STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2287

By: Cox, Perry, Askins, Blackburn, Covey, Deutschendorf, Easley, Liotta, Nance, Peterson (Pam), Peterson (Ron), Staggs, Tibbs and Wilt of the House

and

Leftwich (Debbe) of the Senate

COMMITTEE SUBSTITUTE

[crimes and punishments - identity theft - jurisdiction - expungement of records for identity theft victims - identity theft passport - consumer report - codification - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1533.1, is amended to read as follows:

Section 1533.1 A. It is unlawful for any person to willfully and with fraudulent intent obtain ~~the name, address, social security number, date of birth, or~~ any ~~other~~ personal identifying information of another person, living or dead, with intent to use, sell, or allow any other person to use or sell such personal identifying information to obtain or attempt to obtain credit, goods, money, property, or service in the name of the other person without the consent of that person.

B. It is unlawful for any person to use with fraudulent intent the personal identity of another person, living or dead, or any personal identifying information relating to ~~the personal identity~~

~~of~~ another person, living or dead, to obtain or attempt to obtain credit or anything of value.

C. It is unlawful for any person with fraudulent intent to lend, sell, or otherwise offer the use of such person's own ~~name, address, social security number, date of birth, or any other~~ personal identifying information or document to any other person with the intent to allow such other person to use the personal identifying information or document to obtain or attempt to obtain any identifying document in the name of such other person.

D. It is unlawful for any person to use personal identifying information of another person, living or dead, to avoid summons, arrest, prosecution, or to impede a criminal investigation.

E. As used in this section, "personal identifying information" includes but is not be limited to:

1. Name;

2. Address;

3. Date of birth;

4. Social security number;

5. Driver license number;

6. Bank account numbers;

7. Credit or debit card numbers;

8. Personal identification numbers (PIN);

9. Electronic identification codes;

10. Automated or electronic signatures;

11. Biometric data;

12. Fingerprints;

13. Passwords; or

14. Any other numbers or information that can be used to access the financial resources or property of a person; obtain identification, credit, money, goods or services; or act as identification.

F. Any person convicted of violating any provision of this section shall be guilty of identity theft. Identity theft is a felony offense punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two (2) years, or a fine not to exceed Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

G. In addition to any other punishment, a person convicted of identity theft shall be ordered by the court to make restitution as the court deems appropriate to any person or the estate of any person whose personal identifying information was appropriated. The restitution may include the actual expenses of the person or the estate of the person associated with correcting inaccuracies or errors in the consumer report or other personal identifying information of the person.

H. In any proceeding brought pursuant to this section, the crime shall be considered to have been committed in any locality where the person whose identifying information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in such locality.

I. Any person whose name or other identification has been used without the consent or authorization of that person by another person who has been charged or arrested using such name or identification may file a petition with the court for relief pursuant to Sections 18 and 19 of Title 22 of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1533.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person whose name or other identification has been used without their consent by another person who has been charged or arrested using such name or identification may file a petition with the court for relief pursuant to Sections 18 and 19 of Title 22 of the Oklahoma Statutes. A person who has petitioned the court

pursuant to Sections 18 and 19 of Title 22 of the Oklahoma Statutes as a result of a violation of Section 1533.1 of this title, may submit to the Attorney General a certified copy of a court order obtained pursuant to Sections 18 and 19 of Title 22 of the Oklahoma Statutes. The Attorney General, in cooperation with the Oklahoma State Bureau of Investigation, may issue an "Identity Theft Passport" stating that such an order has been submitted. The Attorney General may provide access to identity theft information to criminal justice agencies and individuals who have submitted a court order pursuant to this section.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 18, as last amended by Section 17, Chapter 3, O.S.L. 2003 (22 O.S. Supp. 2003, Section 18), is amended to read as follows:

Section 18. Persons authorized to file a motion for expungement, as provided herein, must be within one of the following categories:

1. The person has been acquitted;

2. The conviction was reversed with instructions to dismiss by an appellate court of competent jurisdiction, or an appellate court of competent jurisdiction reversed the conviction and the district attorney subsequently dismissed the charge;

3. The factual innocence of the person was established by the use of deoxyribonucleic acid (DNA) evidence subsequent to conviction;

4. <u>The name or other identification of the person has been used without the consent or authorization of that person by another person who has been charged or arrested using such name or identification;</u>

<u>5.</u> The person was arrested and no charges of any type, including charges for an offense different than that for which the person was originally arrested are filed or charges are dismissed within one (1) year of the arrest;

~~5.~~ 6. The statute of limitations on the offense had expired and no charges were filed;

~~6.~~ 7. The person was under eighteen (18) years of age at the time the offense was committed and the person has received a full pardon for the offense;

~~7.~~ 8. The offense was a misdemeanor, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the judgment was entered; or

~~8.~~ 9. The offense was a nonviolent felony, as defined in Section 571 of Title 57 of the Oklahoma Statutes, the person has received a full pardon for the offense, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the conviction.

For purposes of this act, "expungement" ~~shall mean~~ means the sealing of criminal records.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 149 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. If a consumer submits to a consumer reporting agency, as defined in the Federal Fair Credit Reporting Act, 15 U.S.C., Sections 1681 through 1681v, a copy of a valid police report, the consumer reporting agency, within thirty (30) days of receipt of the police report, shall block the reporting of any information that the consumer alleges appears on the consumer report, as defined in the Federal Fair Credit Reporting Act, 15 U.S.C., Sections 1681 through 1681v, as a result of a violation of Section 1533.1 of Title 21 of the Oklahoma Statutes. The consumer reporting agency shall promptly notify the furnisher of the information that a police report has been filed, that a block has been requested, and the effective date of the block.

B. Consumer reporting agencies may decline to block or may rescind any block of consumer information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes that:

1. The information was blocked due to a misrepresentation of a material fact by the consumer;

2. The information was blocked due to fraud, in which the consumer participated, or of which the consumer had knowledge, and which may for purposes of this section be demonstrated by circumstantial evidence;

3. The consumer agrees that portions of the blocked information or all of it were blocked in error;

4. The consumer knowingly obtained or should have known that the obtained possession of goods, services, or monies was a result of the blocked transaction or transactions; or

5. The consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the report made by the consumer of a violation of Section 1533.1 of Title 21 of the Oklahoma Statutes.

C. If blocked information is unblocked pursuant to this section, the consumer shall be notified in the same manner as consumers are notified of the reinsertion of information pursuant to the Federal Fair Credit Reporting Act, 15 U.S.C., Section 1681i. The prior presence of the blocked information in the file of the consumer reporting agency on the consumer is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any money, goods, or services.

D. A consumer reporting agency shall accept the version of the disputed information of the consumer and correct the disputed item when the consumer submits to the consumer reporting agency documentation obtained from the source of the item in dispute or

from public records confirming that the report was inaccurate or incomplete, unless the consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the documentation submitted and notifies the consumer in writing of that decision, explaining its reasons for unblocking the information and setting forth the specific, verifiable facts on which the decision is based.

E. A consumer reporting agency shall delete from a consumer report inquiries for credit reports based upon credit requests that the consumer reporting agency verifies were initiated as a result of a violation of Section 1533.1 of Title 21 of the Oklahoma Statutes.

F. The provisions of this section shall not apply to:

1. A consumer reporting agency that acts as a reseller of credit information by assembling and merging information contained in the databases of other consumer reporting agencies, and that does not maintain a permanent database of credit information from which new consumer reports are produced;

2. A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods; or

3. A demand deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

SECTION 5. This act shall become effective November 1, 2004.