

47-18-2101. Short title. —

This part shall be known and may be cited as the “Tennessee Identity Theft Deterrence Act of 1999.”
[Acts 1999, ch. 201, § 2.]

47-18-2102. Definitions. —

As used in this part and in the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, unless the context otherwise requires:

(1) “Ascertained loss” means an identifiable deprivation, detriment or injury arising from the identity theft or from any unfair, misleading or deceptive act or practice even when the precise amount of the loss is not known. Whenever a violation of this part has occurred, an ascertainable loss shall be presumed to exist;

(2) “Attorney general” means the office of the Tennessee attorney general and reporter;

(3) “Division” means the division of consumer affairs of the department of commerce and insurance;

(4) “Financial document” means any credit card, debit card, check or checking account information or number, savings deposit slip or savings account information or number, or similar financial account or account number, including but not limited to, a money market account, certificate of deposit, or other type of interest generating account with a bank, savings and loan or credit union account, or any other financial institution, mutual fund account, 401K account, individual retirement account, retirement account, or other stock account information, savings bond or other bond, credit line, equity line or other line of credit which the possessor of the account has the right to draw against;

(5) “Identification documents” means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be a driver license, nondriver identification cards, birth certificates, marriage certificates, divorce certificates, passports, immigration documents, social security cards, employee identification cards, cards issued by the government to provide benefits of any sort, health care benefit cards, or health benefit organization, insurance company or managed care organization cards for the purpose of identifying a person eligible for services;

(6) “Identity theft” means:

(A) Obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, for unlawful economic benefit, one or more identification documents or personal identification numbers of another person; or

(B) Otherwise obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, for unlawful economic benefit, one (1) or more financial documents of another person;

(7) “Person” means a natural person, consumer, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized;

(8) “Personal identification number” means any number that is assigned by the government to identify a particular person, including, but not limited to, social security number, federal tax payer identification number, Medicaid, Medicare or TennCare number which identifies a particular person eligible for benefits, any number assigned to a person as part of a licensure or registration process, such as a board of professional responsibility number, driver license number and passport number and any number assigned by an insurance company, health maintenance organization, managed care organization

or other health benefit organization, for the purposes of identifying a particular person eligible for services; and

(9) “Tennessee Consumer Protection Act” means the Tennessee Consumer Protection Act of 1977, as amended, as compiled in part 1 of this chapter and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this definition, related statutes include but are not limited to: the Prize and Promotion Act, § [47-18-120](#); Health Club Act, as compiled in part 3 of this chapter; Buyer's Clubs Act, as compiled in part 5 of this chapter; Home Solicitations Sales Act of 1974, as compiled in part 7 of this chapter; Tennessee Credit Services Businesses Act, as compiled in part 10 of this chapter; Consumer Telemarketing Protection Act of 1990, as compiled in part 15 of this chapter; Unsolicited Telefacsimile Advertising Act, as compiled in part 16 of this chapter; Tennessee Employment Agency Act, as compiled in part 17 of this chapter; and Membership Camping Act, as compiled in title [66](#), chapter 32, part 3.

[Acts 1999, ch. 201, § 3.]

47-18-2103. Prohibited practices. —

It is unlawful for any person to directly or indirectly:

(1) Engage in identity theft; or

(2) Engage in any unfair, deceptive, misleading act or practice for the purpose of directly or indirectly engaging in identity theft.

[Acts 1999, ch. 201, § 4.]

47-18-2104. Private rights of action. —

(a) Any party commencing a private action pursuant to this part must provide a copy of the complaint and all other initial pleadings to the division of consumer affairs and upon entry of any judgment, order or decree of the action, shall mail a copy of such judgment, order or decree to the division of consumer affairs within five (5) days of entry of the judgment, order or decree.

(b) A copy of any notice of appeal shall be served by the appellant upon the director of the division, who in the public interest may intervene.

(c) A private action to enforce any liability created under this part may be brought within two (2) years from the date the liability arises, except that where a defendant has concealed the liability to that person, under this part, the action may be brought within two (2) years after discovery by the person of the liability. No action brought by the division shall be subject to the limitation of actions contained herein.

(d) In any private action commenced under this part, if the private party establishes that identity theft was engaged in willfully or knowingly, the court may award three (3) times the actual damages and may provide such other relief as it considers necessary and proper.

(e) The action may be brought in a court of competent jurisdiction in the county where the identity theft or unfair, deceptive or misleading act or practice took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(f) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part; provided, that such action shall not be filed once the division has commenced a proceeding pursuant to this part or the Tennessee Consumer Protection Act, as compiled in part 1 of this chapter.

(g) Upon a finding by the court that a provision of this part has been violated, the court may award to the person bringing such action reasonable attorneys' fees and costs.

[Acts 1999, ch. 201, § 5.]

47-18-2105. Civil penalties and remedies. —

(a) Whenever the division has reason to believe that any person has engaged in, is engaging in, or based upon information received from another law enforcement agency, is about to engage in any act or practice declared unlawful by this part and that proceedings would be in the public interest, the attorney general and reporter, at the request of the division, may bring an action in the name of the state against such person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such act or practice. Additionally, the state may request an asset freeze or any other appropriate and necessary orders against such person.

(b) The action may be brought in the chancery or circuit court in Davidson County or in a court of competent jurisdiction in the county where the identity theft, unfair, misleading or deceptive act or practice took place or is about to take place or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(c) The courts are authorized to issue orders and injunctions to restrain and prevent violations of this part or issue any other necessary or appropriate relief or orders. Such orders and injunctions shall be issued without bond to the state of Tennessee.

(d) Notwithstanding any other provision of law, a violation of this part shall be punishable by a civil penalty of whichever of the following is greater: ten thousand dollars (\$10,000), five thousand dollars (\$5,000) per day for each day that a person's identity has been assumed or ten (10) times the amount obtained or attempted to be obtained by the person using the identity theft. This civil penalty is supplemental, cumulative and in addition to any other penalties and relief available under the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, or other laws, regulations or rules.

(e) In any successful action commenced under this part, any ascertainable loss that a person has incurred as a result of the identity theft or misleading, deceptive or unfair practices used to engage in identify theft shall be recovered as restitution for each such person. The person shall also be awarded statutory interest on that ascertainable loss.

(f) In any successful action commenced by the division under this part, the court shall also order reimbursement to the division of the reasonable attorneys' fees, costs and expenses of the investigation and prosecution under this part.

(g) No court costs or litigation fees or costs of any sort can be taxed against the state in any action commenced under this part.

(h) Any knowing or willful violation of the terms of an injunction or order issued pursuant to this part in an action commenced by the attorney general and reporter shall be punishable by a civil penalty of not more than five thousand dollars (\$5,000) for each and every violation of the order recoverable by the state, in addition to any other appropriate relief, including, but not limited to, contempt sanctions and the awarding of attorneys' fees and costs to the state for any filings relating to violations of any order under this part.

(i) An order or judgment issued as a result of an action commenced by the division shall in no way affect individual rights of action which may exist independent of the recovery of money or property received under such order or judgment. If a particular person receives restitution as a result of an action

commenced by the attorney general and reporter, those funds shall act only as a set-off against any award of money received in the person's private right of action proceedings.

[Acts 1999, ch. 201, § 6.]

47-18-2106. Violation of Tennessee Consumer Protection Act. —

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in that act, in addition to the penalties and remedies set forth in this part.

(c) If the division has reason to believe that any person has violated any provision of this part, the attorney general and reporter, at the request of the division, may institute a proceeding under this chapter.

[Acts 1999, ch. 201, § 7.]

47-18-2107. Release of personal consumer information. —

(a) As used in this section, unless the context otherwise requires:

(1) “Breach of the security of the system” means unauthorized acquisition of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the information holder. Good faith acquisition of personal information by an employee or agent of the information holder for the purposes of the information holder is not a breach of the security of the system; provided, that the personal information is not used or subject to further unauthorized disclosure;

(2) “Information holder” means any person or business that conducts business in this state, or any agency of the state of Tennessee or any of its political subdivisions, that owns or licenses computerized data that includes personal information; and

(3) (A) “Personal information” means an individual's first name or first initial and last name, in combination with any one (1) or more of the following data elements, when either the name or the data elements are not encrypted:

(i) Social security number;

(ii) Driver license number; or

(iii) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; and

(B) “Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(b) Any information holder shall disclose any breach of the security of the system, following discovery or notification of the breach in the security of the data, to any resident of Tennessee whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (d), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(c) Any information holder that maintains computerized data that includes personal information that the information holder does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(d) The notification required by this section may be delayed, if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(e) For purposes of this section, notice may be provided by one (1) of the following methods:

(1) Written notice;

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic

records and signatures set forth in 15 U.S.C. § 7001; or

(3) Substitute notice, if the information holder demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds five hundred thousand (500,000), or the information holder does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice, when the information holder has an e-mail address for the subject persons;

(B) Conspicuous posting of the notice on the information holder's internet website page, if the information holder maintains such website page; and

(C) Notification to major statewide media.

(f) Notwithstanding subsection (e), an information holder that maintains its own notification procedures as part of an information security policy for the treatment of personal information, and is otherwise consistent with the timing requirements of this section, shall be deemed to be in compliance with the notification requirements of this section, if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(g) In the event that a person discovers circumstances requiring notification pursuant to this section of more than one thousand (1,000) persons at one time, the person shall also notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. § 1681a, of the timing, distribution and content of the notices.

(h) Any customer of an information holder who is a person or business entity, but who is not an agency of the state or any political subdivision of the state, and who is injured by a violation of this section, may institute a civil action to recover damages and to enjoin the person or business entity from further action in violation of this section. The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(i) The provisions of this section shall not apply to any person who is subject to the provisions of Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

[Acts 2005, ch. 473, § 1.]