

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

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