

Initiative Measure No. 1519, filed March 28, 2016

AN ACT Relating to the protection of seniors and vulnerable individuals from financial crimes and victimization; amending RCW 9.35.005, 9.35.001, 9.35.020, and 42.56.250; adding a new section to chapter 42.56 RCW and chapter 43.17 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** This act may be known and cited as the seniors, vulnerable individuals, and public employees identity crime prevention act.

NEW SECTION. **Sec. 2.** It is the intent of this initiative to protect the safety and security of seniors, vulnerable individuals, and public employees by (1) increasing criminal penalties for identity theft targeting seniors and vulnerable individuals; (2) increasing penalties for consumer fraud targeting seniors and vulnerable individuals; and (3) prohibiting the release of certain public records that could facilitate financial crimes against seniors, vulnerable individuals, and public employees.

Sec. 3. RCW 9.35.005 and 2001 c 217 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Financial information" means any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:

(a) Account numbers and balances;

(b) Transactional information concerning an account; and

(c) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicard numbers

issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(2) "Financial information repository" means a person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.

(3) "Means of identification" means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, an electronic address, or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver's license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(4) "Person" means a person as defined in RCW 9A.04.110.

(5) "Senior" means a person over the age of sixty-five.

(6) "Victim" means a person whose means of identification or financial information has been used or transferred with the intent to commit, or to aid or abet, any unlawful activity.

(7) "Vulnerable individual" means a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(b) Found incapacitated under chapter 11.88 RCW;

(c) Who has a developmental disability as defined in RCW 71A.10.020;

(d) Admitted to any facility as defined in 74.34.020 RCW;

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(f) Receiving services from an individual provider as defined in RCW 74.39A.240; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

PART I

INCREASING CRIMINAL PENALTIES FOR IDENTITY THEFT

TARGETING SENIORS OR VULNERABLE INDIVIDUALS

Sec. 4. RCW 9.35.001 and 2008 c 207 s 3 are each amended to read as follows:

(1) The legislature finds that means of identification and financial information are personal and sensitive information such that if unlawfully obtained, possessed, used, or transferred by others may result in significant harm to a person's privacy, financial security, and other interests. The legislature finds that unscrupulous persons find ever more clever ways, including identity theft, to improperly obtain, possess, use, and transfer another person's means of identification or financial information. The legislature intends to penalize for each unlawful act of improperly obtaining, possessing, using, or transferring means of identification or financial information of an individual person. The unit of prosecution for identity theft by use of a means of identification or financial information is each individual unlawful use of any one person's means of identification or financial information. Unlawfully obtaining, possessing, or transferring each means of identification or financial information of any individual person, with the requisite intent, is a separate unit of prosecution for each victim and for each act of obtaining, possessing, or transferring of the individual person's means of identification or financial information.

(2) The people find that additional measures are needed to protect seniors and vulnerable individuals from identity theft because such individuals often have less ability to protect themselves and such individuals can be targeted using information available through public sources, including publicly available information that identifies such individuals or their in-home caregivers.

Sec. 5. RCW 9.35.020 and 2008 c 207 s 4 are each amended to read as follows:

(1) No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.

(2) Violation of this section when the accused or an accomplice violates subsection (1) of this section and obtains credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value, or when the accused knowingly targets a senior or vulnerable individual in carrying out a violation of subsection (1) of this section, shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(3) A person is guilty of identity theft in the second degree when he or she violates subsection (1) of this section under circumstances not amounting to identity theft in the first degree. Identity theft in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(4) Each crime prosecuted under this section shall be punished separately under chapter 9.94A RCW, unless it is the same criminal conduct as any other crime, under RCW 9.94A.589.

(5) Whenever any series of transactions involving a single person's means of identification or financial information which constitute identity theft would, when considered separately, constitute identity theft in the second degree because of value, and the series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining the degree of identity theft involved.

(6) Every person who, in the commission of identity theft, shall commit any other crime may be punished therefor as well as for the identity theft, and may be prosecuted for each crime separately.

(7) A person who violates this section is liable for civil damages of one thousand dollars or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees as determined by the court.

(8) In a proceeding under this section, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(9) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

(10) In a proceeding under this section in which a person's means of identification or financial information was used without that person's authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section.

PART II

INCREASING PENALTIES FOR CONSUMER FRAUD AGAINST SENIORS

AND VULNERABLE INDIVIDUALS

NEW SECTION. **Sec. 6.** A new section is added to read as follows:

(1) It is the intent of this section to increase civil penalties for consumer fraud targeting a senior or a vulnerable individual.

(2) Any consumer fraud that targets a senior or a vulnerable individual, as defined in RCW 9.35.005, is subject to civil penalties of three times the amount of actual damages.

(3) This section does not create a new cause of action. This section increases penalties only where a plaintiff proceeds under any existing cause of action under statute or common law and successfully proves that he or she was the victim of consumer fraud that targeted him or her as a senior or vulnerable individual.

PART III
PROHIBITING THE RELEASE OF CERTAIN PUBLIC RECORDS
THAT COULD BE USED TO VICTIMIZE SENIORS,
VULNERABLE INDIVIDUALS, OR PUBLIC EMPLOYEES

NEW SECTION. **Sec. 7.** It is the intent of part three of this act to protect seniors, vulnerable individuals, and public employees from identity theft by preventing the release of public records that could be used to victimize them. Sensitive personal information about in-home caregivers for vulnerable populations is protected because its release could facilitate identity crimes against seniors, vulnerable individuals, and the other vulnerable populations they serve. Public employees are also more susceptible to identity theft because their identities, professions, and personal information are often accessible through the public records act. Protecting sensitive information about public employees can also help protect the vulnerable populations that public employees serve.

NEW SECTION. **Sec. 8.** A new section is added to chapter 42.56 RCW to read as follows:

(1) Sensitive personal information of vulnerable individuals and sensitive personal information of in-home caregivers for vulnerable populations is exempt from inspection and copying under this chapter.

(2) The following definitions apply to this section:

(a) "In-home caregivers for vulnerable populations" means: (i) Individual providers as defined in RCW 74.39A.240; (ii) Home care aides as defined in RCW 18.88B.010; and (iii) Family child care providers as defined in RCW 41.56.030.

(b) "Sensitive personal information" means names, addresses, GPS coordinates, telephone numbers, email addresses, social security numbers, driver's license numbers, or other personally identifying information.

(c) "Vulnerable individual" has the meaning defined in RCW 9.35.005.

NEW SECTION. **Sec. 9.** Within one hundred eighty days after the effective date of this section, the department of social and health services shall report to the governor and attorney general about any additional records that should be made exempt from public disclosure to provide greater protection to seniors and vulnerable individuals against fraud, identity theft, and other forms of victimization.

NEW SECTION. **Sec. 10.** A new section is added to chapter 43.17 RCW to read as follows:

To protect vulnerable individuals and their children from identity crimes and other forms of victimization, neither the state nor any of its agencies may release sensitive personal information of vulnerable individuals or sensitive personal information of in-home caregivers for vulnerable populations, as those terms are defined in section 8 of this act.

Sec. 11. RCW 42.56.250 and 2014 c 106 s 1 are each amended to read as follows:

The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency: Names, Rresidential addresses, residential telephone numbers, personal wireless telephone numbers, personal ~~electronic mail~~ email addresses, social security numbers, driver's license numbers,

identocard numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal ~~electronic mail~~ email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency. For purposes of this subsection, "employees" includes ~~independent~~ individual providers ~~home-care-workers~~ as defined in RCW 74.39A.240;

(4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting an active and ongoing investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment;

(6) Criminal history records checks for board staff finalist candidates conducted pursuant to RCW 43.33A.025;

(7) Except as provided in RCW 47.64.220, salary and benefit information for maritime employees collected from private employers under RCW 47.64.220(1) and described in RCW 47.64.220(2); and

(8) Photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies as defined in RCW 10.97.030. The news media, as defined in RCW 5.68.010(5), shall have access to the photographs and full date of birth. For the purposes of this subsection, news media does not include any person or organization of persons in the custody of a criminal justice agency as defined in RCW 10.97.030.

NEW SECTION. **Sec. 12.** (1) Nothing in this act prevents the release of public information in the following circumstances:

(a) The information is released to a governmental body, including the state's area agencies on aging, and the recipient agrees to protect the confidentiality of the information;

(b) The information concerns individuals who have been accused of or disciplined for abuse, neglect, exploitation, abandonment, or other acts involving the victimization of individuals or other professional misconduct;

(c) The information is released as part of a judicial or quasi-judicial proceeding and subject to a court's order protecting the confidentiality of the information and allowing the information to be used solely in that proceeding;

(d) The information about public employees who are represented by a collective bargaining representative certified or recognized as the exclusive bargaining representative under state law is being provided to such representative;

(e) The information about public employees who are not currently represented by a collective bargaining representative is being provided to an entity that has been certified or recognized as an exclusive collective bargaining representative for public employees under state law;

(f) The information is released as necessary for the provision of fringe benefits to public employees, and the recipient agrees to protect the confidentiality of the information;

(g) The disclosure is required by federal law;

(h) The disclosure is required by a contract between the state and a third party, and the recipient agrees to protect the confidentiality of the information;

(i) The information is released to a person or entity under contract with the state to manage, administer, or provide services to vulnerable residents, or under contract with the state to engage in research or analysis about state services for vulnerable residents, and the recipient agrees to protect the confidentiality of the information; or

(j) Information about a specific public employee or employees is released to a bona fide news organization that requests such information to conduct an investigation into, or report on, the actions of such specific public employee or employees.

(2) Nothing in this act prevents an agency from providing contact information for the purposes of RCW 74.39A.056(3) and RCW 74.39A.250.

(3) Nothing in this act prevents an agency from confirming the licensing or certification status of a caregiver on an individual basis to allow consumers to verify the licensing or certification status of an individual caregiver.

NEW SECTION. **Sec. 13.** This act shall be liberally construed to promote the public policy of protecting seniors, vulnerable individuals, and public employees from identity theft, consumer fraud, and other forms of victimization.

NEW SECTION. **Sec. 14.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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