

# 2C:21-1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005 **CHAPTER:** 224

**NJSA:** 2C:21-1 (Concerns false birth certificates)

**BILL NO:** A2768

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

**DATE INTRODUCED:** May 10, 2004

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

**SENATE:** Judiciary

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** June 30, 2005

**SENATE:** June 30, 2005

**DATE OF APPROVAL:** September 22, 2005

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2<sup>nd</sup> reprint enacted)

[SPONSOR'S STATEMENT:](#) (Begins on page 13 of original bill) [Yes](#)

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

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

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

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

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

### FOLLOWING WERE PRINTED:

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

For clippings see legislative history of L.2005 c.226

IS 11/7/07

P.L. 2005, CHAPTER 224, *approved September 22, 2005*  
Assembly, No. 2768 (*Second Reprint*)

1 AN ACT concerning false birth certificates and amending  
2 <sup>2</sup>[N.J.S.2C:21-1,]<sup>2</sup> P.L.1983, c.565, N.J.S.2C:21-17, P.L.2002,  
3 c.85 <sup>2</sup>[,] and<sup>2</sup> P.L.2003, c.184 <sup>2</sup>[ and N.J.S.2C:44-1]<sup>2</sup>.

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

7  
8 <sup>2</sup>[1. N.J.S.2C:21-1 is amended to read as follows:

9 2C:21-1. Forgery and Related Offenses.

10 a. Forgery. A person is guilty of forgery if, with purpose to  
11 defraud or injure anyone, or with knowledge that he is facilitating a  
12 fraud or injury to be perpetrated by anyone, the actor:

13 (1) Alters or changes any writing of another without his  
14 authorization;

15 (2) Makes, completes, executes, authenticates, issues or transfers  
16 any writing so that it purports to be the act of another who did not  
17 authorize that act or of a fictitious person, or to have been executed  
18 at a time or place or in a numbered sequence other than was in fact the  
19 case, or to be a copy of an original when no such original existed; or

20 (3) Utters any writing which he knows to be forged in a manner  
21 specified in paragraph (1) or (2).

22 "Writing" includes printing or any other method of recording  
23 information, money, coins, tokens, stamps, seals, credit cards, badges,  
24 trademarks, access devices, and other symbols of value, right,  
25 privilege, or identification, including retail sales receipts, universal  
26 product code (UPC) labels and checks. This section shall apply  
27 without limitation to forged, copied or imitated checks.

28 As used in this section, "information" includes, but is not limited to,  
29 personal identifying information as defined in subsection v. of  
30 N.J.S.2C:20-1.

31 b. Grading of forgery. Forgery is a crime of the third degree if the  
32 writing is or purports to be part of an issue of money, securities,  
33 postage or revenue stamps, or other instruments, certificates or  
34 licenses issued by the government, New Jersey Prescription Blanks as  
35 referred to in R.S.45:14-14, or part of an issue of stock, bonds or  
36 other instruments representing interest in or claims against any  
37 property or enterprise, personal identifying information or an access  
38 device. Forgery is a crime of the third degree if the writing is or  
39 purports to be a check. Forgery is a crime of the third degree if the

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly floor amendments adopted October 7, 2004.

<sup>2</sup> Senate SJU committee amendments adopted June 9, 2005.

1 writing is or purports to be 15 or more forged or altered retail sales  
2 receipts or universal product code labels.

3 Otherwise forgery is a crime of the fourth degree.

4 c. Possession of forgery devices. A person is guilty of possession  
5 of forgery devices, a crime of the ~~[third]~~ second degree, when with  
6 purpose to use, or to aid or permit another to use the same for  
7 purposes of forging written instruments, including access devices and  
8 personal identifying information, he makes or possesses any device,  
9 apparatus, equipment, computer, computer equipment, computer  
10 software or article specially designed or adapted to such use.  
11 (cf: P.L.2002, c.85, s.2).]<sup>2</sup>

12

13 <sup>2</sup>[2.] 1.<sup>2</sup> Section 1 of P.L.1983, c.565 (C.2C:21-2.1) is amended  
14 to read as follows:

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

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

29 c. A person who knowingly exhibits, displays or utters a document  
30 or other writing which falsely purports to be a driver's license, birth  
31 certificate or other document issued by a governmental agency and  
32 which could be used as a means of verifying a person's identity or age  
33 or any other personal identifying information is guilty of a crime of the  
34 third degree. A violation of N.J.S.2C:28-7, constituting a disorderly  
35 persons offense, section 1 of P.L.1979, c.264 (C.2C:33-15),  
36 R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) [for using]  
37 in a case where the person uses the personal identifying information of  
38 another to illegally purchase an alcoholic beverage or for using the  
39 personal identifying information of another to misrepresent his age for  
40 the purpose of obtaining tobacco or other consumer product denied to  
41 persons under 18 years of age shall not constitute an offense under this  
42 subsection if the actor received only that benefit or service and did not  
43 perpetrate or attempt to perpetrate any additional injury or fraud on  
44 another.

45 d .A person who knowingly possesses a document or other writing  
46 which falsely purports to be a driver's license, birth certificate 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 degree. A  
4 violation of N.J.S.2C:28-7, constituting a disorderly persons offense,  
5 section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or section 6  
6 of P.L.1968, c.313 (C.33:1-81.7) in a case where the person uses the  
7 personal identifying information of another to illegally purchase an  
8 alcoholic beverage or for using the personal identifying information of  
9 another to misrepresent his age for the purpose of obtaining tobacco  
10 or other consumer product denied to persons under 18 years of age  
11 shall not constitute an offense under this subsection if the actor  
12 received only that benefit or service and did not perpetrate or attempt  
13 to perpetrate any additional injury or fraud on another.

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

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

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

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

22 (cf: P.L.2003, c.184, s.2).

23

24 <sup>2</sup>[3.] 2.<sup>2</sup> N.J.S.2C:21-17 is amended to read as follows:

25 2C:21-17. Impersonation; Theft of Identity; crime.

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

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

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

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

39 (4) Obtains any personal identifying information pertaining to  
 40 another person and uses that information, or assists another person in  
 41 using the information, in order to assume the identity of or represent  
 42 <sup>1</sup>[themselves]himself <sup>1</sup> as another person, without that person's  
 43 authorization and with the purpose to fraudulently obtain or attempt  
 44 to obtain a benefit or services, or avoid the payment of debt or other  
 45 legal obligation or avoid prosecution for a crime by using the name of  
 46 the other person; or

1       (5) Impersonates another, assumes a false identity or makes a false  
2 or misleading statement, in the course of making an oral or written  
3 application for services, with the purpose of avoiding payment for  
4 prior services. Purpose to avoid payment for prior services may be  
5 presumed upon proof that the person has not made full payment for  
6 prior services and has impersonated another, assumed a false identity  
7 or made a false or misleading statement regarding the identity of any  
8 person in the course of making oral or written application for services.

9       As used in this section:

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

14       b. [A person is guilty of an offense if, in the course of making an  
15 oral or written application for services, the person impersonates  
16 another, assumes a false identity or makes a false or misleading  
17 statement with the purpose of avoiding payment for prior services.  
18 Purpose to avoid payment for prior services may be presumed upon  
19 proof that the person has not made full payment for prior services and  
20 has impersonated another, assumed a false identity or made a false or  
21 misleading statement regarding the identity of any person in the course  
22 of making oral or written application for services.] Deleted by  
23 amendment pursuant to P.L. , c. (C. )(now pending before the  
24 Legislature as this bill).

25       c. A person who violates subsection a. of this section is guilty of  
26 a crime as follows:

27       (1) If the actor obtains a benefit or deprives another of a benefit in  
28 an amount less than \$500 and the offense involves the identity of one  
29 victim, the actor shall be guilty of a crime of the fourth degree[. ]  
30 except that a second or subsequent conviction for such an offense  
31 constitutes a crime of the third degree; or

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

37       (3) If the actor obtains a benefit or deprives another of a benefit in  
38 the amount of \$75,000 or more, or the offense involves the identity  
39 of <sup>1</sup>[more than] <sup>1</sup>five <sup>1</sup>or <sup>1</sup>more <sup>1</sup>victims, the actor shall be guilty of a  
40 crime of the second degree.

41       d. A violation of N.J.S.2C:28-7, constituting a disorderly persons  
42 offense, section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or  
43 section 6 of P.L.1968, c.313 (C.33:1-81.7) [for using] in a case where  
44 the person uses the personal identifying information of another to  
45 illegally purchase an alcoholic beverage or for using the personal  
46 identifying information of another to misrepresent his age for the

1 purpose of obtaining tobacco or other consumer product denied to  
2 persons under 18 years of age shall not constitute an offense under this  
3 section if the actor received only that benefit or service and did not  
4 perpetrate or attempt to perpetrate any additional injury or fraud on  
5 another.

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

11 (cf: P.L.2003, c.184, s.3)

12

13 <sup>2</sup>[4.] 3.<sup>2</sup> Section 4 of P.L.2002, c.85 (C.2C:21-17.1) is amended  
14 to read as follows:

15 4. Restitution to a victim of an offense under N.J.S.2C:21-1,  
16 section 1 of P.L.1983, c.565 (C.2C:21-2.1) [or], N.J.S.2C:21-17 ,  
17 section 5 of P.L.2003, c.184 (C.2C:21-17.2) or section 6 of P.L.  
18 2003, c.184 (C.2C:21-17.3) when the offense concerns personal  
19 identifying information may include costs incurred by the victim:

- 20 a. in clearing the credit history or credit rating of the victim; or  
21 b. in connection with any civil or administrative proceeding to  
22 satisfy any debt, lien, or other obligation of the victim arising as a  
23 result of the actions of the defendant.

24 (cf: P.L.2002, c.85, s.4)

25

26 <sup>2</sup>[5.] 4.<sup>2</sup> Section 5 of P.L.2003, c.184 (C.2C:21-17.2) is amended  
27 to read as follows:

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

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

43 c. A violation of N.J.S.2C:28-7, constituting a disorderly persons  
44 offense, section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or  
45 section 6 of P.L.1968, c.313 (C.33:1-81.7) [for using] in a case where  
46 the person uses the personal identifying information of another to



1 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  
5 this section if the actor received only that benefit or service and did  
6 not perpetrate or attempt to perpetrate any additional injury or fraud  
7 on another.

8 (cf: P.L.2003, c.184,s.5).

9

10 <sup>2</sup>[6.] 5.<sup>2</sup> Section 7 of P.L.2003,c.184 (C.2C:21-17.4) is amended  
11 to read as follows:

12 7. a. Any person who suffers any ascertainable loss of moneys or  
13 property, real or personal, as a result of the use of that person's  
14 personal identifying information, in violation of N.J.S.2C:21-1, section  
15 1 of P.L.1983, c.565 (2C:21-2.1) [or], N.J.S.2C:21-17, section 5 of  
16 P.L.2003, c.184 (C.2C:21-17.2) or section 6 of P.L.2003, c.184  
17 (C.2C:21-17.3), may bring an action in any court of competent  
18 jurisdiction. In any action under this section the court shall, in  
19 addition to any other appropriate legal or equitable relief, award  
20 damages in an amount three times the value of all costs incurred by the  
21 victim as a result of the person's criminal activity. These costs may  
22 include, but are not limited to, those incurred by the victim in clearing  
23 his credit history or credit rating, or those incurred in connection with  
24 any civil or administrative proceeding to satisfy any debt, lien, or other  
25 obligation of the victim arising as a result of the actions of the  
26 defendant. The victim may also recover those costs incurred for  
27 attorneys' fees, court costs and any out-of-pocket losses. A financial  
28 institution, insurance company, bonding association or business that  
29 suffers direct financial loss as a result of the offense shall also be  
30 entitled to damages, but damages to natural persons shall be fully  
31 satisfied prior to any payment to a financial institution, insurance  
32 company, bonding association or business.

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

41 c. The cause of action authorized by this section shall be in  
42 addition to and not in lieu of any forfeiture or any other action,  
43 injunctive relief or any other remedy available at law, except that  
44 where the defendant is convicted of a violation of this act, the court in  
45 the criminal action, upon the application of the Attorney General or  
46 the prosecutor, shall in addition to any other disposition authorized by

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

15 (cf: P.L.2003, c.184, s.7).

16

17 <sup>2</sup>[7.] 6.<sup>2</sup> Section 8 of P.L.2003, c.184 (C.2C:21-17.5) is amended  
18 to read as follows:

19 8. a. On motion of a person who has been the victim of a violation  
20 of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) [or] ,  
21 N.J.S.2C:21-17, section 5 of P.L.2003, c.184 (C.2C:21-17.2) or  
22 section 6 of P.L.2003, c.184 (C.2C:21-17.3), or on its own motion,  
23 the court may, without a hearing, grant an order directing all consumer  
24 reporting agencies doing business within the State of New Jersey to  
25 delete those items of information from the victim's file that were the  
26 result of the unlawful use of the victim's personal identifying  
27 information. The consumer reporting agency shall thereafter, provide  
28 the victim with a copy of the corrected credit history report at no  
29 charge.

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

37 (cf: P.L.2003, c.184, s.8).

38

39 <sup>2</sup>[8. N.J.S.2C:44-1 is amended to read as follows:

40 2C:44-1. Criteria for Withholding or Imposing Sentence of  
41 Imprisonment. a. In determining the appropriate sentence to be  
42 imposed on a person who has been convicted of an offense, the court  
43 shall consider the following aggravating circumstances:

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

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

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

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

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

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

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

19 (8) The defendant committed the offense against a police or other  
20 law enforcement officer, correctional employee or fireman, acting in  
21 the performance of his duties while in uniform or exhibiting evidence  
22 of his authority; the defendant committed the offense because of the  
23 status of the victim as a public servant; or the defendant committed the  
24 offense against a sports official, athletic coach or manager, acting in  
25 or immediately following the performance of his duties or because of  
26 the person's status as a sports official, coach or manager;

27 (9) The need for deterring the defendant and others from violating  
28 the law;

29 (10) The offense involved fraudulent or deceptive practices  
30 committed against any department or division of State government;

31 (11) The imposition of a fine, penalty or order of restitution  
32 without also imposing a term of imprisonment would be perceived by  
33 the defendant or others merely as part of the cost of doing business,  
34 or as an acceptable contingent business or operating expense  
35 associated with the initial decision to resort to unlawful practices;

36 (12) The defendant committed the offense against a person who he  
37 knew or should have known was 60 years of age or older, or disabled;  
38 and

39 (13) The defendant, while in the course of committing or  
40 attempting to commit the crime, including the immediate flight  
41 therefrom, used or was in possession of a stolen motor vehicle.

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

45 (1) The defendant's conduct neither caused nor threatened serious  
46 harm;

- 1 (2) The defendant did not contemplate that his conduct would  
2 cause or threaten serious harm;
  - 3 (3) The defendant acted under a strong provocation;
  - 4 (4) There were substantial grounds tending to excuse or justify the  
5 defendant's conduct, though failing to establish a defense;
  - 6 (5) The victim of the defendant's conduct induced or facilitated its  
7 commission;
  - 8 (6) The defendant has compensated or will compensate the victim  
9 of his conduct for the damage or injury that he sustained, or will  
10 participate in a program of community service;
  - 11 (7) The defendant has no history of prior delinquency or criminal  
12 activity or has led a law-abiding life for a substantial period of time  
13 before the commission of the present offense;
  - 14 (8) The defendant's conduct was the result of circumstances  
15 unlikely to recur;
  - 16 (9) The character and attitude of the defendant indicate that he is  
17 unlikely to commit another offense;
  - 18 (10) The defendant is particularly likely to respond affirmatively to  
19 probationary treatment;
  - 20 (11) The imprisonment of the defendant would entail excessive  
21 hardship to himself or his dependents;
  - 22 (12) The willingness of the defendant to cooperate with law  
23 enforcement authorities;
  - 24 (13) The conduct of a youthful defendant was substantially  
25 influenced by another person more mature than the defendant.
- 26 c. (1) A plea of guilty by a defendant or failure to so plead shall not  
27 be considered in withholding or imposing a sentence of imprisonment.
- 28 (2) When imposing a sentence of imprisonment the court shall  
29 consider the defendant's eligibility for release under the law governing  
30 parole, including time credits awarded pursuant to Title 30 of the  
31 Revised Statutes, in determining the appropriate term of imprisonment.
- 32 d. Presumption of imprisonment. The court shall deal with a  
33 person who has been convicted of a crime of the first or second degree  
34 by imposing a sentence of imprisonment unless, having regard to the  
35 character and condition of the defendant, it is of the opinion that his  
36 imprisonment would be a serious injustice which overrides the need to  
37 deter such conduct by others. Notwithstanding the provisions of  
38 subsection e. of this section, the court shall deal with a person who has  
39 been convicted of theft of a motor vehicle or of the unlawful taking of  
40 a motor vehicle and who has previously been convicted of either  
41 offense by imposing a sentence of imprisonment unless, having regard  
42 to the character and condition of the defendant, it is of the opinion that  
43 his imprisonment would be a serious injustice which overrides the need  
44 to deter such conduct by others.
- 45 e. The court shall deal with a person convicted of an offense other  
46 than a crime of the first or second degree, who has not previously been

1 convicted of an offense, without imposing a sentence of imprisonment  
2 unless, having regard to the nature and circumstances of the offense  
3 and the history, character and condition of the defendant, it is of the  
4 opinion that his imprisonment is necessary for the protection of the  
5 public under the criteria set forth in subsection a., except that this  
6 subsection shall not apply if the person is convicted of any of the  
7 following crimes of the third degree: theft of a motor vehicle; unlawful  
8 taking of a motor vehicle; eluding; if the person is convicted of a crime  
9 of the third degree constituting use of a false government document in  
10 violation of subsection c. of section 1 of P.L.1983, c.565  
11 (C.2C:21-2.1); if the person is convicted of a crime of the third degree  
12 constituting distribution, manufacture or possession of an item  
13 containing personal identifying information in violation of subsection  
14 b. of section 6 of P.L.2003, c.184 (C.2C:21-17.3); or if the person is  
15 convicted of a crime of the third degree constituting theft of identity  
16 in violation of N.J.S.2C:21-17; or if the person is convicted of a crime  
17 of the third or fourth degree constituting bias intimidation in violation  
18 of N.J.S.2C:16-1; or if the person is convicted of a crime of the third  
19 or fourth degree under the provisions of section 1 or 2 of P.L.1997,  
20 c.111 (C.2C:11-5.1 or 2C:12-1.1).

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

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

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

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

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

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

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

38 Unless the preponderance of mitigating factors set forth in  
39 subsection b. weighs in favor of a lower term within the limits  
40 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a  
41 presumptive term of life imprisonment. Unless the preponderance of  
42 aggravating and mitigating factors set forth in subsections a. and b.  
43 weighs in favor of a higher or lower term within the limits authorized,  
44 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive  
45 term of 50 years' imprisonment; sentences imposed pursuant to  
46 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;

1 and sentences imposed pursuant to 2C:43-7a.(4) shall have a  
2 presumptive term of seven years' imprisonment.

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

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

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

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

27 (cf: P.L.2003, c.184, s.4).]<sup>2</sup>

28

29 <sup>2</sup>[9.] 7.<sup>2</sup> This act shall take effect immediately.

30

31

32

33

34 Expands identity theft statutes to include selling, manufacturing,  
35 possessing or exhibiting false birth certificates.

# ASSEMBLY, No. 2768

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MAY 10, 2004

**Sponsored by:**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Assemblyman PATRICK DIEGNAN, JR.**

**District 18 (Middlesex)**

**Assemblyman BRIAN P. STACK**

**District 33 (Hudson)**

**SYNOPSIS**

Expands identity theft statutes to include selling, manufacturing, possessing or exhibiting false birth certificates.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/1/2004)**

1 AN ACT concerning false birth certificates and amending N.J.S.2C:21-  
2 1, P.L.1983, c.565, N.J.S.2C:21-17, P.L.2002, c.85, P.L.2003,  
3 c.184 and N.J.S.2C:44-1.

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:21-1 is amended to read as follows:  
9 2C:21-1. Forgery and Related Offenses.

10 a. Forgery. A person is guilty of forgery if, with purpose to  
11 defraud or injure anyone, or with knowledge that he is facilitating a  
12 fraud or injury to be perpetrated by anyone, the actor:

13 (1) Alters or changes any writing of another without his  
14 authorization;

15 (2) Makes, completes, executes, authenticates, issues or transfers  
16 any writing so that it purports to be the act of another who did not  
17 authorize that act or of a fictitious person, or to have been executed  
18 at a time or place or in a numbered sequence other than was in fact the  
19 case, or to be a copy of an original when no such original existed; or

20 (3) Utters any writing which he knows to be forged in a manner  
21 specified in paragraph (1) or (2).

22 "Writing" includes printing or any other method of recording  
23 information, money, coins, tokens, stamps, seals, credit cards, badges,  
24 trademarks, access devices, and other symbols of value, right,  
25 privilege, or identification, including retail sales receipts, universal  
26 product code (UPC) labels and checks. This section shall apply  
27 without limitation to forged, copied or imitated checks.

28 As used in this section, "information" includes, but is not limited to,  
29 personal identifying information as defined in subsection v. of  
30 N.J.S.2C:20-1.

31 b. Grading of forgery. Forgery is a crime of the third degree if the  
32 writing is or purports to be part of an issue of money, securities,  
33 postage or revenue stamps, or other instruments, certificates or  
34 licenses issued by the government, New Jersey Prescription Blanks as  
35 referred to in R.S.45:14-14, or part of an issue of stock, bonds or  
36 other instruments representing interest in or claims against any  
37 property or enterprise, personal identifying information or an access  
38 device. Forgery is a crime of the third degree if the writing is or  
39 purports to be a check. Forgery is a crime of the third degree if the  
40 writing is or purports to be 15 or more forged or altered retail sales  
41 receipts or universal product code labels.

42 Otherwise forgery is a crime of the fourth degree.

43 c. Possession of forgery devices. A person is guilty of possession

**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 of forgery devices, a crime of the ~~[third]~~ second degree, when with  
2 purpose to use, or to aid or permit another to use the same for  
3 purposes of forging written instruments, including access devices and  
4 personal identifying information, he makes or possesses any device,  
5 apparatus, equipment, computer, computer equipment, computer  
6 software or article specially designed or adapted to such use.  
7 (cf: P.L.2002, c.85, s.2).

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

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

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

25 c. A person who knowingly exhibits, displays or utters a document  
26 or other writing which falsely purports to be a driver's license, birth  
27 certificate or other document issued by a governmental agency and  
28 which could be used as a means of verifying a person's identity or age  
29 or any other personal identifying information is guilty of a crime of the  
30 third degree. A violation of N.J.S.2C:28-7, constituting a disorderly  
31 persons offense, section 1 of P.L.1979, c.264 (C.2C:33-15),  
32 R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) [for using]  
33 in a case where the person uses the personal identifying information of  
34 another to illegally purchase an alcoholic beverage or for using the  
35 personal identifying information of another to misrepresent his age for  
36 the purpose of obtaining tobacco or other consumer product denied to  
37 persons under 18 years of age shall not constitute an offense under this  
38 subsection if the actor received only that benefit or service and did not  
39 perpetrate or attempt to perpetrate any additional injury or fraud on  
40 another.

41 d. A person who knowingly possesses a document or other writing  
42 which falsely purports to be a driver's license, birth certificate or other  
43 document issued by a governmental agency and which could be used  
44 as a means of verifying a person's identity or age or any other personal  
45 identifying information is guilty of a crime of the fourth degree. A  
46 violation of N.J.S.2C:28-7, constituting a disorderly persons offense,

1 section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or section 6  
2 of P.L.1968, c.313 (C.33:1-81.7) in a case where the person uses the  
3 personal identifying information of another to illegally purchase an  
4 alcoholic beverage or for using the personal identifying information of  
5 another to misrepresent his age for the purpose of obtaining tobacco  
6 or other consumer product denied to persons under 18 years of age  
7 shall not constitute an offense under this subsection if the actor  
8 received only that benefit or service and did not perpetrate or attempt  
9 to perpetrate any additional injury or fraud on another.

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

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

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

14 In addition to any other condition imposed, a court, in its  
15 discretion, may suspend, revoke or postpone the driving privileges of  
16 a person admitted to supervisory treatment under N.J.S.2C:36A-1 or  
17 N.J.S.2C:43-12 without a plea of guilty or finding of guilt.  
18 (cf: P.L.2003, c.184, s.2).

19

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

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

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

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

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

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

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

43 (5) Impersonates another, assumes a false identity or makes a false  
44 or misleading statement, in the course of making an oral or written  
45 application for services, with the purpose of avoiding payment for  
46 prior services. Purpose to avoid payment for prior services may be

1 presumed upon proof that the person has not made full payment for  
2 prior services and has impersonated another, assumed a false identity  
3 or made a false or misleading statement regarding the identity of any  
4 person in the course of making oral or written application for services.

5 As used in this section:

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

10 b. [A person is guilty of an offense if, in the course of making an  
11 oral or written application for services, the person impersonates  
12 another, assumes a false identity or makes a false or misleading  
13 statement with the purpose of avoiding payment for prior services.  
14 Purpose to avoid payment for prior services may be presumed upon  
15 proof that the person has not made full payment for prior services and  
16 has impersonated another, assumed a false identity or made a false or  
17 misleading statement regarding the identity of any person in the course  
18 of making oral or written application for services.] Deleted by  
19 amendment pursuant to P.L. , c. (C. )(now pending before the  
20 Legislature as this bill).

21 c. A person who violates subsection a. of this section is guilty of  
22 a crime as follows:

23 (1) If the actor obtains a benefit or deprives another of a benefit in  
24 an amount less than \$500 and the offense involves the identity of one  
25 victim, the actor shall be guilty of a crime of the fourth degree[. ]  
26 except that a second or subsequent conviction for such an offense  
27 constitutes a crime of the third degree; or

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

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

37 d. A violation of N.J.S.2C:28-7, constituting a disorderly persons  
38 offense, section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or  
39 section 6 of P.L.1968, c.313 (C.33:1-81.7) [for using] in a case where  
40 the person uses the personal identifying information of another to  
41 illegally purchase an alcoholic beverage or for using the personal  
42 identifying information of another to misrepresent his age for the  
43 purpose of obtaining tobacco or other consumer product denied to  
44 persons under 18 years of age shall not constitute an offense under this  
45 section if the actor received only that benefit or service and did not  
46 perpetrate or attempt to perpetrate any additional injury or fraud on

1 another.

2 e. The sentencing court shall issue such orders as are necessary to  
3 correct any public record or government document that contains false  
4 information as a result of a theft of identity. The sentencing court  
5 may provide restitution to the victim in accordance with the provisions  
6 of section 4 of P.L.2002, c.85 (C.2C:21-17.1).  
7 (cf: P.L.2003, c.184, s.3).

8  
9 4. Section 4 of P.L.2002, c.85 (C.2C:21-17.1) is amended to read  
10 as follows:

11 4. Restitution to a victim of an offense under N.J.S.2C:21-1,  
12 section 1 of P.L.1983, c.565 (C.2C:21-2.1) [or], N.J.S.2C:21-17 ,  
13 section 5 of P.L.2003, c.184 (C.2C:21-17.2) or section 6 of P.L.  
14 2003, c.184 (C.2C:21-17.3) when the offense concerns personal  
15 identifying information may include costs incurred by the victim:

16 a. in clearing the credit history or credit rating of the victim; or  
17 b. in connection with any civil or administrative proceeding to  
18 satisfy any debt, lien, or other obligation of the victim arising as a  
19 result of the actions of the defendant.

20 (cf: P.L.2002, c.85, s.4)

21  
22 5. Section 5 of P.L.2003, c.184 (C.2C:21-17.2) is amended to read  
23 as follows:

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

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

39 c. A violation of N.J.S.2C:28-7, constituting a disorderly persons  
40 offense, section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or  
41 section 6 of P.L.1968, c.313 (C.33:1-81.7) [for using] in a case where  
42 the person uses the personal identifying information of another to  
43 illegally purchase an alcoholic beverage or for using the personal  
44 identifying information of another to misrepresent his age for the  
45 purpose of obtaining tobacco or other consumer product denied to  
46 persons under 18 years of age shall not constitute an offense under

1 this section if the actor received only that benefit or service and did  
2 not perpetrate or attempt to perpetrate any additional injury or fraud  
3 on another.

4 (cf: P.L.2003, c.184,s.5).

5

6 6. Section 7 of P.L.2003,c.184 (C.2C:21-17.4) is amended to read  
7 as follows:

8 7. a. Any person who suffers any ascertainable loss of moneys or  
9 property, real or personal, as a result of the use of that person's  
10 personal identifying information, in violation of N.J.S.2C:21-1, section  
11 1 of P.L.1983, c.565 (2C:21-2.1) [or], N.J.S.2C:21-17, section 5 of  
12 P.L.2003, c.184 (C.2C:21-17.2) or section 6 of P.L.2003, c.184  
13 (C.2C:21-17.3), may bring an action in any court of competent  
14 jurisdiction. In any action under this section the court shall, in  
15 addition to any other appropriate legal or equitable relief, award  
16 damages in an amount three times the value of all costs incurred by the  
17 victim as a result of the person's criminal activity. These costs may  
18 include, but are not limited to, those incurred by the victim in clearing  
19 his credit history or credit rating, or those incurred in connection with  
20 any civil or administrative proceeding to satisfy any debt, lien, or other  
21 obligation of the victim arising as a result of the actions of the  
22 defendant. The victim may also recover those costs incurred for  
23 attorneys' fees, court costs and any out-of-pocket losses. A financial  
24 institution, insurance company, bonding association or business that  
25 suffers direct financial loss as a result of the offense shall also be  
26 entitled to damages, but damages to natural persons shall be fully  
27 satisfied prior to any payment to a financial institution, insurance  
28 company, bonding association or business.

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

37 c. The cause of action authorized by this section shall be in  
38 addition to and not in lieu of any forfeiture or any other action,  
39 injunctive relief or any other remedy available at law, except that  
40 where the defendant is convicted of a violation of this act, the court in  
41 the criminal action, upon the application of the Attorney General or  
42 the prosecutor, shall in addition to any other disposition authorized by  
43 this Title sentence the defendant to pay restitution in an amount equal  
44 to the costs incurred by the victim as a result of the defendant's  
45 criminal activity, regardless of whether a civil action has been  
46 instituted. These costs may include, but are not limited to those

1 incurred by the victim in clearing his credit history or credit rating;  
2 those incurred in connection with any civil or administrative  
3 proceeding to satisfy any debt, lien, or other obligation of the victim  
4 arising as a result of the actions of the defendant; or those incurred for  
5 attorneys' fees, court costs and any out-of-pocket losses. A financial  
6 institution, insurance company, bonding association or business that  
7 suffers direct financial loss as a result of the offense shall also be  
8 entitled to restitution, but restitution to natural persons shall be fully  
9 satisfied prior to any payment to a financial institution, insurance  
10 company, bonding association or business.

11 (cf: P.L.2003, c.184, s.7).

12

13 7. Section 8 of P.L.2003, c.184 (C.2C:21-17.5) is amended to read  
14 as follows:

15 8. a. On motion of a person who has been the victim of a violation  
16 of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) [or] ,  
17 N.J.S.2C:21-17, section 5 of P.L.2003, c.184 (C.2C:21-17.2) or  
18 section 6 of P.L.2003, c.184 (C.2C:21-17.3), or on its own motion,  
19 the court may, without a hearing, grant an order directing all consumer  
20 reporting agencies doing business within the State of New Jersey to  
21 delete those items of information from the victim's file that were the  
22 result of the unlawful use of the victim's personal identifying  
23 information. The consumer reporting agency shall thereafter, provide  
24 the victim with a copy of the corrected credit history report at no  
25 charge.

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

33 (cf: P.L.2003, c.184, s.8).

34

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

36 2C:44-1. Criteria for Withholding or Imposing Sentence of  
37 Imprisonment. a. In determining the appropriate sentence to be  
38 imposed on a person who has been convicted of an offense, the court  
39 shall consider the following aggravating circumstances:

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

43 (2) The gravity and seriousness of harm inflicted on the victim,  
44 including whether or not the defendant knew or reasonably should  
45 have known that the victim of the offense was particularly vulnerable  
46 or incapable of resistance due to advanced age, ill-health, or extreme

- 1 youth, or was for any other reason substantially incapable of exercising
- 2 normal physical or mental power of resistance;
- 3 (3) The risk that the defendant will commit another offense;
- 4 (4) A lesser sentence will depreciate the seriousness of the
- 5 defendant's offense because it involved a breach of the public trust
- 6 under chapters 27 and 30, or the defendant took advantage of a
- 7 position of trust or confidence to commit the offense;
- 8 (5) There is a substantial likelihood that the defendant is involved
- 9 in organized criminal activity;
- 10 (6) The extent of the defendant's prior criminal record and the
- 11 seriousness of the offenses of which he has been convicted;
- 12 (7) The defendant committed the offense pursuant to an agreement
- 13 that he either pay or be paid for the commission of the offense and the
- 14 pecuniary incentive was beyond that inherent in the offense itself;
- 15 (8) The defendant committed the offense against a police or other
- 16 law enforcement officer, correctional employee or fireman, acting in
- 17 the performance of his duties while in uniform or exhibiting evidence
- 18 of his authority; the defendant committed the offense because of the
- 19 status of the victim as a public servant; or the defendant committed the
- 20 offense against a sports official, athletic coach or manager, acting in
- 21 or immediately following the performance of his duties or because of
- 22 the person's status as a sports official, coach or manager;
- 23 (9) The need for deterring the defendant and others from violating
- 24 the law;
- 25 (10) The offense involved fraudulent or deceptive practices
- 26 committed against any department or division of State government;
- 27 (11) The imposition of a fine, penalty or order of restitution
- 28 without also imposing a term of imprisonment would be perceived by
- 29 the defendant or others merely as part of the cost of doing business,
- 30 or as an acceptable contingent business or operating expense
- 31 associated with the initial decision to resort to unlawful practices;
- 32 (12) The defendant committed the offense against a person who he
- 33 knew or should have known was 60 years of age or older, or disabled;
- 34 and
- 35 (13) The defendant, while in the course of committing or
- 36 attempting to commit the crime, including the immediate flight
- 37 therefrom, used or was in possession of a stolen motor vehicle.
- 38 b. In determining the appropriate sentence to be imposed on a
- 39 person who has been convicted of an offense, the court may properly
- 40 consider the following mitigating circumstances:
- 41 (1) The defendant's conduct neither caused nor threatened serious
- 42 harm;
- 43 (2) The defendant did not contemplate that his conduct would
- 44 cause or threaten serious harm;
- 45 (3) The defendant acted under a strong provocation;
- 46 (4) There were substantial grounds tending to excuse or justify the



1 defendant's conduct, though failing to establish a defense;

2 (5) The victim of the defendant's conduct induced or facilitated its  
3 commission;

4 (6) The defendant has compensated or will compensate the victim  
5 of his conduct for the damage or injury that he sustained, or will  
6 participate in a program of community service;

7 (7) The defendant has no history of prior delinquency or criminal  
8 activity or has led a law-abiding life for a substantial period of time  
9 before the commission of the present offense;

10 (8) The defendant's conduct was the result of circumstances  
11 unlikely to recur;

12 (9) The character and attitude of the defendant indicate that he is  
13 unlikely to commit another offense;

14 (10) The defendant is particularly likely to respond affirmatively to  
15 probationary treatment;

16 (11) The imprisonment of the defendant would entail excessive  
17 hardship to himself or his dependents;

18 (12) The willingness of the defendant to cooperate with law  
19 enforcement authorities;

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

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

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

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

41 e. The court shall deal with a person convicted of an offense other  
42 than a crime of the first or second degree, who has not previously been  
43 convicted of an offense, without imposing a sentence of imprisonment  
44 unless, having regard to the nature and circumstances of the offense  
45 and the history, character and condition of the defendant, it is of the  
46 opinion that his imprisonment is necessary for the protection of the

1 public under the criteria set forth in subsection a., except that this  
2 subsection shall not apply if the person is convicted of any of the  
3 following crimes of the third degree: theft of a motor vehicle; unlawful  
4 taking of a motor vehicle; eluding; if the person is convicted of a crime  
5 of the third degree constituting use of a false government document in  
6 violation of subsection c. of section 1 of P.L.1983, c.565  
7 (C.2C:21-2.1); if the person is convicted of a crime of the third degree  
8 constituting distribution, manufacture or possession of an item  
9 containing personal identifying information in violation of subsection  
10 b. of section 6 of P.L.2003, c.184 (C.2C:21-17.3); or if the person is  
11 convicted of a crime of the third degree constituting theft of identity  
12 in violation of N.J.S.2C:21-17; or if the person is convicted of a crime  
13 of the third or fourth degree constituting bias intimidation in violation  
14 of N.J.S.2C:16-1; or if the person is convicted of a crime of the third  
15 or fourth degree under the provisions of section 1 or 2 of P.L.1997,  
16 c.111 (C.2C:11-5.1 or 2C:12-1.1).

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

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

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

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

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

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

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

34 Unless the preponderance of mitigating factors set forth in  
35 subsection b. weighs in favor of a lower term within the limits  
36 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a  
37 presumptive term of life imprisonment. Unless the preponderance of  
38 aggravating and mitigating factors set forth in subsections a. and b.  
39 weighs in favor of a higher or lower term within the limits authorized,  
40 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive  
41 term of 50 years' imprisonment; sentences imposed pursuant to  
42 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;  
43 and sentences imposed pursuant to 2C:43-7a.(4) shall have a  
44 presumptive term of seven years' imprisonment.

45 In imposing a minimum term pursuant to 2C:43-7b., the sentencing  
46 court shall specifically place on the record the aggravating factors set

1 forth in this section which justify the imposition of a minimum term.

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

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

18 h. Except as provided in section 2 of P.L.1993, c.123  
19 (C.2C:43-11), the presumption of imprisonment as provided in  
20 subsection d. of this section shall not preclude the admission of a  
21 person to the Intensive Supervision Program, established pursuant to  
22 the Rules Governing the Courts of the State of New Jersey.  
23 (cf: P.L.2003, c.184, s.4).

24

25 9. This act shall take effect immediately.

26

27

28

#### STATEMENT

29

30 This bill expands the current laws concerning identity theft and the  
31 sale of simulated documents by prohibiting the sale, manufacture,  
32 possession and exhibition of a false birth certificate and also by  
33 prohibiting using a false birth certificate to obtain a government  
34 document which could be used for verifying a person's identity.

35 *Section 1* of the bill would amend the forgery statute, N.J.S.2C:21-  
36 1, to make it a crime of the second degree if a person possesses a  
37 forgery device. This would make the provisions of the forgery statute  
38 consistent with subsection b. of N.J.S.A.2C:21-2.1 which makes it a  
39 second degree offense to make or possess a device or materials to  
40 make a false driver's license, birth certificate or other government  
41 document.

42 *Section 2* of the bill would amend N.J.S.A.2C:21-2.1. to make it  
43 a crime of the second degree to sell, offer to sell, or possess with  
44 intent to sell or to make or possess devices or materials to make a  
45 false birth certificate as a means of verifying a person's identity. This  
46 bill would also expand the current third degree offense of displaying

1 or exhibiting a false government document and the fourth degree  
2 offense of possessing a false government document to include  
3 exhibiting or possessing a false birth certificate.

4 In addition, this bill would expand the exception under the law  
5 concerning minors under certain circumstances. N.J.S.A.2C:21-2.1  
6 currently provides an exception for a minor who exhibits or displays  
7 a false document solely for the purpose of purchasing an alcoholic  
8 beverage or tobacco product. Under the provisions of subsection c.  
9 of N.J.S.A.2C:21-2.1, a minor is not guilty of the third degree crime  
10 of exhibiting a false document under these circumstances. This bill  
11 would provide for this same exception with regard to the fourth degree  
12 offense of possessing a false document. Thus, minors who display or  
13 merely possess the false document for the sole purpose of purchasing  
14 an alcoholic beverage or tobacco product would not be guilty of either  
15 the third or the fourth degree crime.

16 *Section 3* of the bill would amend N.J.S.A.2C:21-17 in order to  
17 clarify that section's provisions which were recently amended pursuant  
18 to P.L.2003, c.184. The 2003 amendment inadvertently deleted the  
19 reference to subsection a. or b. of N.J.S.A.2C:21-17 when it  
20 established a new gradation scheme for the crime of identity theft.  
21 This bill would clarify that the gradation scheme applies in all those  
22 instances outlined in subsections a. and b. of N.J.S.A.2C:21-17: any  
23 person who impersonates another person, assumes a false identity for  
24 the purpose of obtaining a benefit or injure or defraud; pretends to be  
25 a representative and does an act in that capacity for the purpose of  
26 obtaining a benefit or to injure or defraud; impersonates another,  
27 assumes a false identity or makes a false statement in an application for  
28 services for the purpose of obtaining those services; obtains personal  
29 identifying information and uses that information to fraudulently obtain  
30 a benefit or services or avoid payment or prosecution (subsection a.);  
31 and to impersonate, assume a false identity or make a false or  
32 misleading statement in the course of making an application for  
33 services to avoid payment for prior services (subsection b.). The bill  
34 would also clarify that the pecuniary amount involved in the offense  
35 and the number of identities involved would determine the grading of  
36 the offense.

37 This section would also provide an exception for minors who  
38 display or merely possess the false document for the sole purpose of  
39 purchasing an alcoholic beverage or tobacco product.

40 In addition, this bill would also amend subsection e. of  
41 N.J.S.A.2C:21-17 to clarify that the sentencing court would be  
42 required to make such orders which are necessary to correct any false  
43 information pertaining to any victim of identity theft contained in any  
44 "government record" in addition to any "public record" which the law  
45 currently authorizes.

46 *Section 5* of the bill would amend N.J.S.A.2C:21-17.2, recently

1 enacted pursuant to P.L.2003, c.184, to make it a crime of the second  
2 degree for a person to use a false birth certificate to obtain another  
3 government document which could be used to verify a person's identity  
4 or any other personal identifying information.

5 In addition, this section would provide an exception for minors who  
6 display or merely possess the false document for the sole purpose of  
7 purchasing an alcoholic beverage or tobacco product.

8 *Section 8* of this bill would amend N.J.S.A.2C:44-1, concerning  
9 sentencing, to add the third degree identity theft to the list of crimes  
10 where the presumption of nonincarceration would not apply.

11 *Sections 4, 6 and 7* would amend various sections of the existing  
12 law to include the crime of using a false driver's license or birth  
13 certificate to obtain another government document, pursuant to  
14 N.J.S.A.2C:21-17.2, and the crime of distributing, manufacturing or  
15 possessing any item containing personal identifying information of  
16 another to facilitate a fraud, pursuant to N.J.S.A.2C:21-17.3. *Section*  
17 *4* amends the statute which provides for restitution for identity theft  
18 victims, N.J.S.A.2C:21-17.1. *Section 6* amends the statute which  
19 provides for a civil remedy for identity theft victims, N.J.S.A.2C:21-  
20 17.4. *Section 7* amends the statute which provides for court ordered  
21 corrections of consumer reporting information pertaining to identity  
22 theft victims, N.J.S.A.2C:21-17.5.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2768

# STATE OF NEW JERSEY

DATED: SEPTEMBER 13, 2004

The Assembly Judiciary Committee reports favorably Assembly Bill No. 2768.

This bill clarifies the current laws concerning identity theft and the sale of simulated documents by prohibiting the sale, manufacture, possession and exhibition of a false birth certificate and also by prohibiting using a false birth certificate to obtain a government document which could be used for verifying a person's identity.

*Section 1* of the bill would amend the forgery statute, N.J.S.2C:21-1, to make it a crime of the second degree if a person possesses a forgery device. This bill would make the provisions of the forgery statute consistent with subsection b. of N.J.S.A.2C:21-2.1 which makes it a second degree offense to make or possess a device or materials to make a false driver's license, birth certificate or other government document.

*Section 2* of the bill would expand the current offenses concerning selling a false document, possessing a device which makes a false document, exhibiting a false document or possessing a false driver's license or other document to include false birth certificates.

Specifically, subsections a. and b. of N.J.S.A.2C:21-2.1 would be amended to make it a crime of the second degree: (a) to sell, offer to sell, or possess with intent to sell a false birth certificate; or (b) to make or possess a device or materials to make false birth certificate. Subsections c. and d. of N.J.S.A.2C:21-2.1 would also be amended to make displaying or exhibiting a false birth certificate a crime of the third degree and to make possessing a false birth certificate a crime of the fourth degree.

In addition, this bill would expand the exception for a minor who exhibits or displays a false document solely for the purpose of purchasing an alcoholic beverage or tobacco product to include false birth certificates.

*Section 3* of the bill would amend N.J.S.A.2C:21-17 in order to clarify that section's provisions which were recently amended pursuant to P.L.2003, c.184. The 2003 amendment inadvertently deleted the reference to impersonating another to avoid payment for prior services when it established a new gradation scheme for the crime of identity theft. This bill would amend this section to clarify that the gradation scheme applies in all instances outlined in N.J.S.A.2C:21-17, any

person who: (1) impersonates another person or assumes a false identity for the purpose of obtaining a benefit or injure or defraud another; (2) pretends to be a representative of an organization and does an act in that capacity for the purpose of obtaining a benefit or to injure or defraud another; (3) impersonates another, assumes a false identity or makes a false or misleading statement regarding an application for services for the purpose of obtaining those services; (4) obtains personal identifying information of another and uses that information with the purpose to fraudulently obtain or attempt to obtain a benefit or services or avoid payment of a debt or prosecution for a crime by using the name of the other person; or (5) impersonates another, assumes a false identity or makes a false or misleading statement in the course of making an application for services to avoid payment for prior services.

The bill would clarify that the pecuniary amounts involved in the offense and the number of identities involved would determine the grading of the offense.

This section also provides an exception for minors who display or merely possess the false document for the sole purpose of purchasing an alcoholic beverage or tobacco product.

In addition, this bill would amend subsection e. of N.J.S.A.2C:21-17 to clarify that the sentencing court would be required to make such orders which are necessary to correct any false information pertaining to any victim of identity theft contained in any "government record" in addition to any "public record" which the law currently authorizes.

*Section 5* of the bill would amend N.J.S.A.2C:21-17.2, recently enacted pursuant to P.L.2003, c.184, to expand the current second degree crime of using a false document to obtain another government document to include using a false birth certificate to obtain another government document. In addition, this section would provide an exception for minors who display or merely possess the false document for the sole purpose of purchasing an alcoholic beverage or tobacco product.

*Section 8* of this bill would amend N.J.S.A.2C:44-1, concerning sentencing, to add the third degree crime of identity theft to the list of crimes where the presumption of nonincarceration would not apply.

*Sections 4, 6 and 7* would amend various sections of the existing law concerning restitution(*Section 4*), civil remedies (*Section 6*) and court ordered corrections of consumer reports for identity theft victims (*Section 7*) to include the crimes of using a false driver's license or false birth certificate to obtain another government document, pursuant to N.J.S.A.2C:21-17.2, and the crime of distributing, manufacturing or possessing any item containing personal identifying information of another to facilitate a fraud, pursuant to N.J.S.A.2C:21-17.3.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

[First Reprint]

### **ASSEMBLY, No. 2768**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 9, 2005

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2768 (1R).

This bill clarifies the current laws concerning identity theft and the sale of simulated documents by prohibiting the sale, manufacture, possession and exhibition of a false birth certificate and also by prohibiting using a false birth certificate to obtain a government document which could be used for verifying a person's identity.

The committee amended the bill to omit sections 1 and 8. Section 1 of the bill would have amended the forgery statute, N.J.S.2C:21-1, to upgrade possession of a forgery device to a crime of the second degree. Section 8 would have amended N.J.S.A.2C:44-1, concerning sentencing, to add the third degree crime of identity theft to the list of crimes where the presumption of nonincarceration would not apply.

*Section 2* of the bill would expand the current offenses concerning selling a false document, possessing a device which makes a false document, exhibiting a false document or possessing a false driver's license or other document to include false birth certificates.

Specifically, subsections a. and b. of N.J.S.A.2C:21-2.1 would be amended to make it a crime of the second degree: (a) to sell, offer to sell, or possess with intent to sell a false birth certificate; or (b) to make or possess a device or materials to make false birth certificate. Subsections c. and d. of N.J.S.A.2C:21-2.1 would also be amended to make displaying or exhibiting a false birth certificate a crime of the third degree and to make possessing a false birth certificate a crime of the fourth degree.

In addition, this bill would expand the exception for a minor who exhibits or displays a false document solely for the purpose of purchasing an alcoholic beverage or tobacco product to include false birth certificates.

*Section 3* of the bill would amend N.J.S.A.2C:21-17 to clarify that section's provisions which were amended pursuant to P.L.2003, c.184. The 2003 amendment inadvertently deleted the reference to impersonating another to avoid payment for prior services when it



established a new gradation scheme for the crime of identity theft. This bill would amend this section to clarify that the gradation scheme applies in all instances outlined in N.J.S.A.2C:21-17, any person who: (1) impersonates another person or assumes a false identity for the purpose of obtaining a benefit or injure or defraud another; (2) pretends to be a representative of an organization and does an act in that capacity for the purpose of obtaining a benefit or to injure or defraud another; (3) impersonates another, assumes a false identity or makes a false or misleading statement regarding an application for services for the purpose of obtaining those services; (4) obtains personal identifying information of another and uses that information with the purpose to fraudulently obtain or attempt to obtain a benefit or services or avoid payment of a debt or prosecution for a crime by using the name of the other person; or (5) impersonates another, assumes a false identity or makes a false or misleading statement in the course of making an application for services to avoid payment for prior services.

The bill would clarify that the pecuniary amounts involved in the offense and the number of identities involved would determine the grading of the offense.

This section also provides an exception for minors who display or merely possess the false document for the sole purpose of purchasing an alcoholic beverage or tobacco product.

In addition, this bill would amend subsection e. of N.J.S.A.2C:21-17 to clarify that the sentencing court would be required to make such orders which are necessary to correct any false information pertaining to any victim of identity theft contained in any "government record" in addition to any "public record" which the law currently authorizes.

*Section 5* of the bill would amend N.J.S.A.2C:21-17.2, enacted pursuant to P.L.2003, c.184, to expand the current second degree crime of using a false document to obtain another government document to include using a false birth certificate to obtain another government document. The exception for minors who display or merely possess the false document for the sole purpose of purchasing an alcoholic beverage or tobacco product is included.

*Sections 4, 6 and 7* would amend various sections of the existing law concerning restitution (*Section 4*), civil remedies (*Section 6*) and court ordered corrections of consumer reports for identity theft victims (*Section 7*) to include the crimes of using a false driver's license or false birth certificate to obtain another government document, pursuant to N.J.S.A.2C:21-17.2, and the crime of distributing, manufacturing or possessing any item containing personal identifying information of another to facilitate a fraud, pursuant to N.J.S.A.2C:21-17.3.

**STATEMENT TO**  
**ASSEMBLY, No. 2768**

with Assembly Floor Amendments  
(Proposed By Assemblyman COHEN)

ADOPTED: OCTOBER 7,2004

This floor amendment would clarify the provisions in the bill concerning the gradation scheme for identity theft. The amendment would clarify that the number of victims involved in order to constitute a crime of the second degree would be five or more victims. The current law reads "more than five" victims.

Therefore, the gradation for this offense would be as follows:  
(1) if the benefit is less than \$500 and the offense involves one victim, it would be a crime of the fourth degree; (2) if the benefit is at least \$500 but less than \$75,000 or the offense involves the identity of at least two but less than five victims, it would be a crime of the third degree; and (3) if the amount involved is \$75,000 or more or the offense involves the identity of five or more victims, it would be a crime of the second degree.

## **Codey Signs Identity Theft Prevention Into Law**

### ***Bills help protect Social Security numbers, "good name" of state residents***

(TRENTON) – Acting Governor Richard J. Codey today signed A4001/S1914, A2768 and A2769/S2617, bills that give consumers safeguards against identity theft.

“At the end of the day, New Jersey residents should feel assured that they are working for their families – not shameless impersonators who have targeted their nest egg,” said Codey. “A good name is always worth protecting.”

Codey signed the bills during a public ceremony at the Governor’s Outer Office in the State House. Bill sponsors who joined the Acting Governor included Assembly members Bonnie Watson Coleman (D-Mercer), Reed Gusciora (D-Mercer), Joseph Vas (D-Middlesex) and Senators Shirley K. Turner (D-Mercer), Byron M. Baer (D-Bergen), Joseph F. Vitale (D-Middlesex) and Andrew R. Ciesla (R-Monmouth, Ocean). Other bill sponsors include Assemblymen Joseph Cryan (D-Union), Jeff Van Drew (D-Cape May, Cumberland), John S. Wisniewski (D-Middlesex), Neil M. Cohen (D-Union), Patrick Diegnan Jr. (D-Middlesex), Brian Stack (D-Hudson) and Senators Stephen M. Sweeney (D-Gloucester, Cumberland, Salem), Fred H. Madden (D-Camden, Gloucester) and Walter J. Kavanaugh (R-Somerset).

Bills A4001/S1914 – the “New Jersey Identity Theft Prevention Act” – would provide the following safeguards:

- Allow consumers to request that a reporting agency place a security freeze on their consumer credit report
- Affirm an individual's right to file and receive a copy of a police report concerning suspected identity theft
- Require any company that lawfully collects and maintains computerized records containing consumer’s personal information to notify affected consumers in the event that personal data is compromised
- Limit use of a consumer's Social Security number as an identifier and prohibit public display and usage of the number on printed materials except where required by law
- Require businesses to destroy records containing a customer’s personal information

that is no longer needed

The law will go into effect Jan. 1, 2006.

"The risk of identity theft continues to rise as weaknesses in data reporting and storage are exploited on a daily basis," said Watson Coleman. "Recent media headlines concerning lost information and security breaches affecting millions of consumers clearly illustrate why we need to take a stand and protect consumers against the fastest growing threat to their financial security and quality of life."

"So many people in our country don't know the power of their own Social Security numbers, but in the wrong hands, the economic impact can be extensive and lasting," said Turner. "Identity theft is insidious, invasive, and indiscriminate, striking at the young and old with equal voracity and in some cases causing irreparable damage to one's credit history. However, with greater oversight on how our identifying information is being handled in New Jersey, and the appropriate legal tools to prove a consumer's innocence, we can protect New Jersey's residents from identity theft."

"Particularly in light of the CitiGroup, North Jersey and BJ's incidents, we must provide New Jersey's consumers with the tools they need to protect themselves and the business community with guidelines to follow so they can prevent these devastating financial crimes," said Cryan.

"New incidents of security breaches and lost consumer data are constantly being reported in the media," said Gusciora. "We have an obligation to provide New Jersey residents and businesses with every tool possible to safeguard sensitive personal and credit information from unscrupulous individuals."

"The security of Social Security numbers and credit information is no laughing matter," said Vas. "As technology improves a would-be thief's chances of stealing someone's identity, we should empower consumers and businesses with a new and improved law to help mitigate the situation."

"With the spread of e-commerce and the passage of vulnerable identifying information over unsecured data lines, identity theft has grown from a minor occurrence to a lucrative criminal trade," said Vitale. "New Jersey needs to take every appropriate action to ensure that the innocent are not held culpable for the actions of an imposter. Under these new guidelines, it will be harder for criminals to steal someone's identity, and easier for innocent consumers to protect their good names."

"Identity theft is now the fastest-growing financial crime in our country, with nearly ten million Americans victimized in 2003 alone," said Kim Ricketts, Director of the Division of Consumer Affairs, the agency charged with enforcement of this statute. "The Identity Theft Prevent Act the Governor is signing today is the most comprehensive and easy-to-use identity theft prevention law in the nation, and I applaud Governor Codey for giving consumers the tools they need to protect their financial well-being."

Bill A2768 will expand the state's identity theft laws to include the selling, manufacturing possession or exhibiting of false birth certificates. The new measure will make it a second-degree crime to sell, offer to sell, or possess with the intent of selling a forged birth certificate. Convictions will be punishable by up to 10 years in prison and \$150,000 in fines. The statute for forging a birth certificate would be consistent with punishment for manufacturing a false driver's license or other government documents. The law will go into effect immediately.

Bills A2769/S2617 will protect consumers from having their credit or ATM card information unwittingly taken from them. The new measure will prohibit the unauthorized use of scanning devices or re-encoders to access or scan the encoded information on any ATM, debit, credit or other payment card. The bill would also make it a crime to use a re-encoder to place the information encoded on the magnetic strip onto a different card without permission. A re-encoder is a device that places encoded information from the magnetic strip of a payment card onto the magnetic strip or stripe of a different payment card. The law will go into effect immediately.

"Anyone who gets their hands on a re-encoder can become an identity thief; it could be a gas station attendant or a server at your favorite restaurant," said Sweeney. "By banning re-encoders we are working to help eliminate identity theft while saving consumers millions of dollars in fraudulent debt."

"Consumers deserve to be able to shop without the fear of identity theft," said Madden. "This law will help combat credit card fraud by making it more difficult for thieves to use re-encoders to steal identities, and help give consumers peace of mind while they are shopping."

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