

AN ACT

To amend section 2913.49 and to enact section 109.94 of the Revised Code to increase the penalty for identity fraud in certain circumstances, including when it is committed against an elderly person or disabled adult, to modify the affirmative defenses available for that offense, and to create the Identity Fraud Passport.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 2913.49 be amended and section 109.94 of the Revised Code be enacted to read as follows:

Sec. 109.94. (A) The attorney general, in cooperation with any law enforcement agency, may issue an identity fraud passport to a person who is a victim in this state of identity fraud or identity fraud against an elderly person or disabled adult and has filed a police report with any law enforcement agency citing that the person is a victim of a violation of section 2913.49 of the Revised Code. Once a police report of that nature has been filed with any law enforcement agency, the victim may apply for an identity fraud passport through any law enforcement agency. The law enforcement agency shall send a copy of the police report and the application for an identity fraud passport to the attorney general. The attorney general shall process the application and supporting police report and may issue the victim of identity fraud or identity fraud against an elderly person or disabled adult an identity fraud passport in the form of a card or certificate.

(B)(1) A victim of identity fraud or identity fraud against an elderly person or disabled adult may present the victim's identity fraud passport issued by the attorney general in accordance with division (A) of this section to both of the following:

(a) A law enforcement agency to help prevent the victim's arrest or detention for offenses committed by someone other than the victim who is using the victim's identity;

(b) Any of the victim's creditors to aid in the creditors' investigation and establishment of whether fraudulent charges were made against accounts in

the victim's name or whether accounts were opened using the victim's identity.

(2) Acceptance of the identity fraud passport presented by the victim to a law enforcement agency or creditors pursuant to division (B)(1) of this section is at the discretion of the law enforcement agency or creditor. A law enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity fraud pertaining to the victim.

(C)(1) Subject to its use for statistical purposes pursuant to division (C)(2) of this section, an application made with the attorney general pursuant to division (A) of this section, including any supporting documentation, is not a public record pursuant to section 149.43 of the Revised Code. The attorney general may provide access to the applications and supporting documentation filed with the attorney general's office to other criminal justice agencies in this or another state.

(2) The attorney general shall maintain statistics with respect to the number of applications for identity fraud passports submitted, and the number of identity fraud passports issued, pursuant to division (A) of this section. Not later than the first day of November in each year, the attorney general shall submit a statistical report to the governor, the president and minority leader of the senate, and the speaker and minority leader of the house of representatives indicating the number of applications for identity fraud passports submitted, and the number of identity fraud passports issued, pursuant to division (A) of this section in the previous fiscal year. Nothing in the statistics maintained or the statistical report submitted by the attorney general pursuant to this division shall identify, or enable the identification of, any individual who applied for, was issued, or was denied an identity fraud passport. The statistics and the statistical report are public records for the purpose of section 149.43 of the Revised Code.

Sec. 2913.49. (A) As used in this section, "personal identifying information" includes, but is not limited to, the following: the name, address, telephone number, driver's license, driver's license number, commercial driver's license, commercial driver's license number, state identification card, state identification card number, social security card, social security number, birth certificate, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, money market account number, mutual fund account number, other financial account number, personal identification number, password, or credit card number of a living or dead individual.

(B) No person, without the express or implied consent of the other person, shall use, obtain, or possess any personal identifying information of another person with intent to do either of the following:

(1) Hold the person out to be the other person;

(2) Represent the other person's personal identifying information as the person's own personal identifying information.

(C) No person shall create, obtain, possess, or use the personal identifying information of any person with the intent to aid or abet another person in violating division (B) of this section.

(D) No person, with intent to defraud, shall permit another person to use the person's own personal identifying information.

(E) No person who is permitted to use another person's personal identifying information as described in division (D) of this section shall use, obtain, or possess the other person's personal identifying information with intent to defraud any person by doing any act identified in division (B)(1) or (2) of this section.

(F)(1) It is an affirmative defense to a charge under division (B) of this section that the person using the personal identifying information is acting in accordance with a legally recognized guardianship or conservatorship or as a trustee or fiduciary.

(2) It is an affirmative defense to a charge under division (B), (C), (D), or (E) of this section that either of the following applies:

(a) The person or entity using, obtaining, possessing, or creating the personal identifying information or permitting it to be used is a law enforcement agency, authorized fraud personnel, or a representative of or attorney for a law enforcement agency or authorized fraud personnel and is using, obtaining, possessing, or creating the personal identifying information or permitting it to be used, with prior consent given as specified in this division, in a bona fide investigation, an information security evaluation, a pretext calling evaluation, or a similar matter. The prior consent required under this division shall be given by the person whose personal identifying information is being used, obtained, possessed, or created or is being permitted to be used or, if the person whose personal identifying information is being used, obtained, possessed, or created or is being permitted to be used is deceased, by that deceased person's executor, or a member of that deceased person's family, or that deceased person's attorney. The prior consent required under this division may be given orally or in writing by the person whose personal identifying information is being used, obtained, possessed, or created or is being permitted to be used or that person's executor, or family member, or attorney.

(b) ~~The personal identifying information was obtained, possessed, or used, created, or permitted to be used for a lawful purpose, provided that~~ division (F)(2)(b) of this section does not apply if the person or entity using, obtaining, possessing, or creating the personal identifying information or permitting it to be used is a law enforcement agency, authorized fraud personnel, or a representative of or attorney for a law enforcement agency or authorized fraud personnel that is using, obtaining, possessing, or creating the personnel identifying information or permitting it to be used in an investigation, an information security evaluation, a pretext calling evaluation, or similar matter.

(G) It is not a defense to a charge under this section that the person whose personal identifying information was obtained, possessed, ~~or used, created, or permitted to be used~~ was deceased at the time of the offense.

(H)(1) ~~If the~~ an offender commits a violation of division (B), (D), or (E) of this section and the violation occurs as part of a course of conduct involving other violations of division (B), (D), or (E) of this section or violations of, attempts to violate, conspiracies to violate, or complicity in violations of division (C) of this section or section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code, the court, in determining the degree of the offense pursuant to division (I) of this section, may aggregate all credit, property, or services obtained or sought to be obtained by the offender and all debts or other legal obligations avoided or sought to be avoided by the offender in the violations involved in that course of conduct. The course of conduct may involve one victim or more than one victim.

(2) ~~If the~~ an offender commits a violation of division (C) of this section and the violation occurs as part of a course of conduct involving other violations of division (C) of this section or violations of, attempts to violate, conspiracies to violate, or complicity in violations of division (B), (D), or (E) of this section or section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code, the court, in determining the degree of the offense pursuant to division (I) of this section, may aggregate all credit, property, or services obtained or sought to be obtained by the person aided or abetted and all debts or other legal obligations avoided or sought to be avoided by the person aided or abetted in the violations involved in that course of conduct. The course of conduct may involve one victim or more than one victim.

(I)(1) Whoever violates this section is guilty of identity fraud. ~~Except~~

(2) ~~Except~~ as otherwise provided in this division or division (I)(3) of this section, identity fraud is a ~~misdemeanor~~ felony of the ~~first~~ fifth degree.

If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is five hundred dollars or more and is less than five thousand dollars, except as otherwise provided in division (I)(3) of this section, identity fraud is a felony of the fourth degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is five thousand dollars or more and is less than one hundred thousand dollars, except as otherwise provided in division (I)(3) of this section, identity fraud is a felony of the third degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is one hundred thousand dollars or more, except as otherwise provided in division (I)(3) of this section, identity fraud is a felony of the second degree.

(3) If the victim of the offense is an elderly person or disabled adult, a violation of this section is identity fraud against an elderly person or disabled adult. Except as otherwise provided in this division, identity fraud against an elderly person or disabled adult is a felony of the fifth degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is five hundred dollars or more and is less than five thousand dollars, identity fraud against an elderly person or disabled adult is a felony of the third degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is five thousand dollars or more and is less than one hundred thousand dollars, identity fraud against an elderly person or disabled adult is a felony of the second degree. If the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is one hundred thousand dollars or more, identity fraud against an elderly person or disabled adult is a felony of the first degree.

SECTION 2. That existing section 2913.49 of the Revised Code is hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 48

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____