

DELAWARE

IDENTITY THEFT RANKING BY STATE: Rank 16, 69.7 Complaints Per 100,000
Population, 603 Complaints (2007)
Updated November 30, 2008

Current Laws: A person commits identity theft when he knowingly or recklessly obtains, produces, possesses, uses, sells, gives or transfers personal identifying information belonging or pertaining to another person without the consent of the other person and with intent to use the information to commit or facilitate any crime. In addition, the offense includes when a person knowingly or recklessly obtains, produces, possesses, uses, sells, gives or transfers personal identifying information belonging or pertaining to another person without the consent of the other person, thereby knowingly or recklessly facilitating the use of the information by a third person to commit or facilitate a crime. Identity theft is a class D felony, punishable by up to eight years in prison. However, the presumptive sentence is less than one year.

Personal identifying information includes name, address, birth date, Social Security number, driver's license number, telephone number, financial services account number, savings account number, checking account number, credit card number, debit card number, identification document or false identification document, electronic identification number, educational record, health care record, financial record, credit record, employment record, e-mail address, computer system password, mother's maiden name or similar personal number, record or information.
Statute: 11 § 854: http://delcode.delaware.gov/title11/c005/sc03/index.shtml#P745_62939

It is a class F felony to possess burglar's tools or instruments facilitating theft. The offense includes possession of any tool, instrument, or other thing adapted, designed, or commonly used for committing or facilitating the offense of identity theft, such as a credit card, driver license, or other document issued in a name other than the name of the person who possesses the document. It is punishable by up to three years in prison, with a presumptive sentence of less than one year.
Statute: 11 § 828: http://delcode.delaware.gov/title11/c005/sc03/index.shtml#P266_13862

Payment Cards: A person is guilty of unlawful use of a credit card when the person:

- Uses or knowingly permits or encourages another to use a credit card for the purpose of obtaining property or services knowing that: the card is stolen, forged or fictitious; the card belongs to another person who has not authorized its use; the card has been revoked or canceled; or for any other reason use of the card is unauthorized by the issuer; or
- Knowingly makes, possesses, sells, gives or otherwise transfers to another, or offers or advertises a credit card with the intent that it be used or with the knowledge or reason to believe that it will be used to obtain property or services without payment of the lawful charges; or publishes a credit card or code of an existing, canceled, revoked, expired or nonexistent credit card, or the numbering or coding that is employed in the issuance of credit cards, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any property or services.

Unlawful use of a credit card is a class A misdemeanor, punishable by up to one year in prison, unless the value of the property or services secured or sought to be secured by means of the credit card exceeds \$1,000, in which case it is a class G felony, punishable by up to two years in prison. In addition, if the victim of the violation is a person 62 years of age or older, unlawful use of a credit card is a class G felony, unless the value of the property or services secured or sought to be secured exceeds \$1,000, in which case it is a class F felony, punishable by up to three years in prison. Amounts involved in unlawful use of a credit card pursuant to one scheme or course of conduct, whether from the same issuer or several issuers, may be aggregated in determining whether such unlawful use constitutes a class A misdemeanor or a class G felony. Statute: 11 § 903: http://delcode.delaware.gov/title11/c005/sc03/index.shtml#P1204_96069

Scanning Devices: It is a class D felony to knowingly, willingly, and with the intent to defraud, possess or use a scanning device or reencoder to obtain or record encoded information from the magnetic strip or computer chip of a payment card without the consent of the authorized user. Scanning devices are defined as a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card. A reencoder is an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or the magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur. Statute: 11 § 903A: http://delcode.delaware.gov/title11/c005/sc03/index.shtml#P1227_99066

Victim Assistance:

Mandatory Police Reports: A person who knows or reasonably believes he/she has been the victim of identity theft may contact the police agency that has jurisdiction over that person's actual residence, which must take a police report of the matter, and provide the complainant with a copy of that report, even if the jurisdiction for investigation and prosecution may lie elsewhere. A complaint filed under this section is not required to be counted as an open case for purposes such as compiling open case statistics. Statute: 6 § 2204: <http://delcode.delaware.gov/title6/c022/index.shtml#TopOfPage>

Restitution: When a person is convicted of or pleads guilty to identity theft, the sentencing judge must order full restitution for monetary loss, including documented loss of wages and reasonable attorney fees, suffered by the victim. Statute: 11 § 854: http://delcode.delaware.gov/title6/c022/index.shtml#P107_15728

Identity Theft Passport: Victims may apply for an identity theft passport, which can be presented to law enforcement to help prevent arrest or detention for an offense committed by another person using the victim's identity. It may also be presented to a creditor to aid in the investigation of a fraudulent accounts or charges. A victim who has filed a report of identity theft with a law enforcement agency may apply for an identity theft passport through the law enforcement agency. The law enforcement agency will send a copy of the police report and the application to the Office of the Attorney General, who will process the application and supporting report and may issue the victim an identity theft passport in the form of a card or

certificate. Victims may also apply directly with the Attorney General's Office, if they already have submitted a police report.

Consumer reporting agencies must accept the passport as notice of a dispute and must include notice of the dispute in all future reports that contain disputed information caused by the identity theft. Law enforcement and creditors are given discretion to accept or reject the passport.

Statute: 11 § 854A: http://delcode.delaware.gov/title11/c005/sc03/index.shtml#P762_64767

Identity Theft Passport Program:

<http://attorneygeneral.delaware.gov/consumers/protection/brochure/idthpass.pdf>

Application Form:

<http://attorneygeneral.delaware.gov/consumers/protection/brochure/idtheftapplication.pdf>

Credit Freeze: All Delaware consumers are allowed to place security freezes on their consumer credit reports to prevent new accounts from being opened in their names. Such a freeze enables the consumer to prevent anyone from looking at his/her credit file for the purpose of granting credit unless the consumer chooses to allow a particular business look at the information. To request a freeze, a consumer must request one in writing by certified mail or through an electronic mail method when such a method is made available. Such a method must be available to consumers by January 31, 2009. Consumer reporting agencies may charge a fee of \$20 to place a security freeze. However, victims of identity theft with a valid police report or investigative complaint may not be charged.

The reporting agency must place the freeze within three business days after receiving the request. Within five business days of placing the freeze, the reporting agency must send a written confirmation of the freeze and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his credit for a specific party or period of time. Requests for a temporary unlocking of the freeze must be completed within three business days. By no later than January 31, 2009, the reporting agency must honor a consumer request to temporarily lift the freeze made by electronic mail or by telephone within 15 minutes of receiving the request.

Statute: 6 § 2203: http://delcode.delaware.gov/title6/c022/index.shtml#P39_2487

Office of the Attorney General, "Credit Report Security Freeze":

<http://www.state.de.us/attgen/fraud/consumerprotection/brochure/creditsecfreeze.pdf>

How to Place a Credit Freeze in Delaware:

<http://www.consumersunion.org/pdf/security/securityDE.pdf>

Security Breach: State law requires businesses to notify consumers when their unencrypted personal information is compromised during a security breach, putting them at risk of identity theft. A security breach occurs upon "unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by an individual or a commercial entity."

When a business becomes aware of a breach of the security of the system, it must conduct in good faith a reasonable and prompt investigation to determine the likelihood that person information has been or will be misused. If the investigation determines that the misuse of

information about a Delaware resident has occurred or is reasonably likely to occur, the business must give notice as soon as possible to the affected Delaware resident. Notice must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

Personal information is defined as a Delaware resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident, when either the name or the data elements are not encrypted: Social Security number; driver's license number or Delaware Identification Card number; or a account number, or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account. It does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Notification can be provided by mail, e-mail, or telephone. If the cost of providing regular notice would exceed \$75,000, the amount of people to be notified exceeds 100,000, or the business does not have sufficient contact information to provide written or electronic notice, substitute notice may be provided. When substitute notice is used, it must consist of all of the following, as applicable: e-mail notice, conspicuous posting on the information broker's or data collector's web site, and notification to major statewide media.

Statute: §12B-101 through 104:

<http://delcode.delaware.gov/title6/c012b/index.shtml#TopOfPage>

State Resources:

Office of the Attorney General, "Avoiding Identity Theft"

(<http://attorneygeneral.delaware.gov/media/pdf/idtheft.pdf>)

This brochure contains prevention tips and recommendations on what to do if you suspect you are a victim of identity theft. It directs victims to: *"The first step you need to take is to report the fraud to your local police department. This step is important for two reasons: First, it immediately alerts local law enforcement to the crime. Second, it establishes that you acted diligently, and enables you to get a police report, complaint number or other similar record, which you may need when contacting some of your creditors. If you are not sure which law enforcement agency to contact, please call the Attorney General's Consumer Protection Unit at (800) 220-5424. The Consumer Protection Unit can help you get in touch with the proper police agency, and can answer any other Identity Theft questions you may have."*

"Tips to Protect Yourself Against Identity Theft"

(<http://attorneygeneral.delaware.gov/consumers/protection/idtheft.shtml>)

This document directs victims of identity theft to: *"The first step you need to take is to report the fraud to your local police department. This step is important for two reasons: First, it immediately alerts local law enforcement to the crime. Second, it establishes that you acted diligently, and enables you to get a police report, complaint number or other similar record, which you may need when contacting some of your creditors. If you are not sure which law*

enforcement agency to contact, please call the Attorney General's Consumer Protection Unit, which can help you get in touch with the proper police agency, and can answer any other Identity Theft questions you may have.

“Phishing: Don’t Get Hooked”

<http://attorneygeneral.delaware.gov/consumers/protection/brochure/phishing06.pdf>

Legislation:

2006:

HB 334 creates identity theft passports for people who are victims of identity theft and have filed police reports regarding such thefts. The Office of the Attorney General may issue a passport if reasonably assured that the applicant has an adequately substantiated claim. A victim of identity theft may present a passport to a law enforcement agency to help prevent his or her arrest or detention for an offense committed by someone other than the victim who is using the victim's identity, or to a creditor to aid in the creditor's investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity. Consumer reporting agencies must accept the passport as notice of a dispute and must include notice of the dispute in all future reports that contain disputed information caused by the identity theft. Law enforcement agencies and creditors are given discretion to accept or reject the passport.

SB 109 allows Delaware consumers to put a security freeze on their credit files to prevent identity thieves from opening new credit accounts in their names. A security freeze enables a consumer to prevent anyone from looking at his or her own credit reporting file for purposes of granting credit unless the consumer chooses to let that particular business look at the information. This gives consumers control over who has access to their information needed to process a credit application and effectively prevents others from opening new accounts in their name. When the consumer is applying for credit, the security freeze can be lifted temporarily so the application can be processed. The bill also requires that law enforcement agencies take and provide a police report to a person who resides in their jurisdiction who knows or reasonably believes he/she has been the victim of identity theft, even if the jurisdiction for investigation and prosecution may lie elsewhere.

2005:

HB 116 requires businesses to notify consumers when their unencrypted personal information is compromised during a security breach, putting them at risk of identity theft. When a business becomes aware of a breach of the security of the system, it must conduct a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused. If the investigation determines that the misuse of information has occurred or is reasonably likely to occur, the business must give notice as soon as possible to the affected resident.

SB 50 makes it a class F felony to possess burglar’s tools or instruments facilitating theft. The offense includes possession of any tool, instrument, or other thing adapted, designed, or

commonly used for committing or facilitating the offense of identity theft, such as a credit card, driver license, or other document issued in a name other than the name of the person who possesses the document.