



TEXAS LAWS RELATING TO IDENTITY THEFT

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INTRODUCTION

The Texas Legislature has enacted both criminal and civil statutes protecting victims of identity theft and financial fraud. This publication serves as a brief summary of those laws.

CRIMINAL AND CIVIL STATUTES

It is important to understand the difference between criminal and civil statutes. Criminal laws protect society as a whole. When a crime has been committed, the victim reports the crime to the appropriate law enforcement agency, *e.g.*, the local police. The law enforcement agency investigates the report, and if it is found that a crime may have been committed, the agency makes an arrest. A criminal case is filed in the name of the state against the criminal. The victim is not a party to a criminal court proceeding; however, the victim may be asked to be a witness. The case is handled by a prosecutor who is a government employee. The State must prove its case beyond a reasonable doubt. If the criminal is convicted, then it may be possible for a victim to receive restitution when the court allows it.

Many crimes are also violations of civil laws. When a crime is also a violation of a civil law, the victim may file a civil lawsuit against the criminal. A civil lawsuit is made in the name of the victim and not in the name of the state, so the victim is a party to a civil lawsuit. In a civil case, the person that files the lawsuit is called the Plaintiff, and the person against whom the lawsuit is filed is called the Defendant. The victim/plaintiff can be represented by an attorney in civil court, or the plaintiff can represent himself or herself. In most civil cases the plaintiff must prove his or her case by a preponderance of the evidence. This is a less difficult burden than proving a case beyond reasonable doubt. If the plaintiff obtains a judgment against the defendant, the plaintiff can ask that the defendant be ordered to pay money damages. Damages compensate for the losses that a plaintiff has suffered as a direct result of illegal activity. Damages that are commonly suffered by victims of identity theft are the value of property stolen, lost wages for time missed at work due to the identity theft, and out-of-pocket expenses incurred in trying to restore stolen identity.

CRIMINAL STATUTES

The following Texas statutes make Identity Theft a crime:

Texas Penal Code § 32.51, *Fraudulent Use or Possession of Identifying Information*. It is a felony crime to obtain, possess, transfer, or use a person's "identifying information" or "telecommunication access device" with the intent to harm the person. Personal identifying information includes name, social security number, date of birth, government-issued identification numbers, address, bank routing codes, account numbers, and biometrics such as fingerprints, retina or iris image, and voice print. Telecommunication access devices are credit cards, debit cards, PIN numbers, or other means of accessing accounts electronically. A court can order the defendant to make restitution to the victim for lost income and other expenses except attorneys fees incurred as a result of the identity theft.

Texas Penal Code § 16.02, *Unlawful Interception, Use, or Disclosure of Wire, Oral, or Electronic Communications*. It is a crime to intentionally intercept or to attempt to intercept a wire, oral, or electronic communication or to use such information without a court order or other authorization. This includes situations where a criminal intentionally monitors a person's computer use in order to commit identity theft. This does not prevent a parent from monitoring a child's computer activity or an employer from monitoring employees' email or internet activity.

Texas Penal Code § 16.04, *Unlawful Access to Stored Communications*. It is a felony crime to gain access to electronically stored material without the owner's consent and with the intent to harm a person.

Texas Penal Code § 31.03, *Theft*. Theft is the nonconsensual appropriation of another's property. In other words, taking another person's property without consent. If the value of the property stolen exceeds \$1500, then the crime is a felony. If the victim is a person over the age of 65, the punishment is increased to the next higher level.

Texas Penal Code § 32.21, *Forgery*. It is a crime to alter a writing or other instrument so that it appears to be the act of someone who did not authorize the act. This includes altering credit cards or credit card receipts and forging an account holder's signature on a check or money transfer.

Texas Penal Code § 32.31, *Credit Card or Debit Card Abuse*. It is a crime to use a credit or debit card that does not belong to you.

Texas Penal Code § 32.32, *False Statement to Obtain Property or Credit*. It is a crime to lie in order to obtain credit or property. This includes using another person's identity or identifying information to get credit or purchase property.

Texas Penal Code § 33.02, *Breach of Computer Security*. It is a crime to knowingly access a computer, computer network, or computer system without the owner's consent. If the criminal

knowingly obtains a benefit of more than \$1500 from the computer breach, then the act is a felony.

Texas Penal Code § 22.04, *Injury to a Child, Elderly Individual, or Disabled Individual*. It is a crime for a person that owns or is employed by a nursing home, assisted living center, group home, or other type of care facility to financially exploit a resident.

Texas Code of Criminal Procedure § 42.037, *Restitution*. In addition to any other punishment, a court may order a convicted defendant to pay restitution to the crime victim. If a victim has requested restitution and the court does not order it, the court must state on the record the reason restitution was denied. The court can order a defendant to return stolen property or pay the value of property that was damaged, lost, or stolen.

CIVIL STATUTES

Most Texas civil laws regarding identity theft are found in the Texas Business and Commerce Code. In 2007, the Legislature revised the code effective April 1, 2009. The revisions include a renumbering of the code sections relating to identity theft. The first cite of each statute below is the code section that is effective through March 31, 2009. Renumbered sections are indicated in the parentheses and become effective April 1, 2009.

Texas Business and Commerce Code §§ 48.001, *et seq.* (521.001, *et seq.*), *Identity Theft Enforcement and Protection Act*. A person cannot obtain, transfer, possess, or use another's personal identifying information without consent in order to get something of value in another's name. Businesses must take reasonable steps to safeguard customers' personal identifying information and must notify customers of any electronic security breach involving their sensitive personal information. Identity theft is a deceptive trade practice under the Texas Deceptive Trade Practices – Consumer Protection Act which means that a consumer that sues an identity thief may, in some cases, recover treble damages.

Texas Business and Commerce Code § 48.051, *et seq.* (48.001, *et seq.*), *Consumer Protection Against Computer Spyware Act*. A person may not copy software onto a computer he does not own for the purpose of gathering personal identifying information. A violation of this law is a deceptive trade practice under the Texas Deceptive Trade Practices – Consumer Protection Act.

Texas Business and Commerce Code §§ 48.003-48.004, *Anti-Phishing Act*. A person may not use the internet to induce a person to provide personal identifying information for anything but a legitimate business purpose. This includes both web pages and email.

Texas Business and Commerce Code § 35.585 (523.001), *Extension of Credit to Victim of Identity Theft*. To be considered a victim of identity theft, a victim must have filed a criminal complaint alleging the fraudulent use of personal identifying information under Penal Code § 32.51. An identity theft victim cannot be denied credit on the basis of the fact that he or she has been a victim of identity theft. This does not prevent a business from denying a victim credit based on a reason other than that the applicant has been an identity theft victim.

Texas Business and Commerce Code § 35.591 (523.003), *Notation of Forged Check*. If a person has filed a criminal complaint alleging identity theft, and the victim closes an account at a financial institution as a result of the identity theft and provides a copy of the criminal complaint to the institution, then the victim may request that the institution return checks with the notation “forgery” and process those checks as forgeries. This means that the forged checks are not paid out of your account. This will usually result in a loss to the financial institution.

Texas Business and Commerce Code § 48.202 (521.101, *et seq.*). *Court Order to Declare Individual a Victim of Identity Theft*. A person may request that a civil court declare the person to be a victim of identity theft. This law is useful when a victim has been unable to restore his or her credit because creditors and credit reporting agencies do not believe that the person is truly a victim of identity theft. To obtain a court order declaring that a person is an identity theft victim, the individual must file an application in a civil district court. The court holds a hearing in which the victim produces evidence of the identity theft. If the evidence is sufficient, the court can execute an order declaring the person to be an identity theft victim. The victim may request that the records of the proceeding be sealed.

Texas Business and Commerce Code §§ 17.41, *et seq.* - *Texas Deceptive Trade Practices – Consumer Protection Act*. This Act allows consumers who have been the victim of certain types of scams, financial frauds, and identity thefts to get an injunction, that is, an order prohibiting the Defendant from engaging in the fraudulent conduct. The Act also provides for enhanced damages for consumers who can prove that the Defendant’s actions were unconscionable. The Texas Bar Association has published an excellent publication describing the Deceptive Trade Practices Act. You may get a copy of the publication by contacting VICARS at 1-888-343-4414.

Texas Civil Practice and Remedies Code § 18.062. This statute makes business records inadmissible in court if they were provided to law enforcement personnel in connection with the investigation of an identity theft case. The same records can be admitted in a civil case if the party seeking admission is able to obtain the records from a different source.

Texas Insurance Code §§ 706.01, *et seq.* – *Identity Theft Insurance*. Chapter 706 of the Texas Insurance Code regulates companies that sell identity theft insurance to consumers. Insurers may offer identity theft coverage as a separate policy or as a rider or endorsement to property, casualty, or group insurance policies. The Texas Insurance Commissioner has the authority to make rules regulating identity theft insurance rates and policies.