

# SENATE, No. 391

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## STATE OF NEW JERSEY 215th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator DIANE B. ALLEN**

**District 7 (Burlington)**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**SYNOPSIS**

Requires payment of certain attorney's fees, expenses and costs in identity theft cases; adds debit card numbers to definition of "personal identifying information".

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning identity theft and amending N.J.S.2C:20-1 and  
2 P.L.2002, c.85.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. N.J.S.2C:20-1 is amended to read as follows:

8 2C:20-1. Definitions. In chapters 20 and 21, unless a different  
9 meaning plainly is required:

10 a. "Deprive" means: (1) to withhold or cause to be withheld  
11 property of another permanently or for so extended a period as to  
12 appropriate a substantial portion of its economic value, or with  
13 purpose to restore only upon payment of reward or other  
14 compensation; or (2) to dispose or cause disposal of the property so  
15 as to make it unlikely that the owner will recover it.

16 b. "Fiduciary" means an executor, general administrator of an  
17 intestate, administrator with the will annexed, substituted  
18 administrator, guardian, substituted guardian, trustee under any  
19 trust, express, implied, resulting or constructive, substituted trustee,  
20 executor, conservator, curator, receiver, trustee in bankruptcy,  
21 assignee for the benefit of creditors, partner, agent or officer of a  
22 corporation, public or private, temporary administrator,  
23 administrator, administrator pendente lite, administrator ad  
24 prosequendum, administrator ad litem or other person acting in a  
25 similar capacity.

26 c. "Financial institution" means a bank, insurance company,  
27 credit union, savings and loan association, investment trust or other  
28 organization held out to the public as a place of deposit of funds or  
29 medium of savings or collective investment.

30 d. "Government" means the United States, any state, county,  
31 municipality, or other political unit, or any department, agency or  
32 subdivision of any of the foregoing, or any corporation or other  
33 association carrying out the functions of government.

34 e. "Movable property" means property the location of which  
35 can be changed, including things growing on, affixed to, or found in  
36 land, and documents, although the rights represented thereby have  
37 no physical location. "Immovable property" is all other property.

38 f. "Obtain" means: (1) in relation to property, to bring about a  
39 transfer or purported transfer of a legal interest in the property,  
40 whether to the obtainer or another; or (2) in relation to labor or  
41 service, to secure performance thereof.

42 g. "Property" means anything of value, including real estate,  
43 tangible and intangible personal property, trade secrets, contract  
44 rights, choses in action and other interests in or claims to wealth,  
45 admission or transportation tickets, captured or domestic animals,

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 food and drink, electric, gas, steam or other power, financial  
2 instruments, information, data, and computer software, in either  
3 human readable or computer readable form, copies or originals.
- 4 h. "Property of another" includes property in which any person  
5 other than the actor has an interest which the actor is not privileged  
6 to infringe, regardless of the fact that the actor also has an interest  
7 in the property and regardless of the fact that the other person might  
8 be precluded from civil recovery because the property was used in  
9 an unlawful transaction or was subject to forfeiture as contraband.  
10 Property in possession of the actor shall not be deemed property of  
11 another who has only a security interest therein, even if legal title is  
12 in the creditor pursuant to a conditional sales contract or other  
13 security agreement.
- 14 i. "Trade secret" means the whole or any portion or phase of  
15 any scientific or technical information, design, process, procedure,  
16 formula or improvement which is secret and of value. A trade  
17 secret shall be presumed to be secret when the owner thereof takes  
18 measures to prevent it from becoming available to persons other  
19 than those selected by the owner to have access thereto for limited  
20 purposes.
- 21 j. "Dealer in property" means a person who buys and sells  
22 property as a business.
- 23 k. "Traffic" means:
- 24 (1) To sell, transfer, distribute, dispense or otherwise dispose of  
25 property to another person; or  
26 (2) To buy, receive, possess, or obtain control of or use  
27 property, with intent to sell, transfer, distribute, dispense or  
28 otherwise dispose of such property to another person.
- 29 l. "Broken succession of title" means lack of regular  
30 documents of purchase and transfer by any seller except the  
31 manufacturer of the subject property, or possession of documents of  
32 purchase and transfer by any buyer without corresponding  
33 documents of sale and transfer in possession of seller, or possession  
34 of documents of sale and transfer by seller without corresponding  
35 documents of purchase and transfer in possession of any buyer.
- 36 m. "Person" includes any individual or entity or enterprise, as  
37 defined herein, holding or capable of holding a legal or beneficial  
38 interest in property.
- 39 n. "Anything of value" means any direct or indirect gain or  
40 advantage to any person.
- 41 o. "Interest in property which has been stolen" means title or  
42 right of possession to such property.
- 43 p. "Stolen property" means property that has been the subject  
44 of any unlawful taking.
- 45 q. "Enterprise" includes any individual, sole proprietorship,  
46 partnership, corporation, business trust, association, or other legal  
47 entity, and any union or group of individuals associated in fact,

1 although not a legal entity, and it includes illicit as well as licit  
2 enterprises and governmental as well as other entities.

3 r. "Attorney General" includes the Attorney General of New  
4 Jersey, his assistants and deputies. The term shall also include a  
5 county prosecutor or his designated assistant prosecutor, if a county  
6 prosecutor is expressly authorized in writing by the Attorney  
7 General to carry out the powers conferred on the Attorney General  
8 by this chapter.

9 s. "Access device" means property consisting of any telephone  
10 calling card number, credit card number, account number, mobile  
11 identification number, electronic serial number, personal  
12 identification number, or any other data intended to control or limit  
13 access to telecommunications or other computer networks in either  
14 human readable or computer readable form, either copy or original,  
15 that can be used to obtain telephone service. Access device also  
16 means property consisting of a card, code or other means of access  
17 to an account held by a financial institution, or any combination  
18 thereof, that may be used by the account holder for the purpose of  
19 initiating electronic fund transfers.

20 t. "Defaced access device" means any access device, in either  
21 human readable or computer readable form, either copy or original,  
22 which has been removed, erased, defaced, altered, destroyed,  
23 covered or otherwise changed in any manner from its original  
24 configuration.

25 u. "Domestic companion animal" means any animal commonly  
26 referred to as a pet or one that has been bought, bred, raised or  
27 otherwise acquired, in accordance with local ordinances and State  
28 and federal law for the primary purpose of providing  
29 companionship to the owner, rather than for business or agricultural  
30 purposes.

31 v. "Personal identifying information" means any name, number  
32 or other information that may be used, alone or in conjunction with  
33 any other information, to identify a specific individual and includes,  
34 but is not limited to, the name, address, telephone number, date of  
35 birth, social security number, official State issued identification  
36 number, employer or taxpayer number, place of employment,  
37 employee identification number, demand deposit account number,  
38 savings account number, credit card or debit card number, mother's  
39 maiden name, unique biometric data, such as fingerprint, voice  
40 print, retina or iris image or other unique physical representation, or  
41 unique electronic identification number, address or routing code of  
42 the individual.

43 (cf: P.L.2004, c.11, s.1)

44

45 2. Section 4 of P.L.2002, c.85, (C.2C:21-17.1) is amended to  
46 read as follows:

3. This act shall take effect immediately.

This bill would require payment of certain costs and expenses by offenders in identity theft cases in addition to any other disposition authorized by law and any restitution otherwise ordered by the court. Under current law, courts have discretion in whether or not to order restitution in cases of identity theft. This bill would require courts to order identity theft offenders to pay certain costs, including reasonable attorney's fees and other costs incurred by victims in clearing their credit or in connection with certain proceedings arising as a result of the thefts.

The bill would include debit card numbers in the definition of “personal identifying information” for the purposes of the statutes dealing with theft.