amended to read as follows:

22 2C:21-17. Impersonation; Theft of Identity; [disorderly persons  
23 offense,] crime.

24 a. A person is guilty of an offense [when he] if the person:

25 (1) Impersonates another or assumes a false identity and does an  
26 act in such assumed character or false identity for purpose of obtaining  
27 a [pecuniary] benefit for himself or another or to injure or defraud  
28 another;

29 (2) Pretends to be a representative of some person or organization  
30 and does an act in such pretended capacity for the purpose of  
31 obtaining a benefit for himself or another or to injure or defraud  
32 another;

33 (3) Impersonates another, assumes a false identity or makes a false  
34 or misleading statement regarding the identity of any person, in an oral  
35 or written application for services, for the purpose of obtaining  
36 services; or

37 (4) Obtains any personal identifying information pertaining to  
38 another person and uses that information, or assists another person in  
39 using the information, in order to assume the identity of or represent  
40 themselves as another person, without that person's authorization and  
41 with the purpose to fraudulently obtain or attempt to obtain a  
42 [pecuniary] benefit or services, or avoid the payment of debt or other  
43 legal obligation or avoid prosecution for a crime by using the name of  
44 the other person.

45 As used in this section:

1 "Benefit" means, but is not limited to, any property, any pecuniary  
2 amount, any services, any pecuniary amount sought to be avoided or  
3 any injury or harm perpetrated on another where there is no pecuniary  
4 value.

5 b. A person is guilty of an offense if, in the course of making an  
6 oral or written application for services, [he] the person impersonates  
7 another, assumes a false identity or makes a false or misleading  
8 statement with the purpose of avoiding payment for prior services.  
9 Purpose to avoid payment for prior services may be presumed upon  
10 proof that the person has not made full payment for prior services and  
11 has impersonated another, assumed a false identity or made a false or  
12 misleading statement regarding the identity of any person in the course  
13 of making oral or written application for services.

14 c.(1) [ A person who violates subsection a. or b. of this section is  
15 guilty of a crime of the second degree if the pecuniary benefit, the  
16 value of the services received, the payment sought to be avoided or the  
17 injury or fraud perpetrated on another is \$75,000 or more. If the  
18 pecuniary benefit, the value of the services received, the payment  
19 sought to be avoided or the injury or fraud perpetrated on another is  
20 at least \$500 but is less than \$75,000, the offender is guilty of a crime  
21 of the third degree. If the pecuniary benefit, the value of the services  
22 received, the payment sought to be avoided or the injury or fraud  
23 perpetrated on another is at least \$200 but is less than \$500, the  
24 offender is guilty of a crime of the fourth degree.

25 (2) If the pecuniary benefit, the value of the services received, the  
26 payment sought to be avoided or the injury or fraud perpetrated on  
27 another is less than \$200, or if the benefit or services received or the  
28 injury or fraud perpetrated on another has no pecuniary value, or if the  
29 person was unsuccessful in an attempt to receive a benefit or services  
30 or to injure or perpetrate a fraud on another, then the person is guilty  
31 of a disorderly persons offense] If the actor obtains a benefit or  
32 deprives another of a benefit in an amount less than \$500 and the  
33 offense involves the identity of one victim, the actor shall be guilty of  
34 a crime of the third degree.

35 (2) For a second or subsequent offense, or if the actor obtains a  
36 benefit or deprives another of a benefit in an amount of at least \$500  
37 but less than \$75,000, or the offense involves the identity of at least  
38 two but less than five victims, the actor shall be guilty of a crime of the  
39 second degree.

40 (3) If the actor obtains a benefit or deprives another of a benefit in  
41 the amount of \$75,000 or more, or the offense involves the identity of  
42 more than five victims, the actor shall be guilty of a crime of the first  
43 degree.

44 d. A violation of [R.S.39:3-37 for using the personal information  
45 of another to obtain a driver's license or register a motor vehicle or a  
46 violation of] R.S.33:1-81 or section 6 of P.L.1968, c.313

1 (C.33:1-81.7) for using the personal identifying information of another  
2 to illegally purchase an alcoholic beverage or for using the personal  
3 identifying information of another to misrepresent his age for the  
4 purpose of obtaining tobacco or other consumer product denied to  
5 persons under 18 years of age shall not constitute an offense under this  
6 section if the actor received only that benefit or service and did not  
7 perpetrate or attempt to perpetrate any additional injury or fraud on  
8 another.

9 e. The sentencing court shall issue such orders as are necessary to  
10 correct any public record that contains false information as a result of  
11 a theft of identity. The sentencing court may provide restitution to  
12 the victim in accordance with the provisions of section 4 of P.L.2002,  
13 c. 85 (C.2C:21-17.1).

14 (cf: P.L.2002, c.85, s.5).

15  
16 4. N.J.S. 2C:44-1 is amended to read as follows:

17 2C:44-1. Criteria for Withholding or Imposing Sentence of  
18 Imprisonment. a. In determining the appropriate sentence to be  
19 imposed on a person who has been convicted of an offense, the court  
20 shall consider the following aggravating circumstances:

21 (1) The nature and circumstances of the offense, and the role of the  
22 actor therein, including whether or not it was committed in an  
23 especially heinous, cruel, or depraved manner;

24 (2) The gravity and seriousness of harm inflicted on the victim,  
25 including whether or not the defendant knew or reasonably should  
26 have known that the victim of the offense was particularly vulnerable  
27 or incapable of resistance due to advanced age, ill-health, or extreme  
28 youth, or was for any other reason substantially incapable of exercising  
29 normal physical or mental power of resistance;

30 (3) The risk that the defendant will commit another offense;

31 (4) A lesser sentence will depreciate the seriousness of the  
32 defendant's offense because it involved a breach of the public trust  
33 under chapters 27 and 30, or the defendant took advantage of a  
34 position of trust or confidence to commit the offense;

35 (5) There is a substantial likelihood that the defendant is involved  
36 in organized criminal activity;

37 (6) The extent of the defendant's prior criminal record and the  
38 seriousness of the offenses of which he has been convicted;

39 (7) The defendant committed the offense pursuant to an agreement  
40 that he either pay or be paid for the commission of the offense and the  
41 pecuniary incentive was beyond that inherent in the offense itself;

42 (8) The defendant committed the offense against a police or other  
43 law enforcement officer, correctional employee or fireman, acting in  
44 the performance of his duties while in uniform or exhibiting evidence  
45 of his authority; the defendant committed the offense because of the  
46 status of the victim as a public servant; or the defendant committed the

- 1 offense against a sports official, athletic coach or manager, acting in  
2 or immediately following the performance of his duties or because of  
3 the person's status as a sports official, coach or manager;
- 4 (9) The need for deterring the defendant and others from violating  
5 the law;
- 6 (10) The offense involved fraudulent or deceptive practices  
7 committed against any department or division of State government;
- 8 (11) The imposition of a fine, penalty or order of restitution without  
9 also imposing a term of imprisonment would be perceived by the  
10 defendant or others merely as part of the cost of doing business, or as  
11 an acceptable contingent business or operating expense associated  
12 with the initial decision to resort to unlawful practices;
- 13 (12) The defendant committed the offense against a person who he  
14 knew or should have known was 60 years of age or older, or disabled;
- 15 (13) The defendant, while in the course of committing or attempting  
16 to commit the crime, including the immediate flight therefrom, used or  
17 was in possession of a stolen motor vehicle.
- 18 b. In determining the appropriate sentence to be imposed on a  
19 person who has been convicted of an offense, the court may properly  
20 consider the following mitigating circumstances:
- 21 (1) The defendant's conduct neither caused nor threatened serious  
22 harm;
- 23 (2) The defendant did not contemplate that his conduct would  
24 cause or threaten serious harm;
- 25 (3) The defendant acted under a strong provocation;
- 26 (4) There were substantial grounds tending to excuse or justify the  
27 defendant's conduct, though failing to establish a defense;
- 28 (5) The victim of the defendant's conduct induced or facilitated its  
29 commission;
- 30 (6) The defendant has compensated or will compensate the victim  
31 of his conduct for the damage or injury that he sustained, or will  
32 participate in a program of community service;
- 33 (7) The defendant has no history of prior delinquency or criminal  
34 activity or has led a law-abiding life for a substantial period of time  
35 before the commission of the present offense;
- 36 (8) The defendant's conduct was the result of circumstances  
37 unlikely to recur;
- 38 (9) The character and attitude of the defendant indicate that he is  
39 unlikely to commit another offense;
- 40 (10) The defendant is particularly likely to respond affirmatively to  
41 probationary treatment;
- 42 (11) The imprisonment of the defendant would entail excessive  
43 hardship to himself or his dependents;
- 44 (12) The willingness of the defendant to cooperate with law  
45 enforcement authorities;

1 (13) The conduct of a youthful defendant was substantially  
2 influenced by another person more mature than the defendant.

3 c. (1) A plea of guilty by a defendant or failure to so plead shall not  
4 be considered in withholding or imposing a sentence of imprisonment.

5 (2) When imposing a sentence of imprisonment the court shall  
6 consider the defendant's eligibility for release under the law governing  
7 parole, including time credits awarded pursuant to Title 30 of the  
8 Revised Statutes, in determining the appropriate term of imprisonment.

9 d. Presumption of imprisonment. The court shall deal with a  
10 person who has been convicted of a crime of the first or second degree  
11 by imposing a sentence of imprisonment unless, having regard to the  
12 character and condition of the defendant, it is of the opinion that his  
13 imprisonment would be a serious injustice which overrides the need to  
14 deter such conduct by others. Notwithstanding the provisions of  
15 subsection e. of this section, the court shall deal with a person who has  
16 been convicted of theft of a motor vehicle or of the unlawful taking of  
17 a motor vehicle and who has previously been convicted of either  
18 offense by imposing a sentence of imprisonment unless, having regard  
19 to the character and condition of the defendant, it is of the opinion that  
20 his imprisonment would be a serious injustice which overrides the need  
21 to deter such conduct by others.

22 e. The court shall deal with a person convicted of an offense other  
23 than a crime of the first or second degree, who has not previously been  
24 convicted of an offense, without imposing sentence of imprisonment  
25 unless, having regard to the nature and circumstances of the offense  
26 and the history, character and condition of the defendant, it is of the  
27 opinion that his imprisonment is necessary for the protection of the  
28 public under the criteria set forth in subsection a., except that this  
29 subsection shall not apply if the person is convicted of any of the  
30 following crimes of the third degree: theft of a motor vehicle; unlawful  
31 taking of a motor vehicle; or eluding; or if the person is convicted of  
32 a crime of the third or fourth degree constituting bias intimidation in  
33 violation of N.J.S.2C:16-1; or if the person is convicted of a crime of  
34 the third degree constituting use of a simulated document in violation  
35 of subsection c. of section 1 of P.L.1983, c. 565 (C.2C:21-2.1); or if  
36 the person is convicted of a crime of the third degree constituting  
37 distribution, manufacture or possession of an item containing personal  
38 identifying information in violation of subsection a. of section 6 of  
39 P.L. , c. (C. )(now pending before the Legislature as section 6  
40 of this bill) .

41 f. Presumptive Sentences. (1) Except for the crime of murder,  
42 unless the preponderance of aggravating or mitigating factors, as set  
43 forth in subsections a. and b., weighs in favor of a higher or lower  
44 term within the limits provided in N.J.S.2C:43-6, when a court  
45 determines that a sentence of imprisonment is warranted, it shall  
46 impose sentence as follows:

1 (a) To a term of 20 years for aggravated manslaughter or  
2 kidnaping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1  
3 when the offense constitutes a crime of the first degree; (b)  
4 Except as provided in paragraph (a) of this subsection to a term of 15  
5 years for a crime of the first degree;

6 (c) To a term of seven years for a crime of the second degree;

7 (d) To a term of four years for a crime of the third degree; and

8 (e) To a term of nine months for a crime of the fourth degree.

9 In imposing a minimum term pursuant to 2C:43-6b., the sentencing  
10 court shall specifically place on the record the aggravating factors set  
11 forth in this section which justify the imposition of a minimum term.

12 Unless the preponderance of mitigating factors set forth in  
13 subsection b. weighs in favor of a lower term within the limits  
14 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a  
15 presumptive term of life imprisonment. Unless the preponderance of  
16 aggravating and mitigating factors set forth in subsections a. and b.  
17 weighs in favor of a higher or lower term within the limits authorized,  
18 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive  
19 term of 50 years' imprisonment; sentences imposed pursuant to  
20 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;  
21 and sentences imposed pursuant to 2C:43-7a.(4) shall have a  
22 presumptive term of seven years' imprisonment.

23 In imposing a minimum term pursuant to 2C:43-7b., the sentencing  
24 court shall specifically place on the record the aggravating factors set  
25 forth in this section which justify the imposition of a minimum term.

26 (2) In cases of convictions for crimes of the first or second degree  
27 where the court is clearly convinced that the mitigating factors  
28 substantially outweigh the aggravating factors and where the interest  
29 of justice demands, the court may sentence the defendant to a term  
30 appropriate to a crime of one degree lower than that of the crime for  
31 which he was convicted. If the court does impose sentence pursuant  
32 to this paragraph, or if the court imposes a noncustodial or  
33 probationary sentence upon conviction for a crime of the first or  
34 second degree, such sentence shall not become final for 10 days in  
35 order to permit the appeal of such sentence by the prosecution.

36 g. Imposition of Noncustodial Sentences in Certain Cases. If the  
37 court, in considering the aggravating factors set forth in subsection a.,  
38 finds the aggravating factor in paragraph a.(2) or a.(12) and does not  
39 impose a custodial sentence, the court shall specifically place on the  
40 record the mitigating factors which justify the imposition of a  
41 noncustodial sentence.

42 h. Except as provided in section 2 of P.L.1993, c.123  
43 (C.2C:43-11), the presumption of imprisonment as provided in  
44 subsection d. of this section shall not preclude the admission of a

1 person to the Intensive Supervision Program, established pursuant to  
2 the Rules Governing the Courts of the State of New Jersey.  
3 (cf: P.L.2001, c.443, s.7).

4  
5 5. (New section ) a. A person is guilty of a crime of the second  
6 degree if, in obtaining or attempting to obtain a driver's license or  
7 other document issued by a governmental agency which could be used  
8 as a means of verifying a person's identity, age or any other personal  
9 identifying information, that person knowingly exhibits, displays or  
10 utters a document or other writing which falsely purports to be a  
11 driver's license or other document issued by a governmental agency or  
12 which belongs or pertains to a person other than the person who  
13 possesses the document.

14 b. Notwithstanding the provisions of N.J.S.2C:1-8 or any other  
15 law, a conviction under this section shall not merge with a conviction  
16 of any other criminal offense, nor shall such other conviction merge  
17 with a conviction under this section, and the court shall impose  
18 separate sentences upon each violation of this section and any other  
19 criminal offense.

20 c. A violation of R.S.33:1-81 or section 6 of P.L.1968,  
21 c.313(C.33:1-81.7) for using the personal identifying information of  
22 another to illegally purchase an alcoholic beverage or for using the  
23 personal identifying information of another to misrepresent his age for  
24 the purpose of obtaining tobacco or other consumer product denied to  
25 persons under 18 years of age shall not constitute an offense under  
26 this section if the actor received only that benefit or service and did  
27 not perpetrate or attempt to perpetrate any additional injury or fraud  
28 on another.

29  
30 6. (New section) a. A person who knowingly distributes,  
31 manufactures or possesses any item containing personal identifying  
32 information pertaining to another person, without that person's  
33 authorization, and with knowledge that the actor is facilitating a fraud  
34 or injury to be perpetrated by anyone is guilty of a crime of the third  
35 degree.

36 b. (1) If the person distributes, manufactures or possesses 20 or  
37 more items containing personal identifying information pertaining to  
38 another person, or five or more items containing personal information  
39 pertaining to five or more separate persons, without authorization, and  
40 with knowledge that the actor is facilitating a fraud or injury to be  
41 perpetrated by anyone is guilty of a crime of the second degree.

42 (2) If the person distributes, manufactures or possesses 50 or more  
43 items containing personal identifying information pertaining to another  
44 person, or ten or more items containing personal identifying  
45 information pertaining to five or more separate persons, without  
46 authorization, and with knowledge that the actor is facilitating a fraud

1 or injury to be perpetrated by anyone is guilty of a crime of the first  
2 degree.

3 c. Distribution, manufacture or possession of 20 or more items  
4 containing personal identifying information pertaining to another  
5 person or of items containing personal identifying information  
6 pertaining to five or more separate persons without authorization shall  
7 create an inference that the items were distributed, manufactured or  
8 possessed with knowledge that the actor is facilitating a fraud or injury  
9 to be perpetrated by anyone.

10 d. As used in this section:

11 "Distribute" means, but is not limited to, any sale, purchase,  
12 transfer, gift, delivery, or provision to another, regardless of whether  
13 the distribution was for compensation.

14 "Item" means a writing or document, whether issued by a  
15 governmental agency or made by any business or person, recorded by  
16 any method that contains personal identifying information. Item  
17 includes, but is not limited to, access device, book, check, paper, card,  
18 instrument, or information stored in electronic form by way of e-mail  
19 or otherwise, on any computer, computer storage medium, computer  
20 program, computer software, computer equipment, computer system  
21 or computer network or any part thereof, or by other mechanical or  
22 electronic device such as cellular telephone, pager or other electronic  
23 device capable of storing information.

24

25 7. (New section) a. Any person who suffers any ascertainable loss  
26 of moneys or property, real or personal, as a result of the use of that  
27 person's personal identifying information, in violation of N.J.S.2C:21-  
28 1, section 1 of P.L.1983, c. 565 (2C:21-2.1) or N.J.S.2C:21-17, may  
29 bring an action in any court of competent jurisdiction. In any action  
30 under this section the court shall, in addition to any other appropriate  
31 legal or equitable relief, award damages in an amount three times the  
32 value of all costs incurred by the victim as a result of the person's  
33 criminal activity. These costs may include, but are not limited to,  
34 those incurred by the victim in clearing his credit history or credit  
35 rating, or those incurred in connection with any civil or administrative  
36 proceeding to satisfy any debt, lien, or other obligation of the victim  
37 arising as a result of the actions of the defendant. The victim may also  
38 recover those costs incurred for attorneys' fees, court costs and any  
39 out-of-pocket losses. A financial institution, insurance company,  
40 bonding association or business that suffers direct financial loss as a  
41 result of the offense shall also be entitled to damages, but damages to  
42 natural persons shall be fully satisfied prior to any payment to a  
43 financial institution, insurance company, bonding association or  
44 business.

45 b. The standard of proof in actions brought under this section is a  
46 preponderance of the evidence, and the fact that a prosecution for a



1 violation of N.J.S.2C:21-1, section 1 of P.L.1983, c. 565 (2C:21-2.1)  
2 or N.J.S.2C:21-17 is not instituted or, where instituted, terminates  
3 without a conviction shall not preclude an action pursuant to this  
4 section. A final judgment rendered in favor of the State in any  
5 criminal proceeding shall estop the defendant from denying the same  
6 conduct in any civil action brought pursuant to this section.

7 c. The cause of action authorized by this section shall be in  
8 addition to and not in lieu of any forfeiture or any other action,  
9 injunctive relief or any other remedy available at law, except that  
10 where the defendant is convicted of a violation of this act, the court in  
11 the criminal action, upon the application of the Attorney General or  
12 the prosecutor, shall in addition to any other disposition authorized by  
13 this Title sentence the defendant to pay restitution in an amount equal  
14 to the costs incurred by the victim as a result of the defendant's  
15 criminal activity, regardless of whether a civil action has been  
16 instituted. These costs may include, but are not limited to, those  
17 incurred by the victim in clearing his credit history or credit rating;  
18 those incurred in connection with any civil or administrative  
19 proceeding to satisfy any debt, lien, or other obligation of the victim  
20 arising as a result of the actions of the defendant; or those incurred for  
21 attorneys' fees, court costs and any out-of-pocket losses. A financial  
22 institution, insurance company, bonding association or business that  
23 suffers direct financial loss as a result of the offense shall also be  
24 entitled to restitution, but restitution, but restitution to natural persons  
25 shall be fully satisfied prior to any payment to a financial institution,  
26 insurance company, bonding association or business.

27  
28 8. (New section) a. On motion of a person who has been the  
29 victim of a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c. 565  
30 (2C:21-2.1) or N.J.S.2C:21-17 or on its own motion, the court may,  
31 without a hearing, grant an order directing all consumer reporting  
32 agencies doing business within the State of New Jersey to delete those  
33 items of information from the victim's file that were the result of the  
34 unlawful use of the victim's personal identifying information. The  
35 consumer reporting agency shall thereafter, provide the victim with a  
36 copy of the corrected credit history report at no charge.

37 b. Following any deletion of information pursuant to this section,  
38 the consumer reporting agency shall, at the request of the victim,  
39 furnish notification that the item has been deleted, to any person  
40 specifically designated by the victim who has within two years prior  
41 thereto received a consumer report for employment purposes, or  
42 within one year prior thereto received a consumer report for any other  
43 purpose, which contained the deleted or disputed information.

44  
45 9. Section 10 of P.L.1997, c.172(C.56:11-37) is amended to read  
46 as follows:

1 10. a. Except as provided in subsections b., c.,d. and e. of this  
2 section, a consumer reporting agency may impose a reasonable charge  
3 on a consumer for:

4 (1) making a disclosure to the consumer pursuant to section 7 of  
5 this act if the request is the second or subsequent request in a  
6 12-month period of time and is not made pursuant to subsection b. of  
7 this section; the charge for this disclosure shall not exceed \$8 and shall  
8 be indicated to the consumer before making the disclosure;

9 (2) furnishing to a person designated by the consumer pursuant to  
10 subsection k. of section 9 of this act a statement, codification, or  
11 summary filed or developed under subsection i. or j. of section 9 of  
12 this act, after notification of the consumer under subsection f. of  
13 section 9 of this act with respect to the reinvestigation; this charge  
14 shall not exceed the charge that the agency would impose on each  
15 designated recipient for a consumer report and shall be indicated to the  
16 consumer before furnishing this information.

17 b. Each consumer reporting agency that maintains a file on a  
18 consumer shall make all disclosures required pursuant to section 7 of  
19 this act without charge to the consumer if, not later than 60 days after  
20 receipt by the consumer of a notification of an adverse action or  
21 notification from a debt collection agency affiliated with the consumer  
22 reporting agency stating that the consumer's credit rating may be or  
23 has been adversely affected, the consumer makes a request under  
24 section 7 of this act.

25 c. Upon the request of the consumer, a consumer reporting agency  
26 shall make all disclosures required pursuant to section 7 of this act  
27 once during any 12-month period without charge to the consumer.

28 d. A consumer reporting agency shall not impose any charge on a  
29 consumer for providing any notification required by this act, including  
30 but not limited to, the notification required pursuant to subsection k.  
31 of section 9 of this act following deletion of information from a  
32 consumer's file pursuant to section 9 of this act, or making any  
33 disclosure required by this act, except as authorized by subsection a.  
34 of this section.

35 e. Upon request of the consumer, a consumer reporting agency  
36 shall make all disclosures required pursuant to section 7 of this act  
37 once during any 12-month period without charge to that consumer if  
38 the consumer certifies in writing that the consumer:

39 (1) is unemployed and intends to apply for employment in the  
40 60-day period beginning on the date on which certification is made;

41 (2) is a recipient of assistance under the Work First New Jersey  
42 Program; [or]

43 (3) has reason to believe that the file on the consumer at the  
44 agency contains inaccurate information due to fraud; or

45 (4) has been a victim of a violation of N.J.S.2C:21-1, section 1 of  
46 P.L.1983, c. 565 (2C:21-2.1) or N.J.S.2C:21-17 and the court has

1 ordered the deletion of those items of information that were the result  
2 of the unlawful use of the victim's personal identifying information.  
3 (cf: P.L. 1997, c. 172, s.10).

4  
5 10. This act shall take effect immediately.

6  
7  
8 STATEMENT

9  
10 A substantial burden is placed on the New Jersey economy and to  
11 individual citizens as a result of theft of identity. This type of  
12 misconduct inflicts direct and indirect harm on its victims, in terms of  
13 financial loss, damage to reputation and credit history, and personal  
14 inconvenience and aggravation. This bill protects State citizens from  
15 this insidious practice and promotes restitution of losses and  
16 restoration of financial status of victims. The bill amends N.J.S.2C:1-  
17 3, concerning jurisdiction, to expand the reach of prosecutions for  
18 theft of identity to include an actor's conduct which is outside the  
19 State but the victim suffers the harm in or resides in New Jersey.

20 The bill makes theft of identity a third degree offense. However,  
21 the actor would not be entitled to the presumption of non-  
22 incarceration usually associated with a crime of the third degree. A  
23 second or subsequent offense, or an identity theft offense where the  
24 actor obtains a benefit or deprives another of a benefit in an amount  
25 of at least \$500 but less than \$75,000, or an offense which involves the  
26 identity of between two and five victims would be graded as a crime of  
27 the second degree. If the amount involved is \$75,000 or more or more  
28 than five identities are involved in the theft, the offense would be  
29 graded as a crime of the first degree. The bill provides the sentencing  
30 court with the power to correct public records that contain false  
31 information as a result of a theft of identity.

32 The bill upgrades the crimes associated with the sale of simulated  
33 documents to provide second degree crimes for (1) sale of a simulated  
34 driver's license or government document and (2) making or possessing  
35 devices to make a simulated driver's license or government document.  
36 A person who displays the simulated document would be guilty of a  
37 third degree crime but, again, would not be entitled to the presumption  
38 of non-incarceration usually associated with a crime of the third  
39 degree. A person who possesses the simulated document would be  
40 guilty of a crime of the fourth degree.

41 The bill creates a new crime of the second degree if a person, in  
42 obtaining a driver's license or other government document which could  
43 be used to verify a person's identity or any other personal identifying  
44 information, that person uses a false driver's license or other  
45 government document. However, the bill excludes from the offense

1 a person under 18 years of age who uses personal information of  
2 another solely to purchase alcoholic beverages or tobacco products.

3 The bill further creates a civil remedy for victims of identity theft.  
4 The intent is that a victim have the ability to bring a civil action and  
5 recover that money expended to restore the credit history that was  
6 damaged as a result of identity theft.

7 The bill would allow a victim of an identity theft to bring a civil suit  
8 against the person accused of the theft of the victim's identifying  
9 information, to recover damages in an amount up to and including  
10 three times the value of all costs incurred, as well as those costs  
11 incurred for attorneys' fees, court costs and out-of-pocket losses. The  
12 bill would also direct the court, upon application of the Attorney  
13 General or prosecutor, to order the defendant who is convicted of a  
14 violation of this act, to pay restitution to any victim, including  
15 businesses, from any costs associated with theft of identity. The court  
16 could also grant an order directing all consumer reporting agencies to  
17 delete the record of bad credit that was created as a result of the  
18 identity theft. Finally, this bill would direct the consumer reporting  
19 agency, at the request of the victim, to notify all persons so designated  
20 by the victim of the deletion of the negative credit history that was  
21 created as a result of the identity theft.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 2238**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 10, 2003

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2238.

This bill strengthens the protections against identity theft and promotes restitution of losses and restoration of financial status to victims.

The bill amends N.J.S.2C:1-3, concerning jurisdiction, to expand the reach of prosecutions for theft of identity to include an actor's conduct which is outside the State when the victim suffers the harm in or resides in New Jersey.

The bill upgrades the crimes associated with the sale of false government documents to provide that the following are second degree crimes: (1) sale of a false driver's license or government document; and (2) making or possessing devices to make a false driver's license or government document. A person who knowingly displays or exhibits a false document would be guilty of a third degree crime. The possession of a false document would be a crime of the fourth degree.

The bill would generally upgrade the various identity theft offenses, which currently are the same as theft offenses, to take into account not only the pecuniary amounts involved but also the number of identities involved. For example, under the current law it is a crime of the third degree if the amount involved is at least \$500 but less than \$75,000. This substitute would make it a crime of the third degree if the amount involved is less than \$500 and the offense involves the identity of one victim.

The bill would make it a crime of the second degree if the actor obtains a benefit or deprives another of a benefit in an amount of at least \$500 but less than \$75,000, or the offense involves the identity of at least two victims but less than five victims or if it is a second or subsequent offense of theft of identity. Under the current provisions of the law, it is a crime of the second degree if the amount involved is \$75,000 or more.

The bill would make it a crime of the first degree if the amount involved is \$75,000 or more, or the offense involves the identity of more than five victims. The current provisions of the identity theft law

do not provide for a crime of the first degree.

The bill would also require the sentencing court to make such orders which are necessary to correct any public records that contain false information as a result of a theft of identity. The sentencing court may also provide restitution to the victim in accordance with the recently enacted N.J.S.A.2C:21-17.1.

The bill would create a new crime of the second degree of using a false driver's license or other government document to obtain a driver's license or other government document which could be used to verify a person's identity or any other personal identifying information. The bill would exclude from the offense a person under 18 years of age who uses the personal information of another solely to purchase alcoholic beverages or tobacco products.

The bill would also create a new crime of distributing, manufacturing or possessing any item containing personal identifying information pertaining to another person without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone. Under the provisions of this section, a person would be guilty of a crime of the second degree if the person distributes, manufactures or possesses 20 or more items containing personal identifying information pertaining to another person, or five or more items containing personal information pertaining to five or more separate persons. It would be a crime of the first degree if the person distributes, manufactures or possesses 50 or more items containing personal identifying information pertaining to another person, or ten or more items containing personal identifying information pertaining to five or more separate persons, without authorization.

The bill also provides that distribution, manufacture or possession of 20 or more items containing personal identifying information pertaining to another person or of items containing personal identifying information pertaining to five or more separate persons without authorization creates an inference that the items were distributed, manufactured or possessed with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone.

The bill also amends subsection e. of N.J.S.A.2C:44-1 to provide that the following third degree crimes would not be entitled to the presumption of non-incarceration: the third degree crime of using false government document pursuant to the provisions of subsection c. of N.J.S.2C:21-2.1 and the newly created third degree crime, in section 6 of the bill, of distributing, manufacturing or possessing any item containing personal identifying information pertaining to another person without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone.

In addition, the bill creates a civil remedy for victims of identity theft to recover damages in an amount up to and including three times the value of all costs incurred including attorneys' fees, court costs and out-of-pocket losses.

The bill also authorizes the court to grant an order directing all consumer reporting agencies to delete those items of information from the victim's file that were the result of the identity theft. The consumer reporting agency would be required to notify all persons designated by the victim of the deletion of the negative credit history that was created as a result of the identity theft.

The committee amendments include an exception for minors who display a false document solely to purchase alcoholic beverages or tobacco products by amending N.J.S.A.2C:21-2.1. Two other sections were amended to conform to the language of the Assembly version.

As amended, this bill is identical to Assembly Committee Substitute for A-3226/3290 (1R).

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**Press Releases**

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RELEASE: September 25, 2003

[Previous Screen](#)

## **McGreevey Signs Bill to Attack Identity Theft**

### *New Law Increases Penalties & Protects Victims' Financial Status*

(LYNDHURST)—As part of his continuing effort to protect New Jersey families, Governor James E. McGreevey today signed Assembly bill A-3226, which increases the penalties for anyone convicted of identity theft crimes and, more importantly, protects New Jersey citizens by providing for restitution and restoration of a victim's financial status and credit history.

Attorney General Peter Harvey, members of the State Police, and legislative sponsors Senator Paul Sarlo and Senator Joseph Coniglio joined the Governor for the bill signing at the Lyndhurst Senior Center.

"New Jersey crime is now at its lowest level in more than three decades," said McGreevey. "This is good news, but certainly not the time to ease up on our fight against crime. We have a new battle on our hands. Growing popularity of the Internet, compounded with the increased use of bank cards and credit cards, has created a new problem."

In the last year, nearly 5,000 New Jerseyans have fallen victim to identity theft, twice as many as the previous year. On average, victims pay up to \$1,400 and spend in excess of 175 hours to correct their credit history information that relates to the activities of an identity thief.

"We are now fighting against a truly faceless criminal and must have laws on the books that keep these criminals from easily eluding the law," said McGreevey.

Under the law, identity theft is an enhanced offense with upgraded penalties and fines. Those charged with using in excess of five identities, stealing more than \$75,000, or selling, producing, or possessing a fraudulent driver's license or government document will now face prosecution for a second degree crime, with penalties of up to 10 years in prison and a \$150,000 fine.

But more importantly, this measure is specifically designed to protect victims. Victims now have the right to recover up to three times the monetary damages in a civil suit. This includes three times the value of all that is lost, all their attorneys' fees, all their court costs and any out-of-pocket expenses. In addition, victims will now have the legal power they



need to restore their credit reports to eliminate the improper charges and transactions due to the identity theft. New Jersey courts are now authorized to grant an order directing all consumer reporting agencies to delete the record of bad credit that was created as a result of the identity theft.

"Identity theft inflicts direct and indirect harm on its victims in terms of financial loss, damage to reputation and credit history, as well as personal inconvenience and aggravation. This new law was a priority for the Division of Criminal Justice and will go a long way to protect New Jerseyans from this insidious crime. As importantly, the new law promotes restitution of losses and restoration of financial status of victims," said Attorney General Harvey.

"Identity theft presents major consumer and public safety concerns for our State," said Senator Paul A. Sarlo (D-Bergen/Essex/Passaic). "Despite an increase in national security since 9/11, identity theft crimes continue to sweep the nation, and actually doubled between 2001 and 2002. It's time to crack down on these potential terrorists that wreak havoc upon the lives of New Jersey residents."

"Identity theft is one of the most intrusive and dangerous crimes today," said Senator Joseph Coniglio (D-Bergen). "Identity theft crimes invade an individual's fundamental privacy, take years to undo, and pose serious terror-related threats to our society. I am pleased that New Jersey will now have an appropriate punishment available for this frighteningly common form of modern-day fraud."

"New Jersey has been especially hard hit by instances of identity theft," said Senator Stephen Sweeney (D-Salem/Cumberland/Gloucester). "This law will help to ensure that residents in our state are protected from the consumer safety issues of identity theft crimes, as well as from the public safety issues."

"Identity theft is turning into a criminal epidemic - a crime that severely impacts every consumer and every financial institution," said Assemblyman John Burzichelli (D-Gloucester). "Criminals who personally or financially benefit from supplying fake documents to identity thieves will now face stiffer penalties that are commensurate with the level of harm they cause for consumers and our free-enterprise system."

"Given our everyday reliance on PIN numbers, credit card or bank information, and social security numbers, an identity thief has ample opportunity to destroy a person's reputation or empty a bank account without the victim even knowing it," said Assemblyman Gary Guear Sr. (D-Mercer). "Identity thieves are a pox upon our system of commerce."

"Your identity is unique. The cost and trouble caused when it is stolen or damaged is terrible," said Assistant Majority Leader John S. Wisniewski (D-Middlesex). "This law will increase the punishment for identity theft - to act as a deterrent to would-be identity thieves."

"These stiffer penalties underscore the serious nature of this crime and the devastating impact identity thieves can have on victims," said Assembly Deputy Majority Leader Neil Cohen (D-Union), a sponsor of the state's original identity theft law. "The average loss from one identity theft is now about \$18,000. The gravity of identity theft justifies harsher penalties."

"A credit report should only reflect transactions of the actual borrower," said Assembly Assistant Majority Leader Linda Greenstein (D-Middlesex). "More importantly, fraud victims should not have to jump through hoops or fight bureaucratic red tape just to clear up bad debts created by an identity thief."

The New Jersey Division of Criminal Justice has created a new web site as part of New Jersey's comprehensive law enforcement attack on identity theft. The web page is located at [and](#) serves as a resource to aid anyone who believes they might be a target or victim of identity theft.

Throughout the week, the Governor is focusing on public safety initiatives across the State. In the last year and a half great strides have been made to keep New Jersey families safe. The recently released 2002 Uniform Crime Report shows a four percent drop in overall crime, the lowest rate in three decades, and New Jersey is now the first state in the Nation to enact smart gun legislation and to impose jail time and fines for sleep-deprived drivers, under Maggie's Law. In addition, the Governor has put into place the strongest legislation in the Nation to protect seniors from high interest, high fee predatory loans and from invasive telemarketers by requiring a statewide "Do Not Call List".

"Victims don't ask to be victims," said McGreevey, "so when it comes time for them to find justice the law must be there to protect them. This new law gives them more than justice, it gives them restitution."



State of New Jersey Governor's Office

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