

**RIGHT OF IDENTITY THEFT VICTIM TO
CIVIL CAUSE OF ACTION**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Julie Fisher

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill creates a civil action for damages for an identity theft victim against a perpetrator.

Highlighted Provisions:

This bill:

- ▶ allows an identity theft victim to bring an action against a perpetrator;
- ▶ sets out limits on the recovery of damages; and
- ▶ designates a statute of limitations for a civil action for damages.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-2-305, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

78B-6-1701, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-2-305** is amended to read:

78B-2-305. Within three years.

30 An action may be brought within three years:

31 (1) for waste, trespass upon, or injury to real property; except that when waste or
32 trespass is committed by means of underground works upon any mining claim, the cause of
33 action does not accrue until the discovery by the aggrieved party of the facts constituting the
34 waste or trespass;

35 (2) for taking, detaining, or injuring personal property, including actions for specific
36 recovery; except that in cases where the subject of the action is a domestic animal usually
37 included in the term "livestock," which at the time of its loss has a recorded mark or brand, if
38 the animal strayed or was stolen from the true owner without the owner's fault, the cause does
39 not accrue until the owner has actual knowledge of facts that would put a reasonable person
40 upon inquiry as to the possession of the animal by the defendant;

41 (3) for relief on the ground of fraud or mistake; except that the cause of action does
42 not accrue until the discovery by the aggrieved party of the facts constituting the fraud or
43 mistake;

44 (4) for a liability created by the statutes of this state, other than for a penalty or
45 forfeiture under the laws of this state, except where in special cases a different limitation is
46 prescribed by the statutes of this state; or

47 (5) to enforce liability imposed by Section 78B-3-603, or for damages under Section
48 78B-6-1701, except that the cause of action does not accrue until the aggrieved party knows or
49 reasonably should know of the harm suffered.

50 Section 2. Section **78B-6-1701** is enacted to read:

51 **78B-6-1701. Cause of action for identity theft.**

52 (1) A petitioner who has been injured by a violation of Section 76-6-1102, Identity
53 Fraud, or Section 76-10-1801, Communications Fraud, may recover from the perpetrator:

54 (a) compensatory damages in the amount of \$1,000 or up to three times the amount of
55 actual damages, whichever is greater;

56 (b) attorney fees; and

57 (c) court costs.

58 (2) Actual damages may include:
59 (a) replacement or reissuance costs for checks and any personal identification
60 documents;
61 (b) the value of the petitioner's time spent:
62 (i) repairing their credit history or rating; and
63 (ii) attending civil or administrative hearings necessary to resolve any debt, lien, or
64 other obligation arising from the offense;
65 (c) lost wages; and
66 (d) any other verifiable costs the court may choose to include.
67 (3) The court may award punitive damages in addition to compensatory damages.
68 (4) A perpetrator who is not tried or found not guilty of a violation of Section
69 76-6-1102, Identity Fraud, or Section 76-10-1801, Communications Fraud, may be found
70 liable under this section if the court finds by a preponderance of the evidence that the
71 perpetrator participated in a violation and the petitioner was injured as a result.
72 (5) (a) A perpetrator who is found guilty of a violation of Section 76-6-1102, Identity
73 Fraud, or Section 76-10-1801, Communications Fraud, shall be found liable under this
74 section.
75 (b) If restitution was ordered in the criminal action, the amount ordered shall be
76 deducted from any damages awarded under this section.