STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

2ND CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1985

By: Ingmire, Nance, Trebilcock, Kiesel, Duncan, Dorman and Pruett of the House

and

Bass, Crain and Lamb of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; creating the Identity Theft Protection Act; authorizing preparation and filing of identity theft incident report; directing copy of report be provided to victim; allowing report to be shared with other jurisdictions; defining term; providing certain exception for identity theft incident reports; prohibiting certain acts by persons or entities; providing exceptions; providing penalty; authorizing filing of civil suit; defining terms; requiring businesses to use reasonable measures to protect certain information; stating reasonable measures; requiring written policy for destruction or disposal of records; providing penalty; authorizing filing of civil suit; providing severability clause; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Sections 1 through 5 of this act shall be known and may be cited as the "Identity Theft Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1533.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, victims of identity theft may contact the local law enforcement agency where the victim is domiciled and request that an incident report about the identity theft be prepared and filed. The local law enforcement agency that prepares and files the incident report shall, upon request, provide the victim with a copy of the incident report. The law enforcement agency may share the incident report with law enforcement agencies located in other jurisdictions. For purposes of this section, "incident report" means a loss or other similar report prepared and filed by a local law enforcement agency.

B. Nothing in this section shall interfere with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. An incident report prepared and filed under this section is not required to be counted as an open case for purposes such as compiling open case statistics.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1533.4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Except as provided for in subsection B of this section, a person or entity, including a state or local agency, shall not do any of the following:

1. Intentionally communicate or otherwise make available to the general public the Social Security number of an individual;

2. Print the Social Security number on any card provided to the individual and required for the individual to access products or services provided by the person or entity;

3. Require an individual to transmit his or her Social Security number over the Internet, unless the connection is secure or the Social Security number is encrypted by the use of an algorithmic process to transform data into a form in which there is a low

probability of assigning meaning without use of a confidential process or key;

4. Require an individual to use his or her Social Security number to access an Internet web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet web site;

5. Print the Social Security number of an individual on any materials that are mailed to the individual, unless state or federal law requires the Social Security number to be on the document to be mailed. Notwithstanding this paragraph, Social Security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend, update, or terminate an account, contract, or policy, or to confirm the accuracy of Social Security numbers. A Social Security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened; and

6. Sell, lease, loan, trade, rent, or otherwise disclose the Social Security number of an individual to a nonaffiliated third party for any purpose without written consent, or electronic consent provided by means of a confidential personalized digital key, code, or number used for secure electronic transmissions which identifies and authenticates the signatory, to the disclosure from the individual, unless such transaction is done for a lawful purpose. The provisions of this paragraph do not apply to financial institutions as defined by 15 United States Code, Section 6809(3), officers, directors or employees of the institution, a consumer reporting agency as defined by 15 United States Code, Sections 1681a(f), officers, directors, or employees of the agency, or a licensee as defined by Oklahoma Rule 365:35-1-4(17).

B. This section shall not apply to documents that are recorded or required to be open to the public pursuant to the Oklahoma Open Records Act, Sections 24A.1 through 24A.28 of Title 51 of the Oklahoma Statutes.

C. This section does not prohibit the collection, use, or release of a Social Security number as otherwise expressly permitted by the laws of the State of Oklahoma or the United States, or the use of a Social Security number for internal verification or administrative purposes.

D. Any person who knowingly violates the provisions of this section shall, upon conviction, be guilty of a felony punishable by a fine of not less than Five Thousand Dollars ($5,000.00), or imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment.

E. An individual may bring a civil action against a person who has violated the provisions of this section and may recover actual damages, plus costs and reasonable attorney fees.

F. As used in this section, “nonaffiliated third party” means any business that is not officially associated or attached to that business.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1533.5 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. For purposes of Sections 3 and 4 of this act:

1. "Business" means sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. “Business” does not mean a financial institution as defined by 15 United States Code, Section 6809(3), officer, director, or employee of the institution, or a licensee as defined by Oklahoma Rule 365:35-1-4(17). The term also includes an entity that destroys records;

2. "Dispose" includes:

a. the discarding or abandonment of records containing personal information, and

b. the sale, donation, discarding or transfer of any medium, including computer equipment, or computer media, containing records of personal information, or other nonpaper media upon which records of personal information is stored, or other equipment for nonpaper storage of information;

3. "Personal information" means any information that identifies, relates to, describes, or is capable of being associated with a particular individual including, but not limited to:

a. a name,

b. signature,

c. Social Security number,

d. fingerprint,

e. photograph or computerized image,

f. physical characteristics or description,

g. address,

h. telephone number,

i. passport number,

j. driver license or state identification card number,

k. date of birth,

l. medical information,

m. bank account number,

n. credit card number,

o. debit card number, or

p. any other financial information; and

4. "Records" means any material on which written, drawn, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. "Records" does not include publicly available directories containing

information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address or telephone number.

B. Any business that conducts business in Oklahoma and any business that maintains or otherwise possesses personal information of residents of Oklahoma shall take all reasonable measures to protect against unauthorized access to or use of the information in connection with, or after its disposal. The reasonable measures must include, but may not be limited to:

1. Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing personal information so that the information cannot practicably be read or reconstructed;

2. Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the information cannot practicably be read or reconstructed;

3. After due diligence, entering into and monitoring compliance with a written contract with another party engaged in the business of record destruction to dispose of personal information in a manner consistent with this act. Due diligence should ordinarily include, but may not be limited to, one or more of the following:

a. reviewing an independent audit of the operations of the disposal company or its compliance with this section or its equivalent,

b. obtaining information about the disposal company from several references or other reliable sources and requiring that the disposal company be certified by a recognized trade association or similar third party with a reputation for high standards of quality review, or

c. reviewing and evaluating the information security policies or procedures of the disposal company, or

taking other appropriate measures to determine the competency and integrity of the disposal company; and

4. For disposal companies explicitly hired to dispose of records containing personal information, implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection, transportation, and disposing of the information in accordance with paragraphs 1 and 2 of subsection B of this section.

C. Procedures relating to the adequate destruction or proper disposal of personal records must be comprehensively described and classified as official policy in the writings of the business entity, including corporate and employee handbooks and similar corporate documents.

D. Any person or business that violates this section may be subject to a fine of not to exceed Three Thousand Dollars ($3,000.00) for each offense.

E. An individual aggrieved by a violation of this section may bring a civil action against the person or business to enjoin further violations of this act and may recover actual damages, costs, and reasonable attorney fees.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1533.6 of Title 21, unless there is created a duplication in numbering, reads as follows:

The provisions of this act are severable and if any part or provision shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 6. This act shall become effective November 1, 2005.

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