

Pretexting

The Federal Trade Commission defines pretexting as the practice of getting your personal information under false pretenses. Pretexters sell your information to people who may use it to get credit in your name, steal your assets, or to investigate or sue you.

This Act provides that identity theft also occurs when a person knowingly:

- uses any personal identification information or personal identification document of another to portray himself or herself as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person, or
- uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person.

This Act provides that where a person has been convicted of this form of identity theft, in the absence of proof of actual damages, the person whose personal identification information or personal identification documents were used in the violation in question may recover damages of \$2,000.

The legislation provides that it is no defense to a charge of aggravated identity theft or identity theft that the offender received the consent of any person to access any personal identification information or personal identification document, other than the person described by the personal identification information or personal identification document used by the offender.

This Act provides that the new offense of using any personal identification information or personal identification document of another to portray himself or herself as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person, must be done for the purpose of fraudulently gaining access to any personal identification information or personal identification document of that person and the new offense of using any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person must be with the intent to commit or to aid or abet another in committing any felony theft or other felony violation of State law.

Submitted as:

Illinois

Public Act 094-1008

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Pretexting.”

2

3 Section 2. [*Definitions.*] As used in this Act:

4 (a) “Personal identification document” means a birth certificate, a driver’s license, a State
5 identification card, a public, government, or private employment identification card, a social
6 security card, a firearm owner’s identification card, a credit card, a debit card, or a passport issued

7 to or on behalf of a person other than the offender, or any document made or issued, or falsely
8 purported to have been made or issued, by or under the authority of the United States
9 Government, this state, or any other political subdivision of any state, or any other governmental
10 or quasi-governmental organization that is of a type intended for the purpose of identification of
11 an individual, or any such document made or altered in a manner that it falsely purports to have
12 been made on behalf of or issued to another person or by the authority of one who did not give
13 that authority.

14 (b) "Personal identifying information" means any of the following information:
15 (1) A person's name;
16 (2) A person's address;
17 (3) A person's date of birth;
18 (4) A person's telephone number;
19 (5) A person's driver's license number or state identification card as assigned by
20 the [Secretary of State] of this state or a similar agency of another state;
21 (6) A person's Social Security number;
22 (7) A person's public, private, or government employer, place of employment, or
23 employment identification number;
24 (8) The maiden name of a person's mother;
25 (9) The number assigned to a person's depository account, savings account, or
26 brokerage account;
27 (10) The number assigned to a person's credit or debit card, commonly known as a
28 "Visa Card," "Master Card," "American Express Card," "Discover Card," or other similar cards
29 whether issued by a financial institution, corporation, or business entity;
30 (11) Personal identification numbers;
31 (12) Electronic identification numbers;
32 (13) Digital signals;
33 (14) User names, passwords, and any other word, number, character or
34 combination of the same usable in whole or part to access information relating to a specific
35 individual, or to the actions taken, communications made or received, or other activities or
36 transactions of a specific individual.
37 (15) Any other numbers or information which can be used to access a person's
38 financial resources, or to identify a specific individual, or the actions taken, communications
39 made or received, or other activities or transactions of a specific individual.

40 (c) "Document-making implement" means any implement, impression, template,
41 computer file, computer disc, electronic device, computer hardware, computer software,
42 instrument, or device that is used to make a real or fictitious or fraudulent personal identification
43 document.

44 (d) "Financial transaction device" means any of the following:
45 (1) An electronic funds transfer card.
46 (2) A credit card.
47 (3) A debit card.
48 (4) A point-of-sale card.
49 (5) Any instrument, device, card, plate, code, account number, personal
50 identification number, or a record or copy of a code, account number, or personal identification
51 number or other means of access to a credit account or deposit account, or a driver's license or
52 state identification card used to access a proprietary account, other than access originated solely
53 by a paper instrument, that can be used alone or in conjunction with another access device, for
54 any of the following purposes:

55 (A) Obtaining money, cash refund or credit account, credit, goods,
56 services, or any other thing of value.

57 (B) Certifying or guaranteeing to a person or business the availability to the
58 device holder of funds on deposit to honor a draft or check payable to the order of that person or
59 business.

60 (C) Providing the device holder access to a deposit account for the purpose
61 of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining
62 information pertaining to a deposit account, or making an electronic funds transfer.

63
64 Section 3. [*Identity Theft.*]

65 (a) A person commits the offense of identity theft when he or she knowingly:

66 (1) uses any personal identifying information or personal identification document
67 of another person to fraudulently obtain credit, money, goods, services, or other property, or

68 (2) uses any personal identification information or personal identification
69 document of another with intent to commit any felony theft or other felony violation of state law
70 not set forth in [paragraph (1) of this subsection (a)], or

71 (3) obtains, records, possesses, sells, transfers, purchases, or manufactures any
72 personal identification information or personal identification document of another with intent to
73 commit or to aid or abet another in committing any felony theft or other felony violation of state
74 law, or

75 (4) uses, obtains, records, possesses, sells, transfers, purchases, or manufactures
76 any personal identification information or personal identification document of another knowing
77 that such personal identification information or personal identification documents were stolen or
78 produced without lawful authority, or

79 (5) uses, transfers, or possesses document-making implements to produce false
80 identification or false documents with knowledge that they will be used by the person or another
81 to commit any felony theft or other felony violation of state law, or

82 (6) uses any personal identification information or personal identification
83 document of another to portray himself or herself as that person, or otherwise, for the purpose of
84 gaining access to any personal identification information or personal identification document of
85 that person, without the prior express permission of that person, or

86 (7) uses any personal identification information or personal identification
87 document of another for the purpose of gaining access to any record of the actions taken,
88 communications made or received, or other activities or transactions of that person, without the
89 prior express permission of that person.

90 (b) Knowledge shall be determined by an evaluation of all circumstances surrounding the
91 use of the other person's identifying information or document.

92 (c) When a charge of identity theft of credit, money, goods, services, or other property
93 exceeding a specified value is brought the value of the credit, money, goods, services, or other
94 property is an element of the offense to be resolved by the trier of fact as either exceeding or not
95 exceeding the specified value.

96 (d) Sentence.

97 (1) A person convicted of identity theft in violation of [paragraph (1) of subsection
98 (a)] shall be sentenced as follows:

99 (A) identity theft of credit, money, goods, services, or other property not
100 exceeding [\$300] in value is a [Class 4 felony]. A person who has been previously convicted of
101 identity theft of less than [\$300] who is convicted of a second or subsequent offense of identity
102 theft of less than [\$300] is guilty of a [Class 3 felony]. A person who has been convicted of
103 identity theft of less than [\$300] who has been previously convicted of any type of theft, robbery,
104 armed robbery, burglary, residential burglary, possession of burglary tools, home invasion, home
105 repair fraud, aggravated home repair fraud, or financial exploitation of an elderly or disabled
106 person is guilty of a [Class 3 felony]. When a person has any such prior conviction, the

107 information or indictment charging that person shall state the prior conviction so as to give notice
108 of the State's intention to treat the charge as a [Class 3 felony]. The fact of the prior conviction is
109 not an element of the offense and may not be disclosed to the jury during trial unless otherwise
110 permitted by issues properly raised during the trial.

111 (B) Identity theft of credit, money, goods, services, or other property
112 exceeding [\$300] and not exceeding [\$2,000] in value is a [Class 3 felony].

113 (C) Identity theft of credit, money, goods, services, or other property
114 exceeding [\$2,000] and not exceeding [\$10,000] in value is a [Class 2 felony].

115 (D) Identity theft of credit, money, goods, services, or other property
116 exceeding [\$10,000] and not exceeding [\$100,000] in value is a [Class 1 felony].

117 (E) Identity theft of credit, money, goods, services, or other property
118 exceeding [\$100,000] in value is a [Class X felony].

119 (2) A person convicted of any offense enumerated in [paragraphs (2) through (7)
120 of subsection (a)] is guilty of a [Class 3 felony].

121 (3) A person convicted of any offense enumerated in [paragraphs (2) through (5)
122 of subsection (a)] a second or subsequent time is guilty of a [Class 2 felony].

123 (4) A person who, within a [12-month] period, is found in violation of any offense
124 enumerated in paragraphs (2) through (7) of subsection (a) with respect to the identifiers of, or
125 other information relating to, [3 or more separate people], at the same time or consecutively, is
126 guilty of a [Class 2 felony].

127

128 Section 4. [*Civil Remedies.*] A person who is convicted of identity theft or aggravated
129 identity theft is liable in a civil action to the person who suffered damages as a result of the
130 violation. The person suffering damages may recover court costs, attorney's fees, lost wages, and
131 actual damages. Where a person has been convicted of identity theft in violation of [subsection
132 (a)(6) or subsection (a)(7) of Section 3], in the absence of proof of actual damages, the person
133 whose personal identification information or personal identification documents were used in the
134 violation in question may recover damages of [\$2,000].

135

136 Section 5. [*Offenders Interest in the Property, Consent.*]

137 (a) It is no defense to a charge of aggravated identity theft or identity theft that the
138 offender has an interest in the credit, money, goods, services, or other property.

139 (b) It is no defense to a charge of aggravated identity theft or identity theft that the
140 offender received the consent of any person to access any personal identification information or
141 personal identification document, other than the person described by the personal identification
142 information or personal identification document used by the offender.

143

144 Section 6. [*Mandating Law Enforcement Agencies to Accept and Provide Reports;
145 Judicial Factual Determination.*]

146 (a) A person who has learned or reasonably suspects that his or her personal identifying
147 information has been unlawfully used by another may initiate a law enforcement investigation by
148 contacting the local law enforcement agency that has jurisdiction over his or her actual residence,
149 which shall take a police report of the matter, provide the complainant with a copy of that report,
150 and begin an investigation of the facts or, if the suspected crime was committed in a different
151 jurisdiction, refer the matter to the law enforcement agency where the suspected crime was
152 committed for an investigation of the facts.

153 (b) A person who reasonably believes that he or she is the victim of financial identity theft
154 may petition a court, or the court, on its own motion or upon application of the prosecuting
155 attorney, may move for an expedited judicial determination of his or her factual innocence, where
156 the perpetrator of the financial identity theft was arrested for, cited for, or convicted of a crime

157 under the victim’s identity, or where a criminal complaint has been filed against the perpetrator in
158 the victim’s name, or where the victim’s identity has been mistakenly associated with a criminal
159 conviction. Any judicial determination of factual innocence made pursuant to this [subsection (b)]
160 may be heard and determined upon declarations, affidavits, police reports, or other material,
161 relevant, and reliable information submitted by the parties or ordered to be part of the record by
162 the court. If the court determines that the petition or motion is meritorious and that there is no
163 reasonable cause to believe that the victim committed the offense for which the perpetrator of the
164 identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim’s
165 name, or that the victim’s identity has been mistakenly associated with a record of criminal
166 conviction, the court shall find the victim factually innocent of that offense. If the victim is found
167 factually innocent, the court shall issue an order certifying this determination.

168 (c) After a court has issued a determination of factual innocence under this section, the
169 court may order the name and associated personal identifying information contained in the court
170 records, files, and indexes accessible by the public sealed, deleted, or labeled to show that the
171 data is impersonated and does not reflect the defendant’s identity.

172 (d) A court that has issued a determination of factual innocence under this section may at
173 any time vacate that determination if the petition, or any information submitted in support of the
174 petition, is found to contain any material misrepresentation or fraud.

175 (e) Except for criminal and civil actions provided for by this Act, or for disciplinary or
176 licensure-related proceedings involving the violation of this Act, no information acquired by, or
177 as a result of, any violation of [Section 3] of this Act shall be discoverable or admissible in any
178 court or other proceeding, or otherwise subject to disclosure without the express permission of
179 any person or people identified in that information.

180
181 Section 7. [*Venue.*] In addition to any other venues provided for by statute or otherwise,
182 venue for any criminal prosecution or civil recovery action under this Act shall be proper in any
183 county where the person described in the personal identification information or personal
184 identification document in question resides or has their principal place of business. Where a
185 criminal prosecution or civil recovery action under this Act involves the personal identification
186 information or personal identification documents of more than one person, venue shall be proper
187 in any county where one or more of the people described in the personal identification
188 information or personal identification documents in question resides or has their principal place of
189 business.

190
191 Section 8. [*Exemptions, Relation to Other Laws.*]

192 (a) This Act does not:

193 (1) prohibit the capture or transmission of personal identifying information in the
194 ordinary and lawful course of business;

195 (2) apply to a peace officer of this state, or of the federal government, or the
196 officer's agent, while in the lawful performance of the officer’s duties;

197 (3) prohibit a licensed private detective or licensed private detective agency from
198 representing himself, herself, or itself as any another person, provided that he, she, or it may not
199 portray himself, herself, or itself as the person whose information he, she, or it is seeking except
200 as provided under this Act;

201 (4) apply to activities authorized under any other statute.

202 (b) No criminal prosecution or civil action brought under this Act shall prohibit a person
203 from being charged with, convicted of, or punished for any other violation of law committed by
204 that person while violating or attempting to violate this Act.

205
206 Section 9. [*Severability.*] [Insert severability clause.]

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208
209
210

Section 10. [*Repealer.*] [Insert repealer clause.]

Section 11. [*Effective Date.*] [Insert effective date.]