

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB155

Hearing Date: Wednesday January 28, 2009

Committee On: Judiciary

Introducer: Rogert

One Liner: Adopt the Public Protection Act, change provisions relating to theft offenses and criminal impersonation, and create the offenses of identity theft and identity fraud

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Ashford, Christensen, Coash, Council, Lathrop, Lautenbaugh, McGill, Rogert

Nay:

Absent:

Present Not Voting:

Proponents:

Sen. Kent Rogert

John Freudenberg

Lee Polikov

Jaimee Napp

Representing:

Introducer

Attorney General's Office; NE County Attorneys Association

NE County Attorneys Association

Identity Theft Action Council of NE

Opponents:

Don Niemann

Representing:

NALPI

Neutral:

Representing:

Summary of purpose and/or changes:

LB 155 proposes to implement the Public Protection Act. The Public Protection Act proposes to implement or amend the following provisions for the Public's safety and well-being:

- Create Nebraska's version of the federal Racketeering Influenced and Corrupt Organizations (RICO) Act;
- Allow for the aggregation of victims losses in the Grading of theft Offenses;
- Strengthen Identity Theft provisions by making changes to current sections on;
 1. Criminal Impersonation;
 2. Identity Fraud; and
 3. Identity Theft

A section by section review of LB 155 is as follows:

Section 1 - Amends Criminal Code by adding sections 2 to 7 and 9 to 13 of this act.

Section 2 - Provides that sections 2 to 7 of this act be called the "Public Protection Act".

Section 3 - Legislative Intent

Section 4 - Provides that act should be liberally construed to effectuate its purpose and that this act does not supersede any provision of federal, state, or other law imposing criminal penalties.

Section 5 - Contains a list of definitions, as well as, the list of offenses contained in the definition of "racketeering" found in subsection (5) of this section.

Section 6 - Sets forth the list of prohibited activities under the act, specifically:

- Makes it illegal for a person who has obtained money from an illegal activity (Pattern of racketeering) to then use the money in furtherance of any enterprise whether the enterprise is legal or illegal.
- Makes it illegal to obtain real estate or an interest in an enterprise through illegal activity (pattern of racketeering) i.e., "strong arm tactics" or "protection payments".
- Makes it illegal for a person to participate in the conduct of an enterprise's affairs through a pattern of racketeering activity. This would make all actors in an illegal activity subject to RICO jurisdiction. Section would also pertain to individuals acting illegally within an otherwise legal enterprise.
- Makes any attempt or conspiracy to commit any of the previous three prohibited activities a violation.

Section 7 - Provides the types of penalties for the list of offenses found in section 5, subparagraph 7 which is an extensive list. A violation of section (6) of this act is a Class III felony (1-20 years); however the penalty rises to a Class IB felony (20 years to life imprisonment) if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony.

- The court, in lieu of the amount of fine allowed under a Class III felony, is allowed to provide a fine be paid that is up to three times the loss caused to the victim or three times the pecuniary value gained whichever amount is greater.
- The state can also seek forfeiture under the RICO Act for property:
 1. Used in the racketeering activity
 2. Intended for the use in the course of the racketeering activity
 3. Derived from the racketeering activity
 4. Realized through the pattern of racketeering activity

Types of property subject to forfeiture include:

- Real property/land,
- Tangible and intangible personal property,
- Property derived from any proceeds which the person obtained directly or indirectly from racketeering or unlawful debt collection in violation of section 6 of this act.

Section 8 - Amends 28-518(7) (Theft Statutes), by allowing the amounts taken pursuant to one "scheme" or "course of conduct" from one person or more persons may be aggregated in the indictment or information in determining the classification of offense, except that amounts may not be aggregated into more than one offense.

Currently, Nebraska Statutes allow for the amounts taken pursuant to one "scheme" or "course of conduct" from "one person" to be aggregated in the indictment or information in determining the classification of the offense...

Section 9-13 of this act pertains to Identity Theft

Section 9 - Provides definitions for the following terms:

- Personal identification document
- Personal identifying information
- Telecommunications identifying information

Section 10 - Provides that the venue for prosecution for a violation of sections 9 to 13 of this act, may be commenced and maintained in any county in which an element of the offense occurred, including the county where a victim resides.

Section 10 also provides that an individual, who believes they are a victim of sections 9 to 13 of this act, may contact their local law enforcement agency with their complaint. If jurisdiction lies elsewhere for investigation and prosecution purposes, the local law enforcement agency will provide a copy of the complaint to the person making the complaint and refer the complaint to the appropriate law enforcement agency.

Section 11 - Amends 28-608 which defines the crime of Criminal Impersonation by providing that a violation of the section occurs when a person:

- Pretends to be a representative of some person or organization and does an act in this fictitious capacity with the intent to gain a pecuniary benefit or to deceive/harm;
- Carries on any profession, business, or any other occupation without the proper license, certificate, or authorization;
- Knowingly provides false personal identifying information or a false personal identifying document to a court or a law enforcement officer;
- Knowingly provides false personal identifying information or a false personal identifying document to an employer for the purpose of obtaining employment;

This section provides for the enhancement of penalties upon second or subsequent conviction for the same violation of statute and leaves unchanged the ability of a judge to order the offender to pay restitution.

Section 11 also strikes the definitions for the following terms, as they have been moved to section 9 under this act:

- Personal Identification Document,
- Personal identifying Information
- Telecommunications identifying information

Section 12 - Provides that a person is guilty of Identity Theft upon the following:

- When a person knowingly takes, purchases, manufactures, records, possesses or uses any Personal Identifying Information of a person or entity without their consent, with the intent to obtain/use identity for any unlawful purpose or to cause loss whether or not a victim actually suffers any economic loss OR with the intent to obtain/continue employment and/or with intent to gain pecuniary benefit or to deceive/harm another.

- Identity Theft as provided under this act does not pertain to the:
 1. Lawful obtaining of consumer information for consumer and commercial transactions;
 2. A lawful good faith exercise of a security interest or other legal right by a creditor or financial institution;
 3. The lawful provision of information pursuant to an order of the court;
 4. Investigative activities of law enforcement.

Penalties under this section increase with the monetary amount gained or attempted to be gained, with a maximum penalty of a Class III felony for amounts of \$1500 or more to a minimum of a Class II misdemeanor for amounts less than \$200. Penalties for second or subsequent convictions are enhanced under this act.

Section 13 - Provides that a person is guilty of the crime of Identity Fraud when they:

- Make, counterfeit, alter, or mutilate any personal identification document with the intent to deceive another; or
- Willfully and knowingly obtains, possesses, uses, sells or furnishes or attempts to obtain, possess or furnish for any purpose of deception a personal identifying document.

Identity fraud is a Class I misdemeanor for a first offense and second or subsequent offenses under this subdivision is a Class IV felony.

Section 14 - Amends Section 29-110 by adding subsection (5) and (13) which provides the following:

- Subsection five provides that no person shall be prosecuted under Section 11(Criminal Impersonation), Section 12 (Identity Theft) and Section 13 (Identity Fraud) unless the following has occurred:

1. Indictment for an offense under sections 11-13 has been found by a grand jury w/in five years "next" after the offense

has been done or committed or

2. A complaint for an offense under sections 11-13 is filed with the magistrate w/in five years "next" after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

- Subsection 13 provides that this bill is retroactive for offenses whose statute of limitations has not expired prior to the effective date of this act and provides that this act shall be available for violations occurring on or after the effective date of this act.

Section 15 - Provides a Severability Clause in case any section of this act is deemed unconstitutional.

Section 16 - Harmonizes and repeals sections of the bill.

Explanation of amendments:

Changes made by AM1271 to LB155

1. The Original Section 3 is deleted. This was the legislative intent language.
2. New Section 4(2) adds a requirement of at least a \$1,500 loss/gain to the definition of Pattern of Racketeering Activity.
3. New Section 4(5)(a) deletes the offenses of first, second and third degree sexual assault of a child; second and third degree sexual assault; and abuse of a vulnerable adult from the definition of Racketeering Activity.
4. New Section 4(5)(f) deletes the offenses of second and third degree promotion of gambling from the definition of Racketeering Activity.
5. New Section 4(5)(j) removes the descriptive language with regards to section 28-1005 in the definition of Racketeering Activity.
6. New Section 4(7) adds the element of a minimum of \$1,500 to the definition of Unlawful Debt. Also, the conjunction between subparagraphs (a) and (b) has been changed from "and" to "or".
7. New Section 5(1) adds the intent element that the person charged must know that the proceeds were derived either directly or indirectly from Racketeering Activity.
8. The Original Section 7(3)(a) - 7(9) were deleted. This removed all forfeiture provisions.
9. New Sections 13 and 14 split the offenses of insufficient fund checks and no account checks into two separate offenses. It also brings the grading of such offenses into conformity with Nebraska's theft offenses.
10. The Original Section 14(13) is deleted. This removes the provision relating to the retroactive application of the statutory changes made by LB155 and its amendments.

Brad Ashford, Chairperson