

CHAPTER 365

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 04-1134

BY REPRESENTATIVE(S) Miller, Borodkin, Boyd, Cloer, Coleman, Crane, Fairbank, Frangas, Garcia, Hefley, Jahn, Johnson R., Marshall, May M., McFadyen, Merrifield, Paccione, Ragsdale, Romanoff, Rose, Spence, Spradley, Stafford, Weddig, White, and Williams S.;
also SENATOR(S) Arnold.

AN ACT

**CONCERNING THE ADMINISTRATION OF PROGRAMS RELATING TO THE PROHIBITION AGAINST USING
IDENTITY INFORMATION FOR AN UNLAWFUL PURPOSE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 2 of article 1 of title 42, Colorado Revised Statutes, is amended
BY THE ADDITION OF A NEW SECTION to read:

42-1-222. Motor vehicle investigations unit. THE DEPARTMENT SHALL ESTABLISH A MOTOR VEHICLE INVESTIGATIONS UNIT TO INVESTIGATE AND PREVENT FRAUD CONCERNING THE USE OF DRIVER'S LICENSES, IDENTIFICATION CARDS, MOTOR VEHICLE TITLES AND REGISTRATIONS, AND OTHER MOTOR VEHICLE DOCUMENTS ISSUED BY THE DEPARTMENT. SUCH UNIT SHALL ALSO ASSIST VICTIMS OF IDENTITY THEFT BY MEANS OF SUCH DOCUMENTS.

SECTION 2. Part 1 of article 5 of title 16, Colorado Revised Statutes, is amended
BY THE ADDITION OF A NEW SECTION to read:

16-5-103. Identity theft victims. (1) (a) A PERSON WHOSE IDENTIFYING INFORMATION HAS BEEN MISTAKENLY ASSOCIATED WITH AN ARREST, SUMMONS, SUMMONS AND COMPLAINT, FELONY COMPLAINT, INFORMATION, INDICTMENT, OR CONVICTION IS A VICTIM OF IDENTITY THEFT FOR THE PURPOSES OF THIS SECTION.

(b) IF A CRIMINAL CHARGE IS NOT PENDING, A VICTIM OF IDENTITY THEFT MAY, WITH NOTICE TO THE PROSECUTOR, PETITION THE COURT WITH JURISDICTION OVER THE ARREST, SUMMONS, SUMMONS AND COMPLAINT, FELONY COMPLAINT, INFORMATION, INDICTMENT, OR CONVICTION TO JUDICIALLY DETERMINE THE PERSON'S FACTUAL

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INNOCENCE. ALTERNATIVELY, THE COURT, ON ITS OWN MOTION, MAY MAKE SUCH A DETERMINATION IN THE CASE. IF A CRIMINAL CHARGE IS PENDING, THE PROSECUTING ATTORNEY MAY REQUEST THE COURT TO MAKE SUCH A DETERMINATION. A JUDICIAL DETERMINATION OF FACTUAL INNOCENCE MADE PURSUANT TO THIS SECTION MAY BE DETERMINED, WITH OR WITHOUT A HEARING, UPON DECLARATIONS, AFFIDAVITS, OR POLICE REPORTS OR UPON ANY OTHER RELEVANT, MATERIAL, RELIABLE INFORMATION SUBMITTED BY THE PARTIES AND RECORDS OF THE COURT.

(c) IF THE COURT DETERMINES THAT THERE IS NO REASONABLE CAUSE TO BELIEVE THAT A VICTIM OF IDENTITY THEFT COMMITTED THE OFFENSE FOR WHICH THE VICTIM'S IDENTITY HAS BEEN MISTAKENLY ASSOCIATED WITH AN ARREST, SUMMONS, SUMMONS AND COMPLAINT, FELONY COMPLAINT, INFORMATION, INDICTMENT, OR CONVICTION, THE COURT SHALL FIND THE VICTIM FACTUALLY INNOCENT OF THAT OFFENSE. IF THE VICTIM IS FOUND FACTUALLY INNOCENT, THE COURT SHALL ISSUE AN ORDER CERTIFYING THIS DETERMINATION.

(2) AFTER THE COURT HAS DETERMINED THAT A PERSON IS FACTUALLY INNOCENT, THE COURT MAY ORDER THE NAME AND ASSOCIATED IDENTIFYING INFORMATION CONTAINED IN COURT RECORDS, FILES, OR A CRIMINAL JUSTICE RECORD TO BE LABELED TO SHOW THAT THE INFORMATION IS NOT ACCURATE AND DOES NOT REFLECT THE PERPETRATOR'S IDENTITY BECAUSE THE VICTIM OF IDENTITY THEFT WAS IMPERSONATED.

(3) A PERSON WHO KNOWS OR REASONABLY SUSPECTS THAT HIS OR HER IDENTIFYING INFORMATION HAS BEEN UNLAWFULLY USED BY ANOTHER PERSON MAY INITIATE A LAW ENFORCEMENT INVESTIGATION BY CONTACTING THE LOCAL LAW ENFORCEMENT AGENCY THAT HAS JURISDICTION OVER THE VICTIM'S RESIDENCE OR OVER THE PLACE WHERE A CRIME WAS COMMITTED. SUCH AGENCY SHALL TAKE A POLICE REPORT OF THE MATTER, PROVIDE THE COMPLAINANT WITH A COPY OF THAT REPORT, AND BEGIN AN INVESTIGATION OF THE FACTS. IF THE SUSPECTED CRIME WAS COMMITTED IN A DIFFERENT JURISDICTION, THE LOCAL LAW ENFORCEMENT AGENCY MAY REFER THE MATTER TO THE LOCAL LAW ENFORCEMENT AGENCY WHERE THE SUSPECTED CRIME WAS COMMITTED FOR INVESTIGATION OF THE FACTS.

(4) A COURT THAT HAS ISSUED A DETERMINATION OF FACTUAL INNOCENCE PURSUANT TO THIS SECTION MAY AT ANY TIME VACATE THAT DETERMINATION IF THE PETITION, OR INFORMATION SUBMITTED IN SUPPORT OF THE PETITION, CONTAINS A MATERIAL MISREPRESENTATION OR FRAUD. IF THE COURT VACATES A DETERMINATION OF FACTUAL INNOCENCE, THE COURT SHALL ISSUE AN ORDER RESCINDING ANY ORDERS MADE PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(5) FOR THE PURPOSES OF THIS SECTION:

(a) "BIOMETRIC DATA" MEANS DATA, SUCH AS FINGERPRINTS, VOICE PRINTS, OR RETINA AND IRIS PRINTS, THAT CAPTURE, REPRESENT, OR ENABLE THE REPRODUCTION OF THE UNIQUE PHYSICAL ATTRIBUTES OF AN INDIVIDUAL.

(b) "IDENTIFYING INFORMATION" MEANS INFORMATION THAT, ALONE OR IN CONJUNCTION WITH OTHER INFORMATION, IDENTIFIES AN INDIVIDUAL, INCLUDING BUT NOT LIMITED TO SUCH INDIVIDUAL'S:

(I) NAME;

(II) ADDRESS;

(III) BIRTH DATE;

(IV) TELEPHONE, SOCIAL SECURITY, TAXPAYER IDENTIFICATION, DRIVER'S LICENSE, IDENTIFICATION CARD, ALIEN REGISTRATION, GOVERNMENT PASSPORT, OR CHECKING, SAVINGS, OR DEPOSIT ACCOUNT NUMBER;

(V) BIOMETRIC DATA;

(VI) UNIQUE ELECTRONIC IDENTIFICATION DEVICE;

(VII) TELECOMMUNICATION IDENTIFYING DEVICE.

(c) "TELECOMMUNICATION IDENTIFYING DEVICE" MEANS A NUMBER, CODE, OR MAGNETIC OR ELECTRONIC DEVICE THAT ENABLES THE HOLDER TO USE TELECOMMUNICATIONS TECHNOLOGY TO ACCESS AN ACCOUNT; OBTAIN MONEY, GOODS, OR SERVICES; OR TRANSFER FUNDS.

SECTION 3. 18-1-202 (7) (c) (I), Colorado Revised Statutes, is amended to read:

18-1-202. Place of trial. (7) (c) (I) For an indictment or information that includes an offense described in article 5 of this title, the offender may be tried in a county where the offense occurred, ~~or~~ IN A COUNTY WHERE an act in furtherance of the offense occurred, or in a county where a bank, savings and loan, ~~or~~ credit union, OR GOVERNMENT AGENCY processed a document or transaction related to the offense.

SECTION 4. Effective date. This act shall take effect July 1, 2004.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 4, 2004