



IDENTITY THEFT

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According to the Federal Trade Commission, in 2015 Colorado ranked 21st in the nation for the number of identity theft victims, with 123.2 victims per 100,000 population. Identity theft is generally defined as the unlawful use of personal identifying or financial information of another person to obtain cash or credit, including name and birth date as well as a credit card and social security number. Using driver's license, social security, bank account, and credit card numbers, identity thieves create new accounts or run up charges on existing accounts in the other person's name.

The General Assembly has addressed the issue of identity theft by passing laws to protect consumers before and after they become identity theft victims. This *issue brief* provides information about obtaining a security freeze on a credit report, crimes related to identity theft, and protections for victims of identity theft.

Credit Report Security Freeze Act

State law allows consumers to place a security freeze on their credit report.¹ A security freeze prohibits a credit reporting agency from releasing a consumer's credit report, or any information contained in the report, without prior authorization from the consumer.

Under the law, consumers must be notified of the right to obtain a security freeze as part of their summary of rights under the federal Fair Credit Reporting Act. If a reporting agency negligently violates the security freeze, the agency may be liable for the cost of actual

damages or \$1,000 for each violation, whichever is greater, plus attorney fees and court costs.

Obtaining a security freeze. To place a security freeze on a credit report, a consumer must submit a written request, via certified mail, to any credit reporting agency. The act requires each credit reporting agency to honor a consumer's security freeze request to another credit reporting agency. The freeze must be placed on the report within five business days of receipt of the request, and the agency must provide written confirmation within ten business days. The consumer must be provided with a unique personal identification number to use when authorizing release of information from the credit report or for later removal of the security freeze.

To temporarily lift a security freeze, consumers must provide proper identification, their personal identification number, and information about the third party who may have access to the report. The credit reporting agency must lift the freeze within three business days of receiving a request.

A credit reporting agency cannot charge for the initial placement of a security freeze. However, the agency may charge up to \$10 for temporary or permanent removal of the freeze. The agency may charge an additional \$10 fee to reinstate the security freeze. Agencies may charge a fee of up to \$12 if the freeze is temporarily lifted for a specific party.

Exemption from security freeze restrictions. Certain entities are exempt from the security freeze restrictions, particularly those

¹Section 12-14.3-106.6, C.R.S.

with which a consumer has an existing business or financial relationship. These exemptions are for: credit card companies when the consumer has an existing relationship; child support and law enforcement agencies; insurance companies when setting rates or underwriting a consumer's policy; hospitals to which the consumer has a financial obligation; collections investigators engaged in collecting court-ordered fees, fines, or restitution; and credit reporting agencies. State agencies acting to investigate fraud or collect delinquent taxes or unpaid court orders are also exempt from security freeze restrictions.

Credit reporting agencies. The three main credit reporting agencies are:

Equifax (www.equifax.com)
P.O. Box 740241, Atlanta, GA 30374
Report fraud: 888-766-0008
Order a credit report: 800-685-1111

Experian (www.experian.com)
P.O. Box 4500, Allen, TX 75013
Report fraud: 888-397-3742

Trans Union (www.transunion.com)
P.O. Box 2000, Chester, PA 19016
Report fraud: 800-680-7289
Order a credit report: 800-888-4213

Colorado consumers are entitled to one free credit report per year from each agency. A consumer may contact each agency directly for a report, or may obtain a combined report from all three through www.annualcreditreport.com or by calling 877-322-8228.

Identity Theft as a Crime

State law establishes the crime of identity theft as a class 4 felony, punishable by two to six years imprisonment or \$2,000 to \$500,000 in fines. A person commits identity theft if he or she possesses the personal or financial information of another with the intent to use it to obtain cash, credit, or something of value.²

A person commits criminal possession of an identification document if he or she possesses or controls another person's actual driver's license, government-issued identification card, social security card, or passport without the person's permission.³ Possession of one or more

identification documents issued to the same person is a class 1 misdemeanor, punishable by 6 to 18 months in jail, or \$500 to \$5,000 in fines. Possession of two or more identification documents, at least two of which are issued to different persons, is a class 6 felony, punishable by one year to 18 months in jail, or \$1,000 to \$100,000 in fines.

Protections for Victims of Identity Theft

A victim of identity theft whose identifying information has been mistakenly associated with an arrest, summons, indictment, or conviction can pursue relief through the court system or the Colorado Bureau of Investigation (CBI). Specifically, a victim who does not have criminal charges pending may petition the court with jurisdiction over the arrest, summons, indictment, or conviction to determine his or her factual innocence. If the court determines that the individual is innocent, it must provide the Colorado Bureau of Investigation with the order of factual innocence. The CBI then must modify the victim's law enforcement-only and public criminal history record. If the victim does have criminal charges pending, the prosecuting attorney can request that the court determine factual innocence. Alternatively, a victim facing criminal charges may submit a records challenge directly to the CBI. The victim must include copies of his or her fingerprints in the challenge. If the person is found innocent, the CBI must issue a letter of misidentification and modify the person's law enforcement-only and public criminal history.

A victim whose information has not been connected to an arrest, summons, indictment, or conviction may petition the district court in his or her county of residence for an order of factual innocence. Declarations, affidavits, police reports, and other relevant and reliable materials may be used to determine innocence.

Consumer Resources

The Attorney General's website provides information and resources related to identity theft at: www.stopfraudcolorado.gov/fraud-center/identity-theft. The CBI operates a toll-free, 24-hour identity theft and fraud hotline. The number for the hotline is 1-855-443-3489.

²Section 18-5-902, C.R.S.

³Section 18-5-903.5, C.R.S.