

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1248*
Committee Substitute Favorable 5/19/05

Short Title: Identity Theft Protection Act of 2005.

(Public)

Sponsors:

Referred to:

April 18, 2005

A BILL TO BE ENTITLED

AN ACT ENACTING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Identity Theft Protection Act.

"§ 75-60. Title.

This Article shall be known and may be cited as the "Identity Theft Protection Act".
Any waiver of the provisions of this Article is contrary to public policy, and is void and unenforceable.

"§ 75-61. Definitions.

The following definitions apply in this Article:

- (1) "Business". – A sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.
- (2) "Consumer". – An individual.
- (3) "Consumer reporting agency". – Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.
- (4) "Consumer report" or "credit report". – Any written, oral, or other communication of any information by a consumer reporting agency

1 bearing on a consumer's creditworthiness, credit standing, credit
2 capacity, character, general reputation, personal characteristics, or
3 mode of living which is used or expected to be used or collected in
4 whole or in part for the purpose of serving as a factor in establishing
5 the consumer's eligibility for any of the following:

6 a. Credit to be used primarily for personal, family, or household
7 purposes.

8 b. Employment purposes.

9 c. Any other purpose authorized under 15 U.S.C. § 1681b.

10 (5) "Credit card". – Has the same meaning as in section 103 of the Truth
11 in Lending Act (15 U.S.C. § 160, et seq.).

12 (6) "Debit card". – Any card or device issued by a financial institution to a
13 consumer for use in initiating an electronic fund transfer from the
14 account holding assets of the consumer at such financial institution, for
15 the purpose of transferring money between accounts or obtaining
16 money, property, labor, or services.

17 (7) "Disposal" includes the following:

18 a. The discarding or abandonment of records containing personal
19 information.

20 b. The sale, donation, discarding or transfer of any medium,
21 including computer equipment, or computer media, containing
22 records of personal information, or other nonpaper media upon
23 which records of personal information are stored, or other
24 equipment for nonpaper storage of information.

25 (8) "Person". – Any individual, partnership, corporation, trust, estate,
26 cooperative, association, government, or governmental subdivision or
27 agency, or other entity.

28 (9) "Personal information". – An individual's first name or first initial and
29 last name in combination with identifying information as defined in
30 G.S. 14-113.20(b). Personal information does not include publicly
31 available directories containing information an individual has
32 voluntarily consented to have publicly disseminated or listed,
33 including name, address, and telephone number.

34 (10) "Proper identification". – Information generally deemed sufficient to
35 identify a person. If a person is unable to reasonably identify himself
36 or herself with the information described above, a consumer reporting
37 agency may require additional information concerning the consumer's
38 employment and personal or family history in order to verify the
39 consumer's identity.

40 (11) "Records". – Any material on which written, drawn, spoken, visual, or
41 electromagnetic information is recorded or preserved, regardless of
42 physical form or characteristics.

43 (12) "Security breach". – An incident of unauthorized access to and
44 acquisition of records or data containing personal information where

1 unauthorized or illegal use of the personal information has occurred or
2 is reasonably likely to occur. Good faith acquisition of personal
3 information by an employee or agent of the business for a legitimate
4 purpose is not a security breach, provided that the personal information
5 is not used for a purpose other than a lawful purpose of the business
6 and is not subject to further unauthorized disclosure.

- 7 (13) "Security freeze". – Notice placed in a credit report, at the request of
8 the consumer and subject to certain exceptions, that prohibits the
9 consumer reporting agency from releasing all or any part of the
10 consumer's credit report or any information derived from it without the
11 express authorization of the consumer.

12 **"§ 75-62. Social security number protection.**

13 (a) Except as provided in subsection (b) of this section, a business may not do
14 any of the following:

- 15 (1) Intentionally communicate or otherwise make available to the general
16 public an individual's social security number or any portion thereof of
17 six digits or more.
- 18 (2) Intentionally print or imbed an individual's social security number or
19 any portion thereof of six digits or more on any card required for the
20 individual to access products or services provided by the person or
21 entity.
- 22 (3) Require an individual to transmit his or her social security number or
23 any portion thereof of six digits or more over the Internet, unless the
24 connection is secure or the social security number is encrypted.
- 25 (4) Require an individual to use his or her social security number or any
26 portion thereof of six digits or more to access an Internet Web site,
27 unless a password or unique personal identification number or other
28 authentication device is also required to access the Internet Web site.
- 29 (5) Print an individual's social security number or any portion thereof of
30 six digits or more on any materials that are mailed to the individual,
31 unless State or federal law requires the social security number to be on
32 the document to be mailed.
- 33 (6) Sell, lease, loan, trade, rent, or otherwise intentionally disclose an
34 individual's social security number or any portion thereof of six digits
35 or more to a third party without written consent to the disclosure from
36 the individual, except when the third party seeking disclosure of the
37 social security number does so for a legitimate business purpose. A
38 legitimate business purpose of the third party shall include locating an
39 individual to provide a benefit to that individual, such as a pension,
40 insurance, or unclaimed property benefit, or to find an individual who
41 is missing or a lost relative, or to serve civil process. A legitimate
42 purpose of the third party shall not include the bulk purchase or rental
43 of social security numbers or use in marketing.

44 (b) Subsection (a) of this section shall not apply in the following instances:

- 1 (1) When a social security number is included in an application or in
2 documents related to an enrollment process, or to establish an account,
3 contract, or policy, or to confirm the accuracy of the social security
4 number for the purpose of obtaining a credit report pursuant to 15
5 U.S.C. § 1681(b)(2). A social security number that is permitted to be
6 mailed under this section may not be printed, in whole or in part, on a
7 postcard or other mailer not requiring an envelope, or be visible on the
8 envelope or without the envelope having been opened.
- 9 (2) To the collection, use, or release of a social security number for
10 internal verification or administrative purposes.
- 11 (3) To the opening of an account or the provision of or payment for a
12 product or service authorized by an individual.
- 13 (4) To the collection, use, or release of a social security number to
14 investigate or prevent fraud, conduct background checks, conduct
15 social or scientific research, collect a debt, or obtain a credit report
16 from or furnish data to a consumer reporting agency, pursuant to the
17 Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.
- 18 (5) To a business acting pursuant to a court order, warrant, subpoena, or
19 when otherwise required by law.
- 20 (6) To a business providing the social security number to a federal, State,
21 or local government entity, including a law enforcement agency, or
22 court, or their agents or assigns.

23 (c) A violation of this section is a violation of G.S. 75-1.1.

24 **"§ 75-63. Security freeze.**

25 (a) A consumer or the consumer's attorney-in-fact or legal guardian may place a
26 security freeze on the consumer's credit report by making a request in writing by
27 certified mail to a consumer reporting agency. A security freeze shall prohibit, subject
28 to exceptions in subsection (l) of this section, the consumer reporting agency from
29 releasing the consumer's credit report or any information from it without the express
30 authorization of the consumer. When a security freeze is in place, a consumer reporting
31 agency may not release the consumer's credit report or information to a third party
32 without prior express authorization from the consumer. This subsection does not prevent
33 a consumer reporting agency from advising a third party that a security freeze is in
34 effect with respect to the consumer's credit report.

35 (b) A consumer reporting agency shall place a security freeze on a consumer's
36 credit report no later than five business days after receiving a written request from the
37 consumer.

38 (c) The consumer reporting agency shall send a written confirmation of the
39 security freeze to the consumer within 10 business days of placing the freeze and at the
40 same time shall provide the consumer with a unique personal identification number or
41 password, other than the consumer's social security number, to be used by the consumer
42 when providing authorization for the release of the consumer's credit report for a
43 specific period of time.

1 (d) If the consumer wishes to allow the consumer's credit report to be accessed
2 for a specific period of time while a freeze is in place, the consumer shall contact the
3 consumer reporting agency, request that the freeze be temporarily lifted, and provide all
4 of the following:

5 (1) Proper identification.

6 (2) The unique personal identification number or password provided by
7 the consumer reporting agency pursuant to subsection (c) of this
8 section.

9 (3) The proper information regarding the time period for which the report
10 shall be available to users of the credit report.

11 (e) A consumer reporting agency may develop procedures involving the use of
12 telephone, fax, the Internet, or other electronic media to receive and process a request
13 from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d)
14 of this section in an expedited manner.

15 (f) A consumer reporting agency that receives a request from a consumer to
16 temporarily lift a freeze on a credit report pursuant to subsection (d) of this section shall
17 comply with the request no later than three business days after receiving the request.

18 (g) A consumer reporting agency shall remove or temporarily lift a freeze placed
19 on a consumer's credit report only in the following cases:

20 (1) Upon the consumer's request, pursuant to subsections (d) or (j) of this
21 section.

22 (2) If the consumer's credit report was frozen due to a material
23 misrepresentation of fact by the consumer. If a consumer reporting
24 agency intends to remove a freeze upon a consumer's credit report
25 pursuant to this subdivision, the consumer reporting agency shall
26 notify the consumer in writing five business days prior to removing the
27 freeze on the consumer's credit report.

28 (h) If a third party requests access to a consumer credit report on which a security
29 freeze is in effect and this request is in connection with an application for credit or any
30 other use and the consumer does not allow the consumer's credit report to be accessed
31 for that specific period of time, the third party may treat the application as incomplete.

32 (i) If a consumer requests a security freeze pursuant to this section, the consumer
33 reporting agency shall disclose to the consumer the process for placing and temporarily
34 lifting a security freeze and the process for allowing access to information from the
35 consumer's credit report for a specific period of time while the security freeze is in
36 place.

37 (j) A security freeze shall remain in place until the consumer requests that the
38 security freeze be removed. A consumer reporting agency shall remove a security freeze
39 within three business days of receiving a request for removal from the consumer, who
40 provides all of the following:

41 (1) Proper identification.

42 (2) The unique personal identification number or password provided by
43 the consumer reporting agency pursuant to subsection (c) of this
44 section.

1 (k) A consumer reporting agency shall require proper identification of the person
2 making a request to place or remove a security freeze.

3 (l) The provisions of this section do not apply to the use of a consumer credit
4 report by any of the following:

5 (1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or
6 assignee with which the consumer has or, prior to assignment, had an
7 account, contract, or debtor-creditor relationship for the purposes of
8 reviewing the account or collecting the financial obligation owing for
9 the account, contract, or debt.

10 (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a
11 person to whom access has been granted under subsection (d) of this
12 section for purposes of facilitating the extension of credit or other
13 permissible use.

14 (3) Any person acting pursuant to a court order, warrant, or subpoena.

15 (4) A State or local agency, or its agents or assigns, which administers a
16 program for establishing and enforcing child support obligations.

17 (5) A State or local agency, or its agents or assigns, acting to investigate
18 fraud, including Medicaid fraud, or acting to investigate or collect
19 delinquent taxes or assessments, including interest and penalties,
20 unpaid court orders or to fulfill any of its other statutory
21 responsibilities.

22 (6) A federal, state, or local governmental entity, including law
23 enforcement agency, court, or their agent or assigns.

24 (7) A person for the purposes of prescreening as defined by the Fair Credit
25 Reporting Act, 15 U.S.C. § 1681, et seq.

26 (8) Any person for the sole purpose of providing for a credit file
27 monitoring subscription service to which the consumer has subscribed.

28 (9) A consumer reporting agency for the purpose of providing a consumer
29 with a copy of the consumer's credit report upon the consumer's
30 request.

31 (10) Any depository financial institution for checking, savings, and
32 investment accounts.

33 (m) If a security freeze is in place, a consumer reporting agency shall not change
34 any of the following official information in a credit report without sending a written
35 confirmation of the change to the consumer within 30 days of the change being posted
36 to the consumer's file; name, date of birth, social security number, and address. Written
37 confirmation is not required for technical modifications of a consumer's official
38 information, including name and street abbreviations, complete spellings, or
39 transposition of numbers or letters. In the case of an address change, the written
40 confirmation shall be sent to both the new address and the former address.

41 (n) The following persons are not required to place in a credit report a security
42 freeze pursuant to this section; provided however, any person that is not required to
43 place a security freeze on a credit report under the provisions of subdivision (3) of this

1 subsection shall be subject to any security freeze placed on a credit report by another
2 consumer reporting agency from which it obtains information:

3 (1) A check services or fraud prevention services company, which reports
4 on incidents of fraud or issues authorizations for the purpose of
5 approving or processing negotiable instruments, electronic fund
6 transfers, or similar methods of payments.

7 (2) A deposit account information service company, which issues reports
8 regarding account closures due to fraud, substantial overdrafts, ATM
9 abuse, or other similar negative information regarding a consumer to
10 inquiring banks or other financial institutions for use only in reviewing
11 a consumer request for a deposit account at the inquiring bank or
12 financial institution.

13 (3) A consumer reporting agency that does all of the following:

14 a. Acts only to resell credit information by assembling and
15 merging information contained in a database of one or more
16 credit reporting agencies.

17 b. Does not maintain a permanent database of credit information
18 from which new credit reports are produced.

19 (o) This section does not prevent a consumer credit reporting agency from
20 charging a fee of no more than ten dollars (\$10.00) to a consumer for each freeze,
21 removal of the freeze, or temporary lifting of the freeze for a period of time, regarding
22 access to a consumer credit report, except that a consumer credit reporting agency may
23 not charge any fee to a victim of identity theft who has submitted a copy of a valid
24 investigative or incident report or complaint with a law enforcement agency about the
25 unlawful use of the victim's identifying information by another person.

26 (p) At any time that a consumer is required to receive a summary of rights
27 required under section 609 of the federal Fair Credit Reporting Act, the following notice
28 shall be included:

29 **"North Carolina Consumers Have the Right to Obtain a Security Freeze.**

30 You have a right to place a "security freeze" on your credit report pursuant to North
31 Carolina law. The security freeze will prohibit a consumer reporting agency from
32 releasing any information in your credit report without your express authorization. A
33 security freeze must be requested in writing by certified mail.

34 The security freeze is designed to prevent credit, loans, and services from being
35 approved in your name without your consent. However, you should be aware that using
36 a security freeze to take control over who gains access to the personal and financial
37 information in your credit report may delay, interfere with, or prohibit the timely
38 approval of any subsequent request or application you make regarding new loans, credit,
39 mortgage, insurance, rental housing, employment, investment, license, cellular phone,
40 utilities, digital signature, Internet credit card transactions, or other services, including
41 an extension of credit at point of sale.

42 The freeze will be placed within five business days. When you place a security
43 freeze on your credit report, within 10 business days, you will be provided a personal

1 identification number or a password to use when you want to remove or lift temporarily
2 the security freeze.

3 A freeze does not apply when you have an existing account relationship and a copy
4 of your report is requested by your existing creditor or its agents or affiliates for certain
5 types of account review, collection, fraud control, or similar activities.

6 You should plan ahead and lift a freeze if you are actively seeking credit or services
7 as a security freeze may slow your applications, as mentioned above.

8 You can remove a freeze or authorize temporary access for a specific period of time
9 by contacting the consumer reporting agency and providing all of the following:

- 10 1. Your personal identification number or password,
- 11 2. Proper identification to verify your identity, and
- 12 3. Proper information regarding the period of time you want your report
13 available to users of the credit report.

14 A consumer reporting agency that receives a request from you to temporarily lift a
15 freeze on a credit report shall comply with the request no later than three business days
16 after receiving the request. A consumer reporting agency may charge you up to ten
17 dollars (\$10.00) for each time you freeze, remove the freeze, or temporarily lift the
18 freeze for a period of time, except a consumer reporting agency may not charge any
19 amount to a victim of identify theft who has submitted a copy of a valid investigative or
20 incident report or complaint with a law enforcement agency about the unlawful use of
21 the victim's identifying information by another person.

22 You have a right to bring a civil action against someone who violates your rights
23 under the credit reporting laws. The action can be brought against a consumer reporting
24 agency or a user of your credit report."

25 (q) A violation of this section is a violation of G.S. 75-1.1.

26 **"§ 75-64. Destruction of personal information records.**

27 (a) Any business that conducts business in North Carolina and any business that
28 maintains or otherwise possesses personal information of a resident of North Carolina
29 must take all reasonable measures to protect against unauthorized access to or use of the
30 information in connection with or after its disposal.

31 (b) The reasonable measures must include:

- 32 (1) Implementing and monitoring compliance with policies and
33 procedures that require the burning, pulverizing, or shredding of
34 papers containing personal information so that information cannot be
35 practicably read or reconstructed.
- 36 (2) Implementing and monitoring compliance with policies and
37 procedures that require the destruction or erasure of electronic media
38 and other nonpaper media containing personal information so that the
39 information cannot practicably be read or reconstructed.
- 40 (3) Describing procedures relating to the adequate destruction or proper
41 disposal of personal records as official policy in the writings of the
42 business entity.

43 (c) A business may after due diligence enter into a written contract with, and
44 monitor compliance by, another party engaged in the business of record destruction to

1 destroy personal information in a manner consistent with this section. Due diligence
2 should ordinarily include one or more of the following:

3 (1) Reviewing an independent audit of the disposal business's operations
4 or its compliance with this statute or its equivalent.

5 (2) Obtaining information about the disposal business from several
6 references or other reliable sources and requiring that the disposal
7 business be certified by a recognized trade association or similar third
8 party with a reputation for high standards of quality review.

9 (3) Reviewing and evaluating the disposal business's information security
10 policies or procedures, or taking other appropriate measures to
11 determine the competency and integrity of the disposal business.

12 (d) A disposal business that conducts business in North Carolina or disposes of
13 personal information of residents of North Carolina must take all reasonable measures
14 to dispose of records containing personal information by implementing and monitoring
15 compliance with policies and procedures that protect against unauthorized access to or
16 use of personal information during or after the collection and transportation and
17 disposing of such information.

18 (e) This section does not apply to any of the following:

19 (1) Any bank or financial institution that is subject to and in compliance
20 with the privacy and security provision of the Gramm-Leach-Bliley
21 Act, 15 U.S.C. § 6801, et seq., as amended.

22 (2) Any health insurer that is subject to and in compliance with the
23 standards for privacy of individually identifiable health information
24 and the security standards for the protection of electronic health
25 information of the Health Insurance Portability and Accountability Act
26 of 1996.

27 (3) Any consumer reporting agency that is subject to and in compliance
28 with the Federal Credit Reporting Act, 15 U.S.C. § 1681, et seq., as
29 amended.

30 (f) A violation of this section is a violation of G.S. 75-1.1.

31 **§ 75-65. Protection from security breaches.**

32 (a) Any business that maintains or otherwise possesses personal information of
33 residents of North Carolina or any business that conducts business in North Carolina
34 that maintains or otherwise possesses personal information of consumers in any form
35 (whether computerized, paper, or otherwise) shall provide notice to the affected person
36 that there has been a security breach following discovery or notification of the breach.
37 The disclosure notification shall be made without unreasonable delay, consistent with
38 the legitimate needs of law enforcement, as provided in subsection (b) of this section, or
39 with any measures necessary to determine the scope of the breach and restore the
40 reasonable integrity, security, and confidentiality of the data system. For the purposes of
41 this section, personal information shall not include electronic identification numbers,
42 electronic mail, Internet accounts or Internet identification, parent's legal surname prior
43 to marriage, or a password unless this information would permit access to a person's
44 financial account or resources.

1 (b) The notice required by this section may be delayed if a law enforcement
2 agency determines in writing that notification may impede a criminal investigation or
3 jeopardize national or homeland security. The notice required by this section shall be
4 provided immediately after the law enforcement agency determines that notice will no
5 longer impede the investigation or jeopardize national or homeland security.

6 (c) The notice shall be clear and conspicuous. The notice shall include a
7 description of the following:

8 (1) The incident in general terms.

9 (2) The type of consumer's personal information that was subject to the
10 unauthorized access and acquisition.

11 (3) The acts of the business to protect the personal information from
12 further unauthorized access.

13 (4) A telephone number that the consumer may call for further
14 information and assistance.

15 (5) Advice that directs the consumer to remain vigilant over the next
16 12-24 months by reviewing account statements and monitoring free
17 credit reports.

18 (d) For purposes of this section, notice to affected persons may be provided by
19 one of the following methods:

20 (1) Written notice.

21 (2) Electronic notice, for those customers for whom it has a valid e-mail
22 address and who have agreed to receive communications
23 electronically, if the notice provided is consistent with the provisions
24 regarding electronic records and signatures for notices legally required
25 to be in writing set forth in 15 U.S.C. §7001.

26 (3) Substitute notice, if the business demonstrates that the cost of
27 providing notice would exceed two hundred fifty thousand dollars
28 (\$250,000) or that the affected class of subject persons to be notified
29 exceeds 500,000, or if the business does not have sufficient contact
30 information, for only those affected persons without sufficient contact
31 information, or if the business is unable to identify particular affected
32 persons, for only those unidentifiable affected persons. Substitute
33 notice shall consist of all the following:

34 a. E-mail notice when the business has an electronic mail address
35 for the subject persons.

36 b. Conspicuous posting of the notice on the Web site page of the
37 business, if one is maintained.

38 c. Notification to major statewide media.

39 (e) In the event a business provides notice to more than 1,000 consumers at one
40 time pursuant to this section, the business shall notify, without unreasonable delay, the
41 Consumer Protection Division of the Attorney General's Office and all consumer
42 reporting agencies that compile and maintain files on consumers on a nationwide basis
43 as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

1 (f) A financial institution that is subject to and in compliance with the Federal
2 Interagency Guidance Response Programs for Unauthorized Access to Consumer
3 Information and Customer Notice, issued on March 7, 2005, by the Board of Governors
4 of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of
5 the Comptroller of the Currency, and the Office of Thrift Supervision, and any
6 revisions, additions, or substitutions relating to said interagency guidance, shall be
7 deemed to be in compliance with this section.

8 (g) A violation of this section is a violation of G.S. 75-1.1."

9 **SECTION 2.** G.S. 14-113.21 reads as rewritten:

10 **"§ 14-113.21. Venue of offenses.**

11 In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to
12 be committed in ~~any county in which the county where the victim resides, where the~~
13 perpetrator resides, where any part of the financial identity fraud took place, or in any
14 other county instrumental to the completion of the offense, regardless of whether the
15 defendant was ever actually present in that county."

16 **SECTION 3.** Article 19C of Chapter 14 of the General Statutes is amended
17 by adding a new section to read:

18 **"§ 14-113.21A. Investigation of offenses.**

19 (a) A person who has learned or reasonably suspects that the person has been the
20 victim of identity theft may contact the local law enforcement agency that has
21 jurisdiction over the person's actual residence. Notwithstanding the fact that jurisdiction
22 may lie elsewhere for investigation and prosecution of a crime of identity theft, the local
23 law enforcement agency may take the complaint, issue an incident report, and provide
24 the complainant with a copy of the report and may refer the report to a law enforcement
25 agency in that different jurisdiction.

26 (b) Nothing in this section interferes with the discretion of a local law
27 enforcement agency to allocate resources for investigations of crimes. A complaint filed
28 or report issued under this section is not required to be counted as an open case for
29 purposes of compiling open case statistics."

30 **SECTION 4.** Chapter 132 is amended by adding a new section to read:

31 **"§ 132-1.8. Social security numbers and other personal identifying information.**

32 (a) The General Assembly finds the following:

33 (1) The social security number can be used as a tool to perpetuate fraud
34 against a person and to acquire sensitive personal, financial, medical,
35 and familial information, the release of which could cause great
36 financial or personal harm to an individual. While the social security
37 number was intended to be used solely for the administration of the
38 federal Social Security System, over time this unique numeric
39 identifier has been used extensively for identity verification purposes
40 and other legitimate consensual purposes.

41 (2) Although there are legitimate reasons for State and local government
42 agencies to collect social security numbers and other personal
43 identifying information from individuals, government should collect
44 the information only for legitimate purposes or when required by law.

- 1 (3) When State and local government agencies possess social security
2 numbers or other personal identifying information, the governments
3 should minimize the instances this information is disseminated either
4 internally within government or externally with the general public.
- 5 (b) Except as provided in subsections (c) and (d) of this section, no State or local
6 government agency, nor any agent or employee of a government agency, shall do any of
7 the following:
- 8 (1) Collect a social security number or any portion thereof of six digits or
9 more from an individual unless authorized by law to do so or unless
10 the collection of the social security number is otherwise imperative for
11 the performance of that agency's duties and responsibilities as
12 prescribed by law. Social security numbers collected by an agency
13 must be relevant to the purpose for which collected and shall not be
14 collected until and unless the need for social security numbers has
15 been clearly documented.
- 16 (2) Fail, when collecting a social security number or any portion thereof of
17 six digits or more from an individual, to segregate that number on a
18 separate page from the rest of the record, or as otherwise appropriate,
19 in order that the social security number can be more easily redacted
20 pursuant to a public records request.
- 21 (3) Fail, when collecting a social security number or any portion thereof of
22 six digits or more from an individual, to provide, at the time of or prior
23 to the actual collection of the social security number by that agency,
24 that individual upon request, with a statement of the purpose or
25 purposes for which the social security number is being collected and
26 used.
- 27 (4) Use the social security number or any portion thereof of six digits or
28 more for any purpose other than the purpose stated.
- 29 (5) Intentionally communicate or otherwise make available to the general
30 public a person's social security number or any portion thereof of six
31 digits or more or other identifying information. "Identifying
32 information," as used in this section, shall have the same meaning as in
33 G.S. 14-113.20(b), except it shall not include electronic identification
34 names, including electronic mail addresses, or parent's legal surname
35 prior to marriage.
- 36 (6) Intentionally print or imbed an individual's social security number or
37 any portion thereof of six digits or more on any card required for the
38 individual to access government services.
- 39 (7) Require an individual to transmit the individual's social security
40 number or any portion thereof of six digits or more over the Internet,
41 unless the connection is secure or the social security number is
42 encrypted.
- 43 (8) Require an individual to use the individual's social security number or
44 any portion thereof of six digits or more to access an Internet Web site,

1 unless a password or unique personal identification number or other
2 authentication device is also required to access the Internet Web site.

3 (9) Print an individual's social security number or any portion thereof of
4 six digits or more on any materials that are mailed to the individual,
5 unless State or federal law required that the social security number be
6 on the document to be mailed.

7 (c) Subsection (b) of this section does not apply in the following circumstances:

8 (1) Social security numbers and identifying information may be disclosed
9 to another governmental entity or its agents, employees, or contractors
10 if disclosure is necessary for the receiving entity to perform its duties
11 and responsibilities. The receiving governmental entity and its agents,
12 employees, and contractors shall maintain the confidential and exempt
13 status of such numbers.

14 (2) Social security number or other identifying information may be
15 disclosed pursuant to a court order, warrant, or subpoena.

16 (3) Social security numbers or other identifying information may be
17 disclosed for public health purposes pursuant to and in compliance
18 with Chapter 130A of the General Statutes.

19 (4) To certified copies of vital records issued by the State Registrar and
20 other authorized officials pursuant to G.S. 130A-93(c). The State
21 Registrar may disclose any identifying information other than social
22 security number on any uncertified vital record.

23 (5) To any recorded document in the official records of the county.

24 (6) To any document filed in the official records of the courts.

25 (d) No State or local government agency shall deny a representative of a news
26 media company as defined in G.S. 8-53.11(a)(3) access to identifying information if (i)
27 the news media company will use the identifying information in the normal course of
28 business for legitimate business purposes and (ii) the news media company makes a
29 verified written request for the identifying information, legibly signed by an authorized
30 officer, employee, or agent of the company. The verified request must contain the news
31 media company's name, business mailing and location addresses, business telephone
32 number, and a statement of the specific purposes for which it needs the identifying
33 information and how the identifying information will be used for legitimate business
34 purposes. A State or local government agency may request any other information as
35 may be reasonably necessary to verify the identity of the news media company
36 requesting the identifying information and the specific purposes for which the
37 information will be used; however, an agency has no specific duty to inquire beyond the
38 information contained in the verified written request. A legitimate business purpose
39 includes use in matching, verifying, or retrieving information and in research activities.
40 A legitimate business purpose shall not include the bulk sale or rental of identifying
41 information to the general public. Any person who makes a false representation in order
42 to obtain identifying information pursuant to this subsection is guilty of a Class F
43 felony. For purposes of this subsection only, 'identifying information' shall not include
44 social security number.

1 (e) No person preparing or filing a document to be recorded or filed in the
2 official records by the register of deeds or of the courts may include any person's social
3 security, drivers license, state identification, passport, checking account, savings
4 account, credit card, or debit card numbers, or personal identification (PIN) code or
5 passwords in that document, unless otherwise expressly required by law or court order
6 or adopted by the State Registrar on records of vital events. Any loan closing instruction
7 that requires the inclusion of a person's social security number on a document to be
8 recorded shall be void. Any person who violates this subsection shall be guilty of an
9 infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each
10 violation.

11 (f) Any person or the person's attorney-in-fact or legal guardian has the right to
12 request that a register of deeds or clerk of court remove, from an image or copy of an
13 official record placed on a register of deeds' or court's publicly available Internet Web
14 site or a publicly available Internet Web site used by a register of deeds or court to
15 display public records by the register of deeds or clerk of court, the person's social
16 security, drivers license, state identification, passport, checking account, savings
17 account, credit card, debit card numbers, or personal identification (PIN) code or
18 passwords contained in that official record. The request must be made in writing,
19 legibly signed by the requester, and delivered by mail, facsimile, or electronic
20 transmission, or delivered in person to the register of deeds or clerk of court. The
21 request must specify the identification page number that contains the social security,
22 drivers license, state identification, passport, checking account, savings account, credit
23 card, debit card numbers, or personal identification (PIN) code or passwords to be
24 redacted. The register of deeds or clerk of court shall have no duty to inquire beyond the
25 written request to verify the identity of a person requesting redaction. No fee will be
26 charged for the redaction pursuant to such request.

27 (g) A register of deeds or clerk of court shall immediately and conspicuously post
28 signs throughout his or her offices for public viewing and shall immediately and
29 conspicuously post a notice on any Internet Web site or remote electronic site made
30 available by the register of deeds or clerk of court and used for the ordering or display
31 of official records or images or copies of official records a notice, stating, in
32 substantially similar form, the following:

33 (1) Any person preparing or filing a document for recordation or filing in
34 the official records may not include a social security, drivers license,
35 state identification, passport, checking account, savings account, credit
36 card, debit card numbers, or personal identification (PIN) code or
37 passwords in the document, unless expressly required by law.

38 (2) Any person has a right to request a register of deeds or clerk of court to
39 remove, from an image or copy of an official record placed on a
40 register of deeds' or clerk of court's publicly available Internet Web
41 site or on a publicly available Internet Web site used by a register of
42 deeds or clerk of court to display public records, any social security,
43 drivers license, state identification, passport, checking account, savings
44 account, credit card, debit card numbers, or personal identification

- 1 (7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
- 2 (8) Electronic identification ~~numbers~~numbers, electronic mail, Internet
- 3 accounts or Internet identification.
- 4 (9) Digital signatures.
- 5 (10) Any other numbers or information that can be used to access a person's
- 6 financial resources.
- 7 (11) Biometric data.
- 8 (12) Fingerprints.
- 9 (13) Passwords.
- 10 (14) Parent's legal surname prior to marriage.

11 (c) It shall not be a violation under this Article for a person to do any of the
12 following:

- 13 (1) Lawfully obtain credit information in the course of a bona fide
- 14 consumer or commercial transaction.
- 15 (2) Lawfully exercise, in good faith, a security interest or a right of offset
- 16 by a creditor or financial institution.
- 17 (3) Lawfully comply, in good faith, with any warrant, court order, levy,
- 18 garnishment, attachment, or other judicial or administrative order,
- 19 decree, or directive, when any party is required to do so."

20 **SECTION 7.** The Revisor of Statutes shall make the following technical and
21 conforming corrections:

- 22 (1) Rename Article 19C of Chapter 14 of the General Statutes from
- 23 "Financial Identity Fraud" to "Identity Theft."
- 24 (2) Replace the phrase "financial identity fraud" with the phrase "identity
- 25 theft" wherever the terms appear throughout Article 19C of Chapter 14
- 26 of the General Statutes.

27 **SECTION 8.** G.S. 15A-147 reads as rewritten:

28 **"§ 15A-147. Expunction of records when charges are dismissed or there are**
29 **findings of not guilty as a result of identity ~~fraud~~theft.**

30 (a) If any person is named in a charge for an infraction or a crime, either a
31 misdemeanor or a felony, as a result of another person using the identifying information
32 of the named person ~~to commit an infraction or crime~~ and the charge against the named
33 person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the
34 named person may apply by petition or written motion to the court where the charge
35 was last pending on a form approved by the Administrative Office of the Courts
36 supplied by the clerk of court for an order to expunge from all official records any
37 entries relating to the person's apprehension, charge, or trial. The court, after notice to
38 the district attorney, shall hold a hearing on the motion or petition and, upon finding that
39 the person's identity was used without permission and the charges were dismissed or the
40 person was found not guilty, the court shall order the expunction."

41 **SECTION 9.** G.S. 1-539.2C reads as rewritten:

42 **"§ 1-539.2C. Damages for identity ~~fraud~~theft.**

43 (a) Any person whose property or person is injured by reason of an act made
44 unlawful by Article 19C of Chapter 14 of the General Statutes may sue for civil

1 damages. Damages may be in an amount of up to five thousand dollars (\$5,000) but no
2 less than five hundred dollars (\$500.00) for each incident, or three times the amount of
3 actual damages, whichever amount is greater. A person seeking damages as set forth in
4 this section may also institute a civil action to enjoin and restrain future acts that would
5 constitute a violation of this section. The court, in an action brought under this section,
6 may award reasonable attorneys' fees to the prevailing party."

7 **SECTION 10.** The provisions of this act are severable. If any phrase, clause,
8 sentence, provision, or section is declared to be invalid or preempted by federal law or
9 regulation, the validity of the remainder of this act shall not be affected thereby.

10 **SECTION 11.** G.S. 75-62(a)(2), (3), (4), and (5), as enacted in Section 1 of
11 this act, become effective October 1, 2006. A business covered by G.S. 75-62 as
12 enacted by this act shall make reasonable efforts to cooperate, through systems testing
13 and other means, to ensure that the requirements of this act are implemented on or
14 before the dates specified in this section. G.S. 132-1.8(b)(6), (7), (8), and (9), as enacted
15 in Section 4 of this act, become effective July 1, 2007. Section 6 of this act becomes
16 effective December 1, 2005, and applies to offenses committed, and to causes of action
17 arising, on or after that date. The remainder of this act becomes effective October 1,
18 2005.