

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S4/1/99 S4/6/99

A Bill

SENATE BILL 912

5 By: Senator K. Smith
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For An Act To Be Entitled

9 "AN ACT TO CREATE THE 'ARKANSAS RIGHT TO PRIVACY ACT' ;
10 AND FOR OTHER PURPOSES. "

Subtitle

13 "TO CREATE THE 'ARKANSAS RIGHT TO PRIVACY
14 ACT' . "

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16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. *Arkansas Code Title 5, Chapter 37, Subchapter 2 is amended*
20 *by adding the following section to be appropriately numbered by the Arkansas*
21 *Code Revision Commission:*

22 *"Financial Identity Fraud.*

23 *(a) A person commits financial identity fraud if, with the intent to*
24 *unlawfully appropriate financial resources of another person to his or her own*
25 *use or to the use of a third party, and without the authorization of that*
26 *person, he or she:*

27 *(1) Obtains or records identifying information that would assist*
28 *in accessing the financial resources of the other person; or*

29 *(2) Accesses or attempts to access the financial resources of the*
30 *other person through the use of the identifying information, as defined in*
31 *subsection (b) of this section.*

32 *(b) 'Identifying information' as used in this section, includes, but is*
33 *not limited to, social security numbers, driver's license numbers, checking*
34 *account numbers, savings account numbers, credit card numbers, debit card*
35 *numbers, personal identification numbers, electronic identification numbers,*
36 *digital signatures, or any other numbers or information that can be used to*

1 access a person's financial resources.

2 (c) The provisions of this section do not apply to any person who
3 obtains another person's drivers license or other form of identification for
4 the sole purpose of misrepresenting his or her age.

5 (d) Financial identity fraud is a Class D felony.

6 (e) A violation of this section shall constitute an unfair or deceptive
7 act or practice as defined by the Deceptive Trade Practices Act, beginning at
8 Arkansas Code § 4-88-101. All remedies, penalties, and authority granted
9 thereunder to the Attorney General or other persons under the Deceptive Trade
10 Practices Act shall be available to the Attorney General or other persons for
11 the enforcement of this section."

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13 SECTION 2. Arkansas Code 5-37-510 is amended to read as follows:

14 "5-37-510. Unauthorized copying or sale of recordings.

15 (a) As used in this section, unless the context otherwise requires:

16 (1) 'Person' means any individual, firm, partnership,
17 corporation, or association;

18 (2) 'Owner' means the person who owns the original fixation of
19 sounds embodied in the master phonograph record, master disc, master tape,
20 master film, or other device used for reproducing sounds on recordings upon
21 which sound is recorded and from which the transferred recorded sounds are
22 directly derived, or the person who owns the right to record a live
23 performance;

24 (3) 'Recording' means the tangible medium on which sounds or
25 images are recorded or otherwise stored, and includes any phonograph record,
26 audio or video disc, audio or video tape, wire, film, or other medium now
27 known or later developed on which sounds or images are recorded or otherwise
28 stored.

29 (b) ~~Unless exempt under subsection (d) of this section, it~~ It is
30 unlawful for any person for commercial advantage or private financial gain
31 knowingly to:

32 (1) Transfer or cause to be transferred any sound recorded on a
33 phonograph record, disc, wire, tape, film, or other article on which sounds
34 are recorded, or any live performance, onto any recording without the consent
35 of the owner; or

36 (2) Sell, distribute, circulate, offer for sale, distribution, or

1 circulation, possess for the purpose of sale, distribution, or circulation,
 2 cause to be sold, distributed, or circulated, offered for sale, distribution,
 3 or circulation, or possessed for sale, distribution, or circulation, any
 4 recording on which sounds or a performance have been transferred, knowing it
 5 to have been made without the consent of the owner.

6 (c) It is unlawful for any person for commercial advantage or private
 7 financial gain to sell, distribute, circulate, offer for sale, distribution,
 8 or circulation, or possess for the purposes of sale, distribution, or
 9 circulation, any recording on which sounds or images have been transferred
 10 unless the recording bears the actual name and address of the transferor of
 11 the sounds or images in a prominent place on its outside face, label, cover,
 12 jacket, or package.

13 (d) This section does not apply to any person who transfers or causes
 14 to be transferred any such sounds or images:

15 (1) Intended for or in connection with radio or television
 16 broadcast transmission, for communication mediums or related uses;

17 (2) For archival purposes;

18 (3) For educational purposes, with no compensation being derived
 19 as a result of the transfer; ~~or~~

20 (4) For the internal operations of a business;

21 (5) With prior authorization by a court of competent
 22 jurisdiction; or

23 ~~(4)(6)~~ Solely for the personal use of the person transferring or
 24 causing the transfer if the person transferring or causing the transfer has no
 25 intention to evade the provisions or intent of this section, provided that
 26 proof of intent shall be an element of the offense.

27 (e) Any person violating the provisions of this section, upon
 28 conviction, shall be deemed guilty of a Class A misdemeanor for the first
 29 offense involving less than one hundred (100) sound recordings or less than
 30 seven (7) audiovisual recordings; for a subsequent offense, and for offenses
 31 involving one hundred (100) or more sound recordings, or seven (7) or more
 32 audiovisual recordings, the person shall be deemed guilty of a Class D felony
 33 and shall be subject to an additional fine not to exceed two hundred fifty
 34 thousand dollars (\$250,000).

35 (f) This section shall neither enlarge nor diminish the right of
 36 parties in private litigation.

1 (g) When a person is convicted of any violation of this section, the
2 court in its judgment of conviction shall order the forfeiture and destruction
3 or other disposition of all recordings which do not conform to the
4 requirements of this section and all implements, devices, labels, or equipment
5 used in the manufacture of such recordings.

6 (h) It shall be the duty of all law enforcement officers, upon
7 discovery, to confiscate all recordings that do not conform to the provisions
8 of this section. The recordings shall be delivered to the district attorney
9 for the county in which the confiscation was made. The district attorney, by
10 court order, shall destroy or otherwise dispose of such recordings."

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12 SECTION 3. Nothing in this Act shall be construed to conflict with the
13 Freedom of Information Act.

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15 SECTION 4. All provisions of this act of a general and permanent nature
16 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
17 Revision Commission shall incorporate the same in the Code.

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19 SECTION 5. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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25 SECTION 6. All laws and parts of laws in conflict with this act are
26 hereby repealed.

27 /s/ K. Smith
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