

BILL NO. 17-105

AN ORDINANCE AMENDING CHAPTER 17, ARTICLE IV OFFENSES AGAINST PROPERTY OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI BY ENACTING A NEW SECTION 17-94 TO PROHIBIT IDENTITY THEFT AND REPEALING, SECTION 17-81 DEFINITIONS AND ENACTING IN LIEU THEREOF A NEW SECTION 17-81 DEFINITIONS, OF LIKE NUMBER AND SUBJECT.

WHEREAS, currently the City of Lee's Summit has no ordinance that deals with identity theft; and,

WHEREAS, the State of Missouri prosecutes mostly felony level identity theft cases but faces case load constraints when filing cases that do not meet the threshold for felony level cases and will often refer such cases back to the City; and,

WHEREAS, the City of Lee's Summit has the ability to effectively prosecute lower threshold level identify theft cases as municipal ordinance violations in the Lee's Summit Municipal Division of the Circuit Court of Jackson County with the passage of an ordinance; and,

WHEREAS, the City of Lee's Summit desires to adopt an ordinance which makes identity theft an ordinance violation to better protect the victims of identity theft within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That Chapter 17, Offenses, Article IV Offenses Against Property is hereby amended by enacting a new section 17-94 Identity theft to read as follows:

17-94. – Identity theft.

A. A person commits the offense of identity theft if he or she knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his or her use.

B. This section shall not apply to the following activities:

1. A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors;

2. A person obtains means of identification or information in the course of a bona fide consumer or commercial transaction;

3. A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;

4. A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so;

5. A person is otherwise authorized by law to engage in the conduct that is the subject of the prosecution.

State Law reference -- Similar provisions, RSMo 570.223.

SECTION 2. That Chapter 17, Offenses, Article IV, Offenses Against Property, Section 17-81 Definitions is hereby amended by repealing and enacted in lieu thereof a new Section 17-81 Definitions, of like number and subject matter to read as follows:

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Sec. 17-81. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appropriate shall mean to take, obtain, use, transfer, conceal, retain or dispose.

Coercion shall mean

- A. A threat, however communicated, to:
1. Commit any offense;
 2. Inflict physical injury in the future on the person threatened or another;
 3. Accuse any person of any offense;
 4. Expose any person to hatred, contempt or ridicule;
 5. Harm the credit or business reputation of any person;
 6. Take or withhold action as a public servant, or cause a public servant to take or withhold action;
 7. Inflict any other harm which would not benefit the actor.
- B. A threat of accusation, lawsuit or other invocation of official action is justified and not coercion if the property sought to be obtained by virtue of the threat was honestly claimed as restitution or indemnification for harm done in the circumstances to which the accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful service. The defendant shall have the burden of injecting the issue of justification as to any threat.

Credit device shall mean a writing, card, code, number or other device purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

Customer shall mean the person in whose name a utility service is provided.

Debit device shall mean a writing, card, code, number or other device, other than a check, draft or similar paper instrument, by the use of which a person may initiate an electronic fund transfer, including but not limited to devices that enable electronic transfers of benefits to public assistance recipients.

Deceit or deceive shall mean making a representation which is false and which the actor does not believe to be true and upon which the victim relies, as to a matter of fact, law, value, intention or other state of mind, or concealing a material fact as to the terms of a contract or agreement. The term "deceit" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. Deception as to the actor's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.

Deprive shall mean to:

- A. Withhold property from the owner permanently;
- B. Restore property only upon payment of reward or other compensation;
- C. Use or dispose of property in a manner that makes recovery of the property by the owner unlikely.

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Divert shall mean to change the intended course or path of electricity, water, gas, telephone, cable television or other utility service without the authorization or consent of the utility.

Means of identification shall mean anything used by a person as a means to uniquely distinguish himself or herself.

Of another shall refer to property or services of any person, including a church or school, other than the actor, who has a possessory or proprietary interest therein, except that property shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security arrangement.

Property shall mean anything of value, whether real or personal, tangible or intangible, in possession or in action, and shall include but not limited to the evidence of a debt actually executed but not delivered or issued as a valid instrument.

Receiving shall mean acquiring possession, control or title or lending on the security of the property.

Reconnection shall mean the commencement of utility service other than by the utility company, to a customer or other person after service has been discontinued by the utility.

Services shall mean and include transportation, telephone, electricity, gas, water, cable television services or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions and use of vehicles.

Tamper shall mean to rearrange, damage, injure, destroy, alter, interfere with or otherwise prevent from performing normal or customary functions.

Utility service shall mean the provision of electricity, water, gas, telephone, cable television or other utility service.

(Code 1988, § 17-81)

Cross reference— Definitions and rules of construction generally, § 1-2.

State Law reference— Similar definitions, RSMo 570.010.

SECTION 3. That all ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 4. That should any section, sentence or clause of this Ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences, or clauses.

SECTION 5. That this Ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

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PASSED by the City Council of the City of Lee's Summit, Missouri, this ____ day of _____, 2017.

ATTEST:

Mayor Randall L. Rhoads

City Clerk Denise R. Chisum

APPROVED by the Mayor of said city this _____ day of _____, 2017.

ATTEST:

Mayor Randall L. Rhoads

City Clerk *Denise R. Chisum*

APPROVED AS TO FORM:

Chief Counsel of Public Safety *Beth Murano*