

Senate Bill 431

By: Senators Hill of the 32nd and Loudermilk of the 52nd

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to
2 forgery and fraudulent practices, so as to add medical identity fraud to the provisions relating
3 to identity fraud; to provide for definitions; to provide for related matters; to repeal
4 conflicting laws; and for other purposes.

5 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

6 **SECTION 1.**

7 Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to forgery and
8 fraudulent practices, is amended by revising Article 8, relating to identity fraud, as follows:

9 "ARTICLE 8

10 16-9-120.

11 As used in this article, the term:

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

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

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

23 (4) 'Health care records' means records however maintained and in whatever form
24 regarding an individual's health, including, but not limited to, doctor's and nurse's

25 examinations and other notes, examination notes of other medical professionals, hospital
 26 records, rehabilitation facility records, nursing home records, assisted living facility
 27 records, results of medical tests, X-rays, CT scans, MRI scans, vision examinations,
 28 pharmacy records, prescriptions, hospital charts, surgical records, mental health
 29 treatments and counseling, dental records, and physical therapy notes and evaluations.

30 ~~(4)~~(5) 'Identifying information' shall include, but not be limited to:

- 31 (A) Current or former names;
- 32 (B) Social security numbers;
- 33 (C) Driver's license numbers;
- 34 (D) Checking account numbers;
- 35 (E) Savings account numbers;
- 36 (F) Credit and other financial transaction card numbers;
- 37 (G) Debit card numbers;
- 38 (H) Personal identification numbers;
- 39 (I) Electronic identification numbers;
- 40 (J) Digital or electronic signatures;
- 41 (K) Medical identification numbers;
- 42 (L) Birth dates;
- 43 (M) Mother's maiden name;
- 44 (N) Selected personal identification numbers;
- 45 (O) Tax identification numbers;
- 46 (P) State identification card numbers issued by state departments; ~~or~~
- 47 (Q) Veteran and military medical identification numbers; and
- 48 ~~(R)~~ Any other numbers or information which can be used to access a person's or
- 49 entity's resources or health care records.

50 (6) 'Medical identity theft victim' means any individual whose personal identifying
 51 information has been obtained, compromised, used, or recorded in any manner without
 52 the permission of that individual.

53 ~~(5)~~(7) 'Resources' includes, but is not limited to:

- 54 (A) A person's or entity's credit, credit history, credit profile, and credit rating;
- 55 (B) United States currency, securities, real property, and personal property of any kind;
- 56 (C) Credit, charge, and debit accounts;
- 57 (D) Loans and lines of credit;
- 58 (E) Documents of title and other forms of commercial paper recognized under Title 11;
- 59 (F) Any account, including a safety deposit box, with a financial institution as defined
- 60 by Code Section 7-1-4, including a national bank, federal savings and loan association,

61 or federal credit union or a securities dealer licensed by the Secretary of State or the
 62 federal Securities and Exchange Commission; ~~and~~
 63 (G) A person's personal history, including, but not limited to, records of such person's
 64 driving records; criminal, medical, or insurance history; education; or employment; and
 65 (H) A person's health insurance, health savings accounts, health spending accounts,
 66 flexible spending accounts, medicare accounts, Medicaid accounts, dental insurance,
 67 vision insurance, and other forms of health insurance and health benefit plans.

68 16-9-121.

69 (a) A person commits the offense of identity fraud when he or she willfully and
 70 fraudulently:

71 (1) Without authorization or consent, uses or possesses with intent to fraudulently use
 72 identifying information concerning a person;

73 (2) Uses identifying information of an individual under 18 years old over whom he or
 74 she exercises custodial authority;

75 (3) Uses or possesses with intent to fraudulently use identifying information concerning
 76 a deceased individual;

77 (4) Creates, uses, or possesses with intent to fraudulently use any counterfeit or fictitious
 78 identifying information concerning a fictitious person with intent to use such counterfeit
 79 or fictitious identification information for the purpose of committing or facilitating the
 80 commission of a crime or fraud on another person; or

81 (5) Without authorization or consent, creates, uses, or possesses with intent to
 82 fraudulently use any counterfeit or fictitious identifying information concerning a real
 83 person with intent to use such counterfeit or fictitious identification information for the
 84 purpose of committing or facilitating the commission of a crime or fraud on another
 85 person.

86 (b) A person commits the offense of medical identity fraud when he or she willfully and
 87 fraudulently for the purpose of obtaining medical care, prescription drugs, or other health
 88 care services or money or other financial gain:

89 (1) Without authorization or consent, uses or possesses with intent to fraudulently use
 90 identifying information concerning a person;

91 (2) Uses identifying information of an individual under 18 years old over whom he or
 92 she exercises custodial authority;

93 (3) Uses or possesses with intent to fraudulently use identifying information concerning
 94 a deceased individual;

95 (4) Creates, uses, or possesses with intent to fraudulently use any counterfeit or fictitious
 96 identifying information concerning a fictitious person with intent to use such counterfeit

97 or fictitious identification information for the purpose of committing or facilitating the
 98 commission of a crime or fraud on another person; or

99 (5) Without authorization or consent, creates, uses, or possesses with intent to
 100 fraudulently use any counterfeit or fictitious identifying information concerning a real
 101 individual with intent to use such counterfeit or fictitious identification information for
 102 the purpose of committing or facilitating the commission of a crime or fraud on another
 103 person.

104 ~~(b)~~(c) A person commits the offense of identity fraud or medical identity fraud by receipt
 105 of fraudulent identification information when he or she willingly accepts for identification
 106 purposes identifying information which he or she knows to be fraudulent, stolen,
 107 counterfeit, or fictitious. In any prosecution under this subsection, it shall not be necessary
 108 to show a conviction of the principal thief, counterfeiter, or fraudulent user.

109 ~~(c)~~(d) The offenses created by this Code section shall not merge with any other offense.

110 ~~(d)~~(e) This Code section shall not apply to a person under the age of 21 who uses a
 111 fraudulent, counterfeit, or other false identification card for the purpose of obtaining entry
 112 into a business establishment or for purchasing items which he or she is not of legal age to
 113 purchase.

114 16-9-121.1.

115 (a) A person commits the offense of aggravated identity fraud when he or she willfully and
 116 fraudulently uses any counterfeit or fictitious identifying information concerning a real,
 117 fictitious, or deceased person with intent to use such counterfeit or fictitious identifying
 118 information for the purpose of obtaining employment.

119 (b) The offense created by this Code section shall not merge with any other offense.

120 16-9-122.

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

126 16-9-123.

127 (a) The administrator appointed under Code Section 10-1-395 shall have the authority to
 128 investigate any complaints of consumer victims regarding identity fraud. In conducting
 129 such investigations, the administrator shall have all investigative powers which are
 130 available to the administrator under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair

131 Business Practices Act of 1975.' If, after such investigation, the administrator determines
 132 that a person has been a consumer victim of identity fraud in this state, the administrator
 133 shall, at the request of the consumer victim, provide the consumer victim with certification
 134 of the findings of such investigation. Copies of any and all complaints received by any law
 135 enforcement agency of this state regarding potential violations of this article shall be
 136 transmitted to the Georgia Bureau of Investigation. The Georgia Bureau of Investigation
 137 shall maintain a repository for all complaints in the State of Georgia regarding identity
 138 fraud. Information contained in such repository shall not be subject to public disclosure.
 139 The information in the repository may be transmitted to any other appropriate investigatory
 140 agency or entity. Consumer victims of identity fraud may file complaints directly with the
 141 Governor's Office of Consumer Affairs, the Georgia Bureau of Investigation, or with local
 142 law enforcement. Employees of the Governor's Office of Consumer Affairs may
 143 communicate with consumer victims. Any and all transmissions authorized under this
 144 Code section may be transmitted electronically, provided that such transmissions are made
 145 through a secure channel for the transmission of such electronic communications or
 146 information, the sufficiency of which is acceptable to the Governor's Office of Consumer
 147 Affairs. Nothing in this Code section shall be construed to preclude any otherwise
 148 authorized law enforcement or prosecutorial agencies from conducting investigations and
 149 prosecuting offenses of identity fraud.

150 (b) The provisions of this Code section shall not apply to medical identity theft victims.

151 16-9-124.

152 The Attorney General and prosecuting attorneys shall have the authority to conduct the
 153 criminal prosecution of all cases of identity fraud or medical identity fraud.

154 16-9-125.

155 The General Assembly finds that identity fraud or medical identity fraud involves the use
 156 of identifying information which is uniquely personal to the consumer victim, medical
 157 identity theft victim, or business victim of that identity fraud or medical identity fraud and
 158 which information is considered to be in the lawful possession of the consumer victim,
 159 medical identity theft victim, or business victim wherever the consumer victim, medical
 160 identity theft victim, or business victim currently resides or is found. Accordingly, ~~the~~
 161 ~~fraudulent use of that~~ such fraudulently used information ~~involves the fraudulent use of~~
 162 ~~information that is,~~ for the purposes of this article, is found within the county where the
 163 consumer victim, medical identity theft victim, or business victim of the identity fraud or
 164 medical identity fraud resides or is found. Accordingly, in a proceeding under this article,
 165 the crime ~~will~~ shall be considered to have been committed in any county where the person

166 whose means of identification or financial information was appropriated resides or is
167 found, or in any county in which any other part of the offense took place, regardless of
168 whether the defendant was ever actually in such county.

169 16-9-125.1.

170 (a) A person who has learned or reasonably believes that he or she has been the victim of
171 identity fraud or medical identity fraud may contact the local law enforcement agency with
172 jurisdiction over his or her actual residence for the purpose of making an incident report.
173 The law enforcement agency having jurisdiction over the complainant's residence shall
174 make a report of the complaint and provide the complainant with a copy of the report.
175 Where jurisdiction for the investigation and prosecution of the complaint lies with another
176 agency, the law enforcement agency making the report shall forward a copy to the agency
177 having such jurisdiction and shall advise the complainant that the report has been so
178 forwarded.

179 (b) Nothing in this Code section shall be construed so as to interfere with the discretion
180 of a law enforcement agency to allocate resources for the investigation of crimes. A report
181 created pursuant to this Code section is shall not be required to be counted as an open case
182 file.

183 16-9-126.

184 (a) A violation of this article, other than a violation of Code Section 16-9-121.1 or
185 16-9-122, shall be punishable by imprisonment for not less than one nor more than ten
186 years or a fine not to exceed \$100,000.00, or both. Any person who commits such a
187 violation for the second or any subsequent offense shall be punished by imprisonment for
188 not less than three nor more than 15 years, a fine not to exceed \$250,000.00, or both.

189 (a.1) A violation of Code Section 16-9-121.1 shall be punishable by imprisonment for not
190 less than one nor more than 15 years, a fine not to exceed \$250,000.00, or both, and such
191 sentence shall run consecutively to any other sentence which the person has received.

192 (b) A violation of this article which does not involve the intent to commit theft or
193 appropriation of any property, resource, or other thing of value that is committed by a
194 person who is less than 21 years of age shall be punishable by imprisonment for not less
195 than one nor more than three years or a fine not to exceed \$5,000.00, or both.

196 (c) Any person found guilty of a violation of this article may be ordered by the court to
197 make restitution to any consumer victim, medical identity theft victim, or any business
198 victim of such fraud.

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

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

203 16-9-127.

204 The administrator shall have authority to initiate any proceedings and to exercise any
 205 power or authority in the same manner as if he or she were acting under Part 2 of Article
 206 15 of Chapter 1 of Title 10, as regards violations or potential violations of this article
 207 pertaining to identity fraud.

208 16-9-128.

209 (a) The prohibitions set forth in Code Sections 16-9-121, 16-9-121.1, and 16-9-122 shall
 210 not apply to nor shall any cause of action arise under Code Sections 16-9-129 and 16-9-131
 211 for:

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

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

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

219 (4) The good faith use of identifying information with the permission of the affected
 220 person.

221 (b) The exemptions provided in subsection (a) of this Code section shall not apply to a
 222 person intending to further a scheme to violate Code Section 16-9-121, 16-9-121.1, or
 223 16-9-122.

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

229 16-9-129.

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

234 16-9-130.

235 (a) Any consumer victim or medical identity theft victim who suffers injury or damages
236 as a result of a violation of this article may bring an action individually or as a
237 representative of a class against the person or persons engaged in such violations under the
238 rules of civil procedure to seek equitable injunctive relief and to recover general and
239 punitive damages sustained as a consequence thereof in any court having jurisdiction over
240 the defendant; provided, however, that punitive damages shall be awarded only in cases of
241 intentional violation. A claim under this article may also be asserted as a defense, setoff,
242 cross-claim, or counterclaim or third-party claim against such person.

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

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

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

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

257 16-9-131.

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

263 16-9-132.

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

268

SECTION 2.

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