

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 13-0499.01 Michael Dohr x4347

HOUSE BILL 13-1146

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A BILL FOR AN ACT

101 **CONCERNING RIGHTS OF VICTIMS OF IDENTITY THEFT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Under current law a victim of identity theft may ask a court to determine that he or she is factually innocent of a criminal charge based on misidentification. The bill adds an additional process in which a victim of identity theft may pursue a records challenge with the Colorado bureau of investigation (CBI). If the records challenge is successful, the CBI issues the victim of identity theft a letter of misidentification and modifies the victim's law enforcement-only and public criminal record accordingly.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
2nd Reading Unamended
February 28, 2013

HOUSE
3rd Reading Unamended
February 11, 2013

HOUSE
2nd Reading Unamended
February 7, 2013

When the court enters a restitution order in a case of identity theft, the court must include the victim's costs associated with seeking a declaration of factual innocence or a CBI records challenge.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 16-5-103 as
3 follows:

4 **16-5-103. Identity theft victims - definitions.** (1) ~~(a)~~ A person
5 whose identifying information has been mistakenly associated with an
6 arrest, summons, summons and complaint, felony complaint, information,
7 indictment, or conviction is a victim of identity theft for the purposes of
8 this section. A VICTIM OF IDENTIFY THEFT MAY PROCEED EITHER THROUGH
9 THE JUDICIAL PROCESS IN SUBSECTION (2) OF THIS SECTION OR THE
10 COLORADO BUREAU OF INVESTIGATION PROCESS IN SUBSECTION (3) OF
11 THIS SECTION.

12 ~~(b)~~ (2) (a) If a criminal charge is not pending, a victim of identity
13 theft may, with notice to the prosecutor, petition the court with
14 jurisdiction over the arrest, summons, summons and complaint, felony
15 complaint, information, indictment, or conviction to judicially determine
16 the person's factual innocence. Alternatively, the court, on its own
17 motion, may make such a determination in the case. If a criminal charge
18 is pending, the prosecuting attorney may request the court to make such
19 a determination. A judicial determination of factual innocence made
20 pursuant to this section may be determined, with or without a hearing,
21 upon declarations, affidavits, or police reports or upon any other relevant,
22 material, reliable information submitted by the parties and records of the
23 court.

24 ~~(c)~~ (b) If the court determines that there is no reasonable cause to

1 believe that a victim of identity theft committed the offense for which the
2 victim's identity has been mistakenly associated with an arrest, summons,
3 summons and complaint, felony complaint, information, indictment, or
4 conviction, the court shall find the victim factually innocent of that
5 offense. If the victim is found factually innocent, the court shall issue an
6 order certifying this determination.

7 ~~(2)~~ (c) After the court has determined that a person is factually
8 innocent, the court ~~may order the name and associated identifying~~
9 ~~information contained in court records, files, or a criminal justice record~~
10 ~~to be labeled to show that the information is not accurate and does not~~
11 ~~reflect the perpetrator's identity because the victim of identity theft was~~
12 ~~impersonated~~ SHALL PROVIDE THE COLORADO BUREAU OF INVESTIGATION
13 WITH THE ORDER OF FACTUAL INNOCENCE. UPON RECEIPT OF THE ORDER
14 OF FACTUAL INNOCENCE, THE COLORADO BUREAU OF INVESTIGATION
15 SHALL MODIFY THE VICTIM OF IDENTITY THEFT'S LAW ENFORCEMENT-ONLY
16 AND PUBLIC CRIMINAL HISTORY RECORD ACCORDINGLY.

17 (d) A COURT THAT ISSUES A DETERMINATION OF FACTUAL
18 INNOCENCE PURSUANT TO THIS SECTION MAY AT ANY TIME VACATE THAT
19 DETERMINATION IF THE PETITION, OR INFORMATION SUBMITTED IN
20 SUPPORT OF THE PETITION, CONTAINS MATERIAL MISREPRESENTATION OR
21 FRAUD. IF THE COURT VACATES A DETERMINATION OF FACTUAL
22 INNOCENCE, THE COURT SHALL ISSUE AN ORDER RESCINDING ANY ORDERS
23 MADE PURSUANT TO THIS SUBSECTION (2).

24 (3) (a) A VICTIM OF IDENTITY THEFT MAY CONTACT THE
25 COLORADO BUREAU OF INVESTIGATION AND SUBMIT A RECORDS
26 CHALLENGE TO ONE OR MORE CRIMINAL CHARGES THE VICTIM OF IDENTITY
27 THEFT IS ALLEGED TO HAVE COMMITTED. THE VICTIM OF IDENTITY THEFT

1 SHALL INCLUDE A COPY OF HIS OR HER FINGERPRINTS WITH THE RECORDS
2 CHALLENGE.

3 (b) (I) A COLORADO BUREAU OF INVESTIGATION FINGERPRINT
4 EXAMINER SHALL COMPARE THE SUBMITTED FINGERPRINTS IN THE
5 RECORDS CHALLENGE TO THE FINGERPRINTS OBTAINED IN EACH CRIMINAL
6 CASE THAT THE VICTIM OF IDENTITY THEFT IS MAKING A RECORDS
7 CHALLENGE.

8 (II) THE FINGERPRINT EXAMINER SHALL EITHER DETERMINE THAT
9 THE FINGERPRINTS SUBMITTED IN THE RECORDS CHALLENGE ARE NOT THE
10 SAME AS THE INDIVIDUAL ARRESTED OR THAT THEY ARE THE SAME AS
11 INDIVIDUAL ARRESTED.

12 (III) IF THE FINGERPRINT EXAMINER DETERMINES THE
13 FINGERPRINTS SUBMITTED IN THE FINGERPRINT CHALLENGE ARE NOT THE
14 SAME AS THE INDIVIDUAL ARRESTED, THE COLORADO BUREAU OF
15 INVESTIGATION SHALL ISSUE A LETTER OF MISIDENTIFICATION AND SHALL
16 MODIFY THE VICTIM OF IDENTITY THEFT'S LAW ENFORCEMENT-ONLY AND
17 PUBLIC CRIMINAL HISTORY RECORD ACCORDINGLY. THE LETTER OF
18 MISIDENTIFICATION SHALL STATE THE HOLDER OF THE LETTER IS A VICTIM
19 OF IDENTITY THEFT IN EACH CRIMINAL CASE IDENTIFIED BY THE LETTER.

20 ~~(3)~~ (4) A person who knows or reasonably suspects that his or her
21 identifying information has been unlawfully used by another person may
22 initiate a law enforcement investigation by contacting the local law
23 enforcement agency that has jurisdiction over the victim's residence or
24 over the place where a crime was committed. Such agency shall take a
25 police report of the matter, provide the complainant with a copy of that
26 report, and begin an investigation of the facts. If the suspected crime was
27 committed in a different jurisdiction, the local law enforcement agency

1 may refer the matter to the local law enforcement agency where the
2 suspected crime was committed for investigation of the facts.

3 ~~(4) A court that has issued a determination of factual innocence~~
4 ~~pursuant to this section may at any time vacate that determination if the~~
5 ~~petition, or information submitted in support of the petition, contains a~~
6 ~~material misrepresentation or fraud. If the court vacates a determination~~
7 ~~of factual innocence, the court shall issue an order rescinding any orders~~
8 ~~made pursuant to subsection (2) of this section.~~

9 (5) For the purposes of this section:

10 (a) "Biometric data" means data, such as fingerprints, voice prints,
11 or retina and iris prints that capture, represent, or enable the reproduction
12 of the unique physical attributes of an individual.

13 (b) "Identifying information" means information that, alone or in
14 conjunction with other information, identifies an individual, including but
15 not limited to such individual's:

16 (I) Name;

17 (II) Address;

18 (III) Birth date;

19 (IV) Telephone, social security, taxpayer identification, driver's
20 license, identification card, alien registration, government passport, or
21 checking, savings, or deposit account number;

22 (V) Biometric data;

23 (VI) Unique electronic identification device; AND

24 (VII) Telecommunication identifying device.

25 (c) "Telecommunication identifying device" means a number,
26 code, or magnetic or electronic device that enables the holder to use
27 telecommunications technology to access an account; obtain money,

1 goods, or services; or transfer funds.

2 **SECTION 2.** In Colorado Revised Statutes, 18-1.3-603, **amend**
3 (7) as follows:

4 **18-1.3-603. Assessment of restitution - corrective orders.**

5 (7) When a person's means of identification or financial information was
6 used without that person's authorization in connection with a conviction
7 for any crime in violation of part 2, 3, or 4 of article 4, part 1, 2, 3, or 7
8 of article 5, or article 5.5 of this title, the sentencing court may issue such
9 orders as are necessary to correct a public record that contains false
10 information resulting from any violation of such laws. IN ADDITION, THE
11 RESTITUTION ORDER SHALL INCLUDE ANY COSTS INCURRED BY THE VICTIM
12 RELATED TO SECTION 16-5-103, C.R.S.

13 **SECTION 3. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.