Senate Bill 475

By: Senators Thompson of the 33rd, Stokes of the 43rd and Tanksley of the 32nd

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend various provisions of the Official Code of Georgia Annotated as they relate to identity fraud and the collection and dissemination of personal identifying and financial information on individuals and businesses so as to protect such information from being utilized in an unlawful manner; to amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, so as to change provisions relating to definitions, financial identity fraud, and racketeer influenced and corrupt organizations; to amend Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, so as to change provisions relating to data collection for identity fraud cases; to amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to change provisions to allow consistent penalties for identity fraud; to amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, so as to establish guidelines for proper discarding and disposal of certain business documents containing personal information; to define terms; to provide for exceptions; to provide for civil liability; to provide for criminal penalties; to provide for other matters relative to the foregoing; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by striking Code Section 16-9-4, relating to definitions of identification documents and prohibitions regarding false documents, in its entirety and inserting in lieu thereof the following:

"16-9-4.

(a) As used in this Code section, the term:

(1) 'Access device' means a unique electronic identification number, address, description, or routing code or a device containing a unique electronic identification number, address, description, or routing code which permits or facilitates entry into a facility or computer

or provides access to the financial resources, including, but not limited, to the credit resources of the individual to whom the device or card is issued.

(2) 'Description' means any identifying information about a person, including, but not limited to, date of birth, place of birth, address, social security number, height, weight, hair or eye color, or unique biometric data such as fingerprint, voice print, retina or iris image, DNA profile, or other unique physical representation.

(3) 'Government agency' means any agency of the executive, legislative, or judicial branch of government or political subdivision or authority thereof of this state, any other state, the United States, or any foreign government or international governmental or quasi-governmental agency recognized by the United States or by any of the several states.

(4) 'Identification ~~'identification~~ document' means:

(A) Any ~~any~~ document or card issued by a government agency or by the authority of a government agency containing the name of a person and a description of the person or such person´s photograph, or both, ~~and giving such person´s date of birth,~~ and includes, without being limited to, a passport, visa, military identification card, driver´s license, or an identification card; ~~authorized under Code Sections 40-5-100 through 40-5-104.~~

(B) Any document displaying a trademark or trade name of another, as such terms are defined by Code Section 10-1-371, containing the name of a person and a description of a person or such person´s photograph, or both; or

(C) Any access device.

(b)(1) It shall be unlawful for any person to ~~knowingly~~ manufacture, sell, or distribute ~~a~~ any identification documents containing false, fictitious, fraudulent, or altered information ~~identification document.~~; notwithstanding anything to the contrary contained in this Code section, it shall be an affirmative defense to the manufacturing, selling, or distributing of identification documents containing false, fictitious, fraudulent, or altered information if the person manufacturing, selling, or distributing such documents used due diligence to ascertain the truth of the information.

(2) ~~Any person who violates paragraph (1) of this subsection on the first offense shall be guilty of a misdemeanor. Any person who violates paragraph (1) of this subsection for the second or any subsequent offense shall be guilty of a felony and shall be punished by a fine of not more than $5,000.00 or by imprisonment for not more than three years, or both.~~ It shall be unlawful for any person to knowingly manufacture, alter, sell, distribute, deliver, possess with intent to sell, deliver, or distribute, or offer for sale, delivery, or distribution a false, fraudulent, or fictitious identification document or any identification document which contains any false, fictitious, or fraudulent statement or entry.

(3) It shall be unlawful for any person to knowingly manufacture, alter, sell, distribute, deliver, possess with the intent to sell, deliver, or distribute, or offer for sale, delivery, or distribution any identification document containing the trademark or trade name of another without the written consent of the owner of the trademark or trade name.

(4) It shall be unlawful for any person to knowingly possess, display, or use any false, fictitious, fraudulent, or altered identification document containing the logo or legal or official seal of a government agency or any colorable imitation thereof in furtherance of a conspiracy or attempt to commit a violation of the criminal laws of this state or of the United States or any of the several states which is punishable by imprisonment for one year or more.

(5) It shall be unlawful for any person to knowingly manufacture, alter, sell, distribute, deliver, possess with the intent to sell, deliver, or distribute, or offer for sale or distribution any other identification document containing the logo or legal or official seal of a government agency or any colorable imitation thereof without the written consent of the government agency.

(6) It shall be unlawful for any person to knowingly possess, display, or use any identification document of another person without the other person´s permission; notwithstanding anything to the contrary contained in this Code section, it shall be an affirmative defense to the possession, display, or use of any identification document under this subsection that the person possessing, displaying, or using any identification document issued to another person had the permission of that other person to possess, display, or use that document, provided that the document is otherwise available as a public record pursuant to the laws of this state.

(c)(1) Except as provided in paragraph (2) or (3) of this subsection, any person who violates paragraph (1), (2), (3), or (6) of subsection (b) of this Code section shall be guilty of a misdemeanor.

(2) Any person who violates paragraph (1), (2), (3), or (6) of subsection (b) of this Code section for the second or any subsequent offense shall be guilty of a felony and shall be punished by a fine of not more than $25,000.00 or by imprisonment for not more than three years, or both.

(3) Any person who manufactures, alters, sells, distributes, delivers, receives, possesses, or offers for sale or distribution three or more identification documents in violation of subsection (b) of this Code section shall be punished by imprisonment for not less than three nor more than ten years, a fine not to exceed the amount specified by Code Section 17-10-8, or both.

(4) Any person who violates paragraph (4) or (5) of subsection (b) of this Code section shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed the amount specified by Code Section 17-10-8, or both.

(5) Any person convicted of an attempt or conspiracy to violate subsection (b) of this Code section shall be punished by imprisonment, by a fine, or by both such punishments not to exceed the maximum punishment prescribed for the offense the commission of which was the object of the attempt or conspiracy.

(d) Each violation of this Code section shall constitute a separate offense.

(e) Any violation of this Code section shall be considered to have been committed in any county of this state in which the evidence shows that the identification document was manufactured, altered, sold, displayed, distributed, delivered, received, offered for sale or distribution, or possessed.

(f) The provisions of this Code section shall not apply to any lawfully authorized investigative, protective, or intelligence activity of an agency of the United States, this state, or any of the several states or their political subdivisions or any activity authorized under Chapter 224 of Title 18 of the United States Code or any similar such law relating to witness protection.

(g) It shall not be a defense to a violation of this Code section that a document contained words indicating that it is not an identification document unless there appears on the front and back of such document the word 'novelty' which is in a color which is not transparent on the design of the document and is in block letters not less than 40 point type in size.

(h)(1) Any property which is used, intended for use, or used in any manner to facilitate a violation of this Code section is contraband and forfeited to the state and no person shall have a property interest in it. Such property may be seized or detained in the same manner as provided in Code Section 16-13-49 and shall not be subject to replevin, conveyance, sequestration, or attachment.

(2) Within 60 days of the date of the seizure of contraband pursuant to this Code section, the district attorney shall initiate forfeiture or other proceedings as provided in Code Section 16-13-49. An owner or interest holder, as defined by subsection (a) of Code Section 16-13-49, may establish as a defense to the forfeiture of property which is subject to forfeiture under this Code section the applicable provisions of subsection (e) or (f) of Code Section 16-13-49. Property which is forfeited pursuant to this Code section shall be disposed of and distributed as provided in Code Section 16-13-49.

(3) If property subject to forfeiture cannot be located; has been transferred or conveyed to, sold to, or deposited with a third party; is beyond the jurisdiction of the court; has been substantially diminished in value while not in the actual physical custody of a receiver or governmental agency directed to maintain custody of the property; or has been

commingled with other property that cannot be divided without difficulty, the court shall order the forfeiture of any property of a claimant or defendant up to the value of property found by the court to be subject to forfeiture under this subsection in accordance with the procedures set forth in subsection (x) of Code Section 16-13-49.

(4) The provisions of paragraphs (3), (4), and (5) of subsection (x) and subsection (z) of Code Section 16-13-49 shall be applicable to any proceedings brought pursuant to this subsection.″

SECTION 2.

Said title is further amended by striking Article 8 of Chapter 9 thereof, relating to identity fraud, and inserting in lieu thereof the following:

″ARTICLE 8

16-9-120.

~~There is created the criminal offense of financial identity fraud.~~ As used in this article, the term:

(1) 'Administrator' means the administrator appointed under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.'

(2) 'Business victim' means any individual or entity that provided money, credit, goods, services, or anything of value to someone other than the intended recipient where the intended recipient has not given permission for the actual recipient to receive it and the individual or entity that provided money, credit, goods, services, or anything of value has suffered financial loss as a direct result of the commission or attempted commission of a violation of this article.

(3) 'Consumer victim' means any individual whose personal identifying information has been obtained, compromised, used, or recorded in any manner without the permission of that individual.

(4) 'Identifying information' shall include, but not be limited to:

(A) Current or former names;

(B) Social security numbers;

(C) Driver´s license numbers;

(D) Checking account numbers;

(E) Savings account numbers;

(F) Credit and other financial transaction card numbers;

(G) Debit card numbers;

(H) Personal identification numbers;

(I) Electronic identification numbers;

(J) Digital or electronic signatures;

(K) Medical identification numbers;

(L) Birth dates;

(M) Mother´s maiden name;

(N) Selected personal identification numbers;

(O) Tax identification numbers;

(P) State identification card numbers issued by state departments; or

(Q) Any other numbers or information which can be used to access a person´s or entity´s resources.

(5) 'Resources' includes, but is not limited to:

(A) A person´s or entity´s credit, credit history, credit profile, and credit rating;

(B) United States currency, securities, real property, and personal property of any kind;

(C) Credit, charge, and debit accounts;

(D) Loans and lines of credit;

(E) Documents of title and other forms of commercial paper recognized under Title 11;

(F) Any account, including a safety deposit box, with a financial institution as defined by Code Section 7-1-4, including a national bank, federal savings and loan association, or federal credit union or a securities dealer licensed by the Secretary of State or the federal Securities and Exchange Commission; and

(G) A person´s personal history, including but not limited to records of such person´s driving records; criminal, medical, or insurance history; education; or employment.

16-9-121.

A person commits the offense of ~~financial~~ identity fraud when without the authorization or permission of ~~another person and~~ a person with the intent unlawfully to appropriate ~~financial~~ resources of that ~~other~~ person, or of any other person, to his or her own use or to the use of a third party he or she:

(1) Obtains or records identifying information of a person which would assist in accessing the ~~financial~~ resources of ~~the other~~ that person or any other person; or

(2) Accesses or attempts to access the ~~financial~~ resources of ~~the other~~ a person through the use of identifying information. ~~Such identifying information shall include but not be limited to:~~

~~(A) Social security numbers;~~

~~(B) Driver´s license numbers;~~

~~(C) Checking account numbers;~~

~~(D) Savings account numbers;~~

~~(E) Credit card numbers;~~

~~(F) Debit card numbers;~~

~~(G) Personal identification numbers;~~

~~(H) Electronic identification numbers;~~

~~(I) Digital signatures; or~~

~~(J) Any other numbers or information which can be used to access a person´s financial resources.~~

16-9-122.

It shall be unlawful for any person to attempt or conspire to commit any offense prohibited by this article. Any person convicted of a violation of this Code section shall be punished by imprisonment or community service, by a fine, or by both such punishments not to exceed the maximum punishment prescribed for the offense the commission of which was the object of the attempt or conspiracy.

~~16-9-122.~~ 16-9-123.

The administrator appointed under Code Section 10-1-395 shall have the authority to investigate any complaints of consumer victims regarding financial identity fraud. In conducting such investigations the administrator shall have all investigative powers which are available to the administrator under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.' If, after such investigation, the administrator determines that a person has been a consumer victim of identity fraud in this state, the administrator shall, at the request of the consumer victim, provide the consumer victim with certification of the findings of such investigation. Copies of any and all complaints received by any law enforcement agency of this state regarding potential violations of this article shall be transmitted to the Governor´s Office of Consumer Affairs. The Governor´s Office of Consumer Affairs shall maintain a repository for all complaints in the State of Georgia regarding identity fraud. Information contained in such repository shall not be subject to public disclosure. The information in the repository may be transmitted to any other appropriate investigatory agency or entity. Consumer victims of identity fraud may file complaints directly with the Governor´s Office of Consumer Affairs. Employees of the Governor´s Office of Consumer Affairs may communicate with consumer victims. Any and all transmissions authorized under this Code section may be transmitted electronically, provided that such transmissions are made through a secure channel for the transmission of such electronic communications or information, the sufficiency of which is acceptable to the Governor´s Office of Consumer Affairs. Nothing in this Code section shall be

construed to preclude any otherwise authorized law enforcement or prosecutorial agencies from conducting investigations and prosecuting offenses of identity fraud.

~~16-9-123.~~ 16-9-124.

The Attorney General and prosecuting attorneys shall have the authority to conduct the criminal prosecution of all cases of ~~financial~~ identity fraud ~~or to refer them to the district attorney in the county where the crime was committed~~.

~~16-9-124.~~ 16-9-125.

~~In any criminal proceeding brought pursuant to this article, the crime shall be considered to have been committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually in such county.~~ The General Assembly finds that identity fraud involves the use of identifying information which is uniquely personal to the consumer or business victim of that identity fraud and which information is considered to be in the lawful possession of the consumer or business victim wherever the consumer or business victim currently resides or is found. Accordingly, the fraudulent use of that information involves the fraudulent use of information that is, for the purposes of this article, found within the county where the consumer or business victim of the identity fraud resides or is found. Accordingly, in a proceeding under this article, the crime will be considered to have been committed in any county where the person whose means of identification or financial information was appropriated resides or is found, or in any county in which any other part of the offense took place, regardless of whether the defendant was ever actually in such county.

~~16-9-125.~~ 16-9-126.

(a) A violation of this article, other than a violation of Code Section 16-9-122, shall be punishable by imprisonment for not less than one nor more than ten years or a fine not to exceed $100,000.00, or both. Any person who commits such a violation for the second or any subsequent offense shall be punished by imprisonment for not less than three nor more than 15 years, a fine not to exceed $250,000.00, or both.

(b) Any person found guilty of a violation of this article may be ordered by the court to make restitution to any consumer victim or any business victim of such fraud.

(c) Each violation of this article shall constitute a separate offense.

(d) Upon a conviction of a violation of this article, the court may issue any order necessary to correct a public record that contains false information resulting from the actions which resulted in the conviction.

~~16-9-126.~~ 16-9-127.

~~In addition to being imprisoned as provided in Code Section 16-9-125, a person found guilty of financial identity fraud may be ordered by the court to make restitution to any victims of such fraud.~~ The administrator shall have authority to initiate any proceedings and to exercise any power or authority in the same manner as if he or she were acting under Part 2 of Article 15 of Chapter 1 of Title 10, as regards violations or potential violations of this article.

~~16-9-127.~~ 16-9-128.

(a) The prohibitions set forth in Code ~~Section~~ Sections 16-9-121 and 16-9-122 shall not apply to nor shall any cause of action arise under Code Sections 16-9-129 and 16-9-131 for:

(1) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction;

(2) The lawful, good faith exercise of a security interest or a right to offset by a creditor or a financial institution; ~~or~~

(3) The lawful, good faith compliance by any party when required by any warrant, levy, garnishment, attachment, court order, or other judicial or administrative order, decree, or directive~~.~~; or

(4) The good faith use of identifying information with the permission of the affected individual.

(b) The ~~These~~ exemptions provided in subsection (a) of this Code section will not apply to a person intending to further a scheme to violate Code Section 16-9-121 or 16-9-122.

(c) It is not necessary for the state to negate any exemption or exception in this article in any complaint, accusation, indictment, or other pleading or in any trial, hearing, or other proceeding under this article involving a business victim. In such cases the burden of proof of any exemption or exception is upon the business victim claiming it.

16-9-129.

Any business victim who is injured by reason of any violation of this article shall have a cause of action for the actual damages sustained and, where appropriate, punitive damages. Such business victim may also recover attorney´s fees in the trial and appellate courts and the costs of investigation and litigation reasonably incurred.

16-9-130.

(a) Any consumer victim who suffers injury or damages as a result of a violation of this article may bring an action individually or as a representative of a class against the person

or persons engaged in such violations under the rules of civil procedure to seek equitable injunctive relief and to recover general and punitive damages sustained as a consequence thereof in any court having jurisdiction over the defendant; provided, however, punitive damages shall be awarded only in cases of intentional violation. A claim under this article may also be asserted as a defense, setoff, cross-claim, or counterclaim or third-party claim against such person.

(b) A court shall award three times actual damages for an intentional violation.

(c) If the court finds in any action that there has been a violation of this article, the consumer victim injured by such violation shall, in addition to other relief provided for in this Code section and irrespective of the amount in controversy, be awarded reasonable attorney´s fees and expenses of litigation incurred in connection with said action.

(d) It shall not be a defense in any action under this article that others were, are, or will be engaged in like practices.

(e) In any action brought under this article the administrator shall be served by certified or registered mail or statutory overnight delivery with a copy of the initial complaint and any amended complaint within 20 days of the filing of such complaint. The administrator shall be entitled to be heard in any such action, and the court where such action is filed may enter an order requiring any of the parties to serve a copy of any other pleadings in an action upon the administrator.

16-9-131.

Whenever an investigation has been conducted by the Governor´s Office of Consumer Affairs under this article and such investigation reveals conduct which constitutes a criminal offense, the administrator shall forward the results of such investigation to the Attorney General or other prosecuting attorney of this state who shall commence any criminal prosecution that he or she deems appropriate.

16-9-132.

This article is cumulative with other laws and is not exclusive. The rights or remedies provided for in this article shall be in addition to any other procedures, rights, remedies, or duties provided for in any other law or in decisions of the courts of this state dealing with the same subject matter.″

SECTION 3.

Said title is further amended by striking divisions (9)(A)(xxxiv) and (xxxv) of Code Section 16-14-3, relating to definitions, and inserting in lieu thereof the following:

"(xxxiv) Code Section 16-10-97, relating to intimidation of grand or petit juror or court officer; ~~or~~

(xxxv) Article 11 of Chapter 1 of Title 7 and Sections 5311 through 5330 of Title 31 of the United States Code relating to records and reports of currency transactions~~.~~; or

(xxxvi) Article 8 of Chapter 9 of this title, relating to identity fraud, and Section 1028 of Title 18 of the United States Code, relating to fraudulent identification documents and information."

SECTION 4.

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended by inserting after Code Section 35-1-12 a new Code Section 35-1-13 to read as follows:

"35-1-13.

Notwithstanding any other provision of law, any law enforcement agency that receives a report from a resident of this state that such person has been the victim of identity fraud shall prepare an incident report and transmit the same to the Governor´s Office of Consumer Affairs identity fraud repository, as provided in Code Section 16-9-123, notwithstanding the fact that such person´s identity may have been used solely to commit one or more criminal offenses beyond the jurisdiction of this state. Copies of such incident reports shall be referred from the Governor´s Office of Consumer Affairs to the Georgia Crime Information Center as provided in Chapter 3 of this title and to any jurisdiction in which such identity has been used."

SECTION 5.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended by striking Code Section 40-5-104, relating to false statement in applications, and inserting in lieu thereof the following:

"40-5-104.

Any person who knowingly makes any false statement in an application for an identification card provided for by this article shall be guilty of a ~~misdemeanor~~ violation of Code Section 16-10-20."

SECTION 6.

Said title is further amended by striking Code Section 40-5-125, relating to possession, procurement, or use of fraudulent driver´s license or identification card, and inserting in lieu thereof the following:

"40-5-125.

(a) It is a misdemeanor for any person to:

~~(1) Display, cause or permit to be displayed, or have in his or her possession any fictitious, fraudulent, or altered driver´s license or identification card;~~

~~(2) Use a false or fictitious name or provide any other false information in any application for a driver´s license or identification card;~~

~~(3) Procure, secure, or assist another person in the procuring or securing of a fraudulent driver´s license or identification card;~~

~~(4) Alter any driver´s license or identification card such that the information on the license is false or fictitious;~~

~~(5) Sell or deliver any false, fictitious, or altered driver´s license or identification card;~~

~~(6)~~(1) Lend his or her driver´s license or identification card to any other person or permit knowingly the use thereof by another person; or

~~(7)~~(2) Display or represent as his or her own any driver´s license or identification card not issued to him or her~~; or~~.

~~(8) Conceal a material fact in any application for a driver´s license or identification card.~~

~~Any employee of the department who knowingly violates and is convicted of violating this Code section shall also be guilty of the offense of violating his or her public position and, upon conviction, shall be punished as for such separate and additional violation.~~

(b) Any person who knowingly makes any false statement in an application for a driver´s license provided for by this chapter shall be guilty of a violation of Code Section 16-10-20."

SECTION 7.

Said title is further amended by striking Code Section 40-5-179, relating to penalties, and inserting in lieu thereof the following:

"40-5-179.

It is a misdemeanor for any person:

~~(1) To use a false or fictitious name in any application for an identification card for persons with disabilities or knowingly to make a false statement or conceal a material fact or otherwise commit a fraud in any such application;~~

~~(2) To display or cause to be displayed or have in his or her possession any fictitious or fraudulently altered identification card for persons with disabilities;~~

~~(3)~~(1) To lend his or her identification card for persons with disabilities to any other person or knowingly to permit the use thereof by another; and

~~(4)~~ (2) To display or represent as his or her own any identification card for persons with disabilities not issued to him or her."

SECTION 8.

Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is amended by adding at the end a new chapter, to be designated Chapter 15, to read as follows:

"CHAPTER 15

10-15-1.

As used in this chapter, the term:

(1) 'Business' means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this state, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. The term also includes an entity that destroys records. However, for purposes of this chapter, the term shall not include any bank or financial institution that is subject to the privacy and security provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et seq., as amended, and as it existed on January 31, 2002, nor shall it include any hospital or health care institution licensed under Title 31 which is subject to the privacy and security provisions of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, nor any other entity which is governed by federal law, provided that the federal law governing the business requires the business to discard a record containing personal information in the same manner as Code Section 10-15-2.

(2) 'Customer' means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(3) 'Discard' means to throw away, get rid of, or eliminate.

(4) 'Dispose' means the sale or transfer of a record for value to a company or business engaged in the business of record destruction.

(5) 'Personal information' means:

(A) Personally identifiable data about a customer´s medical condition, if the data are not generally considered to be public knowledge;

(B) Personally identifiable data which contain a customer´s account or identification number, account balance, balance owing, credit balance, or credit limit, if the data relate to a customer´s account or transaction with a business;

(C) Personally identifiable data provided by a customer to a business upon opening an account or applying for a loan or credit; or

(D) Personally identifiable data about a customer´s federal, state, or local income tax return.

(6)(A) 'Personally identifiable' means capable of being associated with a particular customer through one or more identifiers, including, but not limited to, a customer´s fingerprint, photograph, or computerized image, social security number, passport number, driver identification number, personal identification card number, date of birth, medical information, or disability information.

(B) A customer´s name, address, and telephone number shall not be considered personally identifiable data unless one or more of them are used in conjunction with one or more of the identifiers listed in subparagraph (A) of this paragraph.

(7) 'Record' means any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

10-15-2.

A business may not discard a record containing personal information unless it:

(1) Shreds the customer´s record before discarding the record;

(2) Erases the personal information contained in the customer´s record before discarding the record;

(3) Modifies the customer´s record to make the personal information unreadable before discarding the record; or

(4) Takes actions that it reasonably believes will ensure that no unauthorized person will have access to the personal information contained in the customer´s record for the period between the record´s disposal and the record´s destruction.

10-15-3.

(a) A business is liable to a customer whose personal customer information is negligently discarded or disposed of in violation of Code Section 10-15-2 for the amount of actual damages resulting from the violation.

(b) A business is liable to a customer whose personal customer information is intentionally discarded or disposed of in violation of Code Section 10-15-2 for three times the amount of actual damages and expenses of litigation resulting from the violation.

10-15-4.

A business that violates Code Section 10-15-2 may be fined by the administrator appointed pursuant to Code Section 10-1-395 not more than $500.00 for each customer´s record that contains personal information that is wrongfully disposed of or discarded; provided, however, in no event shall the total fine levied by the administrator exceed $50,000.00. Notwithstanding anything to the contrary contained in this Code section, it shall be an

affirmative defense to the wrongful disposing of or discarding of a customer´s record that contains personal information if the business can show that it used due diligence in its attempt to properly dispose of or discard such records.″

SECTION 9.

This section and Sections 1 through 7 and Section 10 of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval; Section 8 of this Act shall become effective on July 1, 2002.

SECTION 10.

All laws and parts of laws in conflict with this Act are repealed.