

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2761

By: Perry

COMMITTEE SUBSTITUTE

An Act relating to identity theft; creating the Oklahoma Identity Theft Act; providing short title; defining terms; authorizing consumers to request a security freeze; providing certain exemption; establishing certain procedures for consumer reporting agencies; requiring disclosure of process; allowing security freeze to be temporarily lifted; establishing procedures for the temporary lifting of a security freeze; authorizing development of procedures for certain requests; requiring removal or temporary lifting of security freeze under certain circumstances; allowing third parties to treat credit applications as incomplete under certain circumstances; providing procedures for removal of security freeze; providing an exemption for certain persons and entities; allowing credit reporting agencies to charge a certain fee; providing exceptions; excluding certain entities from security freeze requirements; requiring inclusion of certain notice under certain circumstance; providing civil penalties for certain acts; defining terms; requiring individuals and certain entities to conduct an investigation upon a breach of security; requiring notice and providing notice procedures; authorizing delay of notice under certain circumstances; recognizing compliance with notice requirements by individuals and certain entities under certain circumstances; authorizing the Attorney General to bring certain actions for certain violations; providing exclusivity clause; providing for codification; 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 to be codified in the Oklahoma Statutes as Section 149 of Title 24, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 15 of this act shall be known and may be cited as the "Oklahoma Identity Theft Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150 of Title 24, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Consumer" means an individual who is also a resident of this state;

2. "Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on the creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of a consumer which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the eligibility of a consumer for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized under Section 1681b of Title 15 of the United States Code. The term "consumer report" does not include:

- a. any report containing information solely as to transactions or experiences between the consumer and the person making the report,
- b. an authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device,
- c. a report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer as required under of the Fair Credit Reporting Act, Section 1681m of Title 15 of the United States Code,

- d. any communication of information described in this section among persons related by common ownership or affiliated by corporate control, or
- e. any communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity before the time that the information is initially communicated to direct that such information not be communicated among such persons;

3. "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports; and

4. "Security freeze" means a notice placed in a credit report of a consumer, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing the credit report or score of the consumer.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 151 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. A consumer may request that a security freeze be placed on his or her credit report by sending a request in writing by certified mail to a consumer reporting agency at an address designated by the consumer reporting agency to receive such requests. This subsection does not prevent a consumer reporting

agency from advising a third party that a security freeze is in effect with respect to the credit report of a consumer.

B. A consumer reporting agency shall place a security freeze on a credit report of a consumer no later than five (5) business days after receiving from the consumer:

1. A written request as provided in subsection A of this section;

2. Proper identification; and

3. Payment of a fee, if applicable.

C. The consumer reporting agency shall send a written confirmation of the placement of the security freeze to the consumer within ten (10) business days. Upon placing the security freeze on the credit report of the consumer, the consumer reporting agency shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit report for a specific period of time.

D. If a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the credit report of the consumer for a period of time while the freeze is in place.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 152 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. If the consumer wishes to allow his or her credit report to be accessed for a specific period of time while a freeze is in place, he or she shall contact the consumer reporting agency using a point of contact designated by the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

1. Proper identification;

2. The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection C of Section 3 of this act;

3. The proper information regarding the time period for which the report shall be available to users of the credit report; and

4. A fee, if applicable.

B. A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection A of this section, shall comply with the request no later than three (3) business days after receiving the request.

C. A consumer reporting agency may develop procedures involving the use of telephone, facsimile, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection A of this section in an expedited manner.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 153 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. A consumer reporting agency shall remove or temporarily lift a freeze placed on the credit report of a consumer only in the following cases:

1. Upon consumer request, pursuant to Sections 4 and 6 of this act; or

2. If the credit report of the consumer was frozen due to a material misrepresentation of fact by the consumer.

If a consumer reporting agency intends to remove a freeze upon a credit report of a consumer, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the credit report of the consumer.

B. If a third party requests access to a consumer credit report on which a security freeze is in effect, this request is in connection with an application for credit or any other use, and the

consumer does not allow his or her credit report to be accessed for that period of time, the third party may treat the application as incomplete.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 154 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. A security freeze shall remain in place until the consumer requests, using a point of contact designated by the consumer reporting agency, that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three (3) business days of receiving a request for removal from the consumer, who provides:

1. Proper identification;
2. The unique personal identification number or password provided by the consumer reporting agency pursuant to Section 3 of this act; and
3. A fee, if applicable.

B. A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 155 of Title 24, unless there is created a duplication in numbering, reads as follows:

The provisions of this act do not apply to the use of a consumer credit report by any of the following:

1. A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owed by the consumer to that person or entity, or a prospective assignee of a financial obligation owed by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract including a demand deposit account, or to

whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owed for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

2. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;

3. Any state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena;

4. A child support agency acting pursuant to Title IV-D of the Social Security Act;

5. The state or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities, provided such responsibilities are consistent with a permissible purpose under Section 1681b of Title 15 of the United States Code;

6. The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act;

7. Any person or entity administering a credit file monitoring subscription or similar service to which the consumer has subscribed;

8. Any person or entity for the purpose of providing a consumer with a copy of his or her credit report or score upon the request of the consumer; or

9. Any person using the information in connection with the underwriting of insurance.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 156 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. This act does not prevent a consumer reporting agency from charging a fee of no more than Five Dollars (\$5.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a consumer credit report, except that a consumer reporting agency may not charge a fee to a victim of identity theft who has submitted a valid police report to the consumer reporting agency.

B. If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within thirty (30) days of the change being posted to the file of the consumer:

1. Name;
2. Date of birth;
3. Social security number; and
4. Address.

C. Written confirmation is not required for technical modifications of official information of a consumer, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 157 of Title 24, unless there is created a duplication in numbering, reads as follows:

The following entities are not required to place a security freeze on a credit report:

1. A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained

in the database of another consumer reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent database of credit information from which new consumer credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency;

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

3. A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine (ATM) 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 deposit account at the inquiring bank or financial institution.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 158 of Title 24, unless there is created a duplication in numbering, reads as follows:

At any time a consumer is required to receive a summary of rights required under Section 1681g of Title 15 of the United States Code, the following notice shall be included:

"Oklahoma Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial

information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a period of time after the freeze is in place. To provide that authorization you must contact the consumer reporting agency and provide all of the following:

1. The personal identification number or password;
2. Proper identification to verify your identity;
3. The proper information regarding the period of time for which the report shall be available; and
4. The payment of the appropriate fee.

A consumer reporting agency must authorize the release of your credit report no later than three (3) business days after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring civil action against anyone, including a consumer reporting agency, who improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct inaccurate file data.

Unless you are a victim of identity theft with a police report to verify the crimes, a consumer reporting agency has the right to charge you up to Five Dollars (\$5.00) to place a freeze on your credit report, up to Five Dollars (\$5.00) to temporarily lift a freeze on your credit report, depending on the circumstances, and up to Five Dollars (\$5.00) to remove a freeze from your credit report."

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 159 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. Any person who willfully fails to comply with any requirement imposed under the provisions of this act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. a. any actual damages sustained by the consumer as a result of the failure or damages of not less than One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00), or
- b. in the case of liability of a person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or Five Thousand Dollars (\$5,000.00), whichever is greater;

2. Such amount of punitive damages as the court may allow; and

3. In the case of any successful action to enforce any liability under the provisions of this act, the costs of the action together with reasonable attorney fees as determined by the court.

B. Any person who obtains a consumer report, requests a security freeze, or requests the temporary lifting or removal of a security freeze from a consumer reporting agency under false pretenses or knowingly without a permissible purpose, shall be liable to the consumer reporting agency for actual damages sustained

by the consumer reporting agency or Five Thousand Dollars (\$5,000.00), whichever is greater.

C. Any person who is negligent in failing to comply with any requirement imposed under this act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Any actual damages sustained by the consumer as a result of the failure; and

2. In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney fees as determined by the court.

D. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under the provisions of this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party reasonable attorney fees in relation to the work expended in responding to the pleading, motion, or other paper.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160 of Title 24, unless there is created a duplication in numbering, reads as follows:

As used in Sections 12 through 15 of this act:

1. "Breach of the security of the system" means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by an individual or a commercial entity. Good-faith acquisition of personal information by an employee or agent of an individual or a commercial entity for the purposes of the individual or the commercial entity is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure;

2. "Commercial entity" includes corporations, business trusts, estates, trusts, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations,

organizations, joint ventures, governments, governmental subdivisions, agencies, or instrumentalities, or any other legal entity, whether for profit or not-for-profit;

3. "Notice" means:

- a. written notice,
- b. telephonic notice,
- c. electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code, or
- d. substitute notice, if the individual or the commercial entity required to provide notice demonstrates that the cost of providing notice will exceed Seventy-five Thousand Dollars (\$75,000.00), or that the affected class of Oklahoma residents to be notified exceeds one hundred thousand (100,000) residents, or that the individual or the commercial entity does not have sufficient contact information to provide notice.

Substitute notice consists of all of the following:

- (1) e-mail notice if the individual or the commercial entity has e-mail addresses for the members of the affected class of Oklahoma residents,
- (2) conspicuous posting of the notice on the web site page of the individual or the commercial entity if the individual or the commercial entity maintains one, and
- (3) notice to major statewide media; and

4. "Personal information" means the first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident, when either the name or the data elements are not encrypted:

- a. Social Security number,

- b. driver license number or identification card number,
or
- c. account number, or credit or debit card number, in
combination with any required security code, access
code, or password that would permit access to a
financial account of a resident.

The term "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 161 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. An individual or a commercial entity that conducts business in Oklahoma and that owns or licenses computerized data that includes personal information about a resident of Oklahoma shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused. If the investigation determines that the misuse of information about an Oklahoma resident has occurred or is reasonably likely to occur, the individual or the commercial entity shall give notice as soon as possible to the affected Oklahoma resident. Notice must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

B. An individual or a commercial entity that maintains computerized data that includes personal information that the individual or the commercial entity does not own or license shall give notice to and cooperate with the owner or licensee of the information of any breach of the security of the system immediately

following discovery of a breach, if misuse of personal information about an Oklahoma resident occurred or is reasonably likely to occur. Cooperation includes sharing with the owner or licensee information relevant to the breach.

C. Notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation. Notice required by this section must be made in good faith, without unreasonable delay and as soon as possible after the law enforcement agency determines that notification will no longer impede the investigation.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 162 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. An individual or a commercial entity that maintains its own notice procedures as part of an information security policy for the treatment of personal information, and whose procedures are otherwise consistent with the timing requirements of Section 13 of this act is deemed to be in compliance with the notice requirements of Section 13 of this act if the individual or the commercial entity notifies affected Oklahoma residents in accordance with its policies in the event of a breach of security of the system.

B. An individual or a commercial entity that is regulated by state or federal law and that maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with the provisions of Section 13 of this act if the individual or the commercial entity notifies affected Oklahoma residents in accordance with the maintained procedures when a breach occurs.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163 of Title 24, unless there is created a duplication in numbering, reads as follows:

Pursuant to the duties and powers prescribed by the Oklahoma Consumer Protection Act, the Attorney General may bring an action in law or equity to address violations of Sections 13 and 14 of this act and for other relief that may be appropriate to ensure proper compliance with Sections 13 and 14 of this act or to recover direct economic damages resulting from a violation, or both. The provisions of Sections 13 and 14 of this act are not exclusive and do not relieve an individual or a commercial entity from compliance with all other applicable provisions of law.

SECTION 16. This act shall become effective November 1, 2006.

50-2-9626 GRS 03/06/06