

Senate Bill 349

By: Senators Lee of the 29th, Stephens of the 51st and Kemp of the 46th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 8 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated,
2 relating to identity fraud, so as to change certain provisions regarding definitions; to change
3 certain provisions regarding investigations; to change certain provisions regarding authority
4 of the administrator; to change certain provisions regarding exemptions; to provide for
5 additional violations; to change certain provisions regarding damages, defenses, and service;
6 to change certain provisions regarding investigation results; to change certain provisions
7 regarding the cumulative nature of said article; to provide an effective date; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 8 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to
12 identity fraud, is amended by striking Code Section 16-9-120, relating to definitions, and
13 inserting in its place a new Code Section 16-9-120 to read as follows:

14 "16-9-120.

15 As used in this article, the term:

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

18 (2) 'Bureau' means the Georgia Bureau of Investigation.

19 ~~(2)~~(3) 'Business victim' means any individual or entity that provided money, credit,
20 goods, services, or anything of value to someone other than the intended recipient where
21 the intended recipient has not given permission for the actual recipient to receive it and
22 the individual or entity that provided money, credit, goods, services, or anything of value
23 has suffered financial loss as a direct result of the commission or attempted commission
24 of a violation of this article.

1 ~~(3)~~(4) 'Consumer victim' means any individual whose personal identifying information
 2 has been obtained, compromised, used, or recorded in any manner without the permission
 3 of that individual.

4 (5) 'Director' means the director of the bureau.

5 ~~(4)~~(6) 'Identifying information' shall include, but not be limited to:

- 6 (A) Current or former names;
- 7 (B) Social security numbers;
- 8 (C) Driver's license numbers;
- 9 (D) Checking account numbers;
- 10 (E) Savings account numbers;
- 11 (F) Credit and other financial transaction card numbers;
- 12 (G) Debit card numbers;
- 13 (H) Personal identification numbers;
- 14 (I) Electronic identification numbers;
- 15 (J) Digital or electronic signatures;
- 16 (K) Medical identification numbers;
- 17 (L) Birth dates;
- 18 (M) Mother's maiden name;
- 19 (N) Selected personal identification numbers;
- 20 (O) Tax identification numbers;
- 21 (P) State identification card numbers issued by state departments; or
- 22 (Q) Any other numbers or information which can be used to access a person's or
 23 entity's resources.

24 ~~(5)~~(7) 'Resources' includes, but is not limited to:

- 25 (A) A person's or entity's credit, credit history, credit profile, and credit rating;
- 26 (B) United States currency, securities, real property, and personal property of any kind;
- 27 (C) Credit, charge, and debit accounts;
- 28 (D) Loans and lines of credit;
- 29 (E) Documents of title and other forms of commercial paper recognized under Title 11;
- 30 (F) Any account, including a safety deposit box, with a financial institution as defined
 31 by Code Section 7-1-4, including a national bank, federal savings and loan association,
 32 or federal credit union or a securities dealer licensed by the Secretary of State or the
 33 federal Securities and Exchange Commission; and
- 34 (G) A person's personal history, including but not limited to records of such person's
 35 driving records; criminal, medical, or insurance history; education; or employment."

1 "16-9-127.

2 (a) The administrator shall have authority to initiate any proceedings and to exercise any
3 power or authority in the same manner as if he or she were acting under Part 2 of Article
4 15 of Chapter 1 of Title 10, as regards violations or potential violations of this article.

5 (b) A violation of this article shall also constitute a violation of Code Section 10-1-393."

6 **SECTION 4.**

7 Said article is further amended by striking subsection (a) of Code Section 16-9-128, relating
8 to exemptions, and inserting in its place a new subsection (a) to read as follows:

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

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

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

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

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

20 **SECTION 5.**

21 Said article is further amended by striking Code Section 16-9-130, relating to damages,
22 defenses, and service, and inserting in its place a new Code Section 16-9-130 to read as
23 follows:

24 "16-9-130.

25 (a) Any consumer victim who suffers injury or damages as a result of a violation of this
26 article may bring an action individually or as a representative of a class against the person
27 or persons engaged in such violations under the rules of civil procedure to seek equitable
28 injunctive relief and to recover general and punitive damages sustained as a consequence
29 thereof in any court having jurisdiction over the defendant; provided, however, punitive
30 damages shall be awarded only in cases of intentional violation. A claim under this article
31 may also be asserted as a defense, setoff, cross-claim, or counterclaim or third-party claim
32 against such person.

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

34 (c) If the court finds in any action that there has been a violation of this article, the
35 consumer victim injured by such violation shall, in addition to other relief provided for in

1 this Code section and irrespective of the amount in controversy, be awarded reasonable
2 attorney's fees and expenses of litigation incurred in connection with said action.

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

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

11 **SECTION 6.**

12 Said article is further amended by striking Code Section 16-9-131, relating to investigation
13 results, and Code Section 16-9-132, relating to cumulative nature of certain provisions, and
14 inserting in their place the following:

15 "16-9-131.

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

21 ~~16-9-132.~~

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

26 **SECTION 7.**

27 This Act shall become effective upon its approval by the Governor or upon its becoming law
28 without such approval.

29 **SECTION 8.**

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