

CHAPTER 175**(HB 79)**

AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 15.113 is amended to read as follows:

- (1) The Financial Integrity Enforcement Division is created in the Department of Law. The division shall:
 - (a) Investigate illegal redemption of food stamp benefits in cooperation with the United States Department of Agriculture and the Cabinet for Families and Children;
 - (b) Verify eligibility of food stamp program applicants as to past criminal history;
 - (c) Investigate the illegal distribution of counterfeit merchandise; and
 - (d) Investigate the use of personal identification *and financial information* by persons for the purpose of theft, or fraud, or both theft and fraud, and other illegal or fraudulent activity which may involve electronic commerce.
- (2) The Office of the Attorney General shall coordinate with the Department of Financial Institutions, the United States Secret Service, *the Federal Trade Commission*, the Kentucky Bankers' Association, and any other agency or organization to prepare and disseminate information to prevent identity theft.

Section 2. KRS 15.231 is amended to read as follows:

The Attorney General shall have concurrent jurisdiction with Commonwealth's attorneys and county attorneys for the prosecution of offenses under and the enforcement of the provisions of *Sections 3, 5, 6, 8, 9, and 10 of this Act* ~~[KRS 514.160, 514.170, 411.210, and 532.034]~~.

Section 3. KRS 411.210 is amended to read as follows:

- (1) *In addition to pursuing any other remedy*, anyone who is a victim under *Section 5, 6, 8, or 9 of this Act* ~~[KRS 514.160 or 514.170]~~ shall have a cause of action, either where the victim resides or the defendant resides, for compensatory and punitive damages against anyone who violates *Section 5, 6, 8, or 9 of this Act, and, if successful, shall be awarded reasonable costs and attorneys' fees* ~~[KRS 514.160 or 514.170]~~.
- (2) The statute of limitations for cases under the provisions of this section shall be five (5) years from the date of the discovery of the violation of *Section 5, 6, 8, or 9 of this Act* ~~[KRS 514.160 or 514.170]~~.

SECTION 4. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

As used in Sections 4 to 7 of this Act, unless the context otherwise requires:

- (1) *"Financial information" includes, but is not limited to, 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 any account;*

- (c) *Codes, passwords, Social Security numbers, tax identification numbers, and driver's license numbers; and*
- (d) *Information held for the purpose of credit or loan acquisition, account access, or transaction initiation;*
- (2) *"Financial information repository" means any 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; and*
- (3) *"Person" means an individual, partnership, corporation, or association.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

- (1) *No person may obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, financial information from a financial information repository by knowingly:*
 - (a) *Making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial information repository with the intent to deceive the officer, employee, or agent into relying on that statement or representation for the purpose of releasing financial information;*
 - (b) *Making a false, fictitious, or fraudulent statement or representation to a customer of a financial information repository with the intent to deceive the customer into releasing financial information or authorizing the release of such information; or*
 - (c) *Providing any document to an officer, employee, or agent of a financial information repository, knowing that the document is forged, counterfeit, lost, or stolen, or that the document was fraudulently obtained, or that the document contains a false, fictitious, or fraudulent statement or representation, if such a document is provided with the intent to deceive the officer, employee, or agent into releasing the financial information.*
- (2) *Violation of this section is a Class D felony. If the person violating this section is a business that has violated this section on more than one (1) occasion, then that person also violates the Consumer Protection Act, KRS 367.110 to 367.300.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of trafficking in financial information when he or she manufactures, sells, transfers, or purchases, or possesses with the intent to manufacture, sell, transfer, or purchase financial information for the purpose of committing any crime.*
- (2) *Trafficking in financial information is a Class C felony. If the person violating this section is a business that has violated this section on more than one (1) occasion, then that person also violates the Consumer Protection Act, KRS 367.110 to 367.300.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

- (1) *No provision of Sections 4 to 7 of this Act shall be construed to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, or any action of an agent of the financial information repository when working in conjunction with a law enforcement agency.*

- (2) *Sections 4 to 7 of this Act does not apply to:*
- (a) *Efforts by the financial information repository to test security procedures or systems of the financial institution repository for maintaining the confidentiality of customer information;*
 - (b) *Investigations of alleged financial institution repository employee misconduct or negligence; or*
 - (c) *Efforts to recover financial or personal information of the financial institution obtained or received by another person in any manner described in Section 5 of this Act.*

Section 8. KRS 514.160 is amended to read as follows:

- (1) A person is guilty of the theft of the identity of another when~~[, without the other's consent,]~~ he or she knowingly possesses or uses any **current or former** identifying information of the other person **or family member or ancestor of the other person**, such as **that person's or family member's or ancestor's**~~[one's]~~ name, **address, telephone number, electronic mail address**, Social Security number, **driver's license number**, birth date, personal identification number or code, **and any other information which could be used to identify the person, including unique biometric data**,~~[which is kept in documents, photo or electrical copies, computer storage, or any other form of document retrieval and storage, and the theft is committed]~~ with the intent to represent that he or she is the other person for the purpose of:
 - (a) Depriving the other person of property;
 - (b) Obtaining benefits or property to which he or she would otherwise not be entitled;
 - (c) Making financial or credit transactions using the other person's identity;
 - (d) Avoiding detection; or
 - (e) Commercial or political benefit.
- (2) Theft of identity is a Class D felony. ***If the person violating this section is a business that has violated this section on more than one (1) occasion, then that person also violates the Consumer Protection Act, KRS 367.110 to 367.300.***
- (3) This section shall not apply when a person obtains the identity of another to misrepresent his or her age for the purpose of obtaining alcoholic beverages, tobacco, or another privilege denied to minors.
- (4) This section does not apply to credit or debit card fraud under KRS 434.550 to 434.730.
- (5) Where the offense consists of theft by obtaining or trafficking in the personal identity of another person, the venue of the prosecution may be in either the county where the offense was committed or the county where the other person resides.
- (6) A person found guilty of violating any provisions of this section shall forfeit any lawful claim to the identifying information, property, or other realized benefit of the other person as a result of such violation.

Section 9. KRS 514.170 is amended to read as follows:

- (1) A person is guilty of trafficking in stolen identities when~~[, without the other's consent,]~~ he **or she** manufactures, sells, transfers, **or** purchases, or possesses with **the** intent to manufacture, **sell**, transfer, **or** purchase~~[, or sell]~~ the personal identity of another person **or persons** for any

purpose listed in *subsection (1) of Section 8 of this Act*~~[KRS 514.160(1)]~~. The personal identity of an individual includes any *of the* identifying information *described in subsection (1) of Section 8 of this Act*~~[of that person, such as one's name, Social Security number, birth date, personal identification number or code, which is kept in documents, photo or electrical copies, computer storage, or any other form of document retrieval and storage]~~.

- (2) Possession of five (5) or more separate identities shall be prima facie evidence that the identities are possessed for the purpose of trafficking.
- (3) Trafficking in stolen identities is a Class C felony. ***If the person violating this section is a business that has violated this section on more than one (1) occasion, then that person also violates the Consumer Protection Act, KRS 367.110 to 367.300.***

Section 10. KRS 532.034 is amended to read as follows:

- (1) A person found guilty of violating any provisions of *Section 5, 6, 8, or 9 of this Act*~~[KRS 514.160 or 514.170]~~ shall, in addition to any other punishment, be ordered to make restitution for financial loss sustained by a victim as a result of the violation. Financial loss may include any costs incurred by the victim in correcting the credit history of the victim or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney's fees.
- (2) A person found guilty of violating any provisions of *Section 5, 6, 8, or 9 of this Act*~~[KRS 514.160 or 514.170]~~ shall pay restitution to the person or entity that suffers the financial loss. In addition to the financial loss detailed in subsection (1) of this section, the person or entity may include a financial institution, insurance company, or bonding association that suffers direct financial loss as a result of the violation.

Approved April 2, 2002