

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

FLOOR SUBSTITUTE

FOR

SENATE BILL NO. 1748

By: Bass and Lawler of the
Senate

and

Ingmire of the House

FLOOR SUBSTITUTE

[identity theft - Identify Theft Protection Act -
codification - 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 13 of this act shall be known and may be
cited as the "Identity Theft Protection Act".

SECTION 2. AMENDATORY 13 O.S. 2001, Section 177.2, is
amended to read as follows:

Section 177.2 A. Except as otherwise provided in this section,
no person shall install or use a pen register or a trap and trace
device without first obtaining a court order as provided by Section
~~4 of this act~~ 177.4 of this title.

B. The prohibition of subsection A of this section shall not
apply with respect to the use of a pen register or a trap and trace
device by a provider of electronic or wire communication service:

1. Relating to the operation, maintenance and testing of a wire
or electronic communication service or to the protection of the
rights or property of such provider, or to the protection of users
of that service from abuse of service or unlawful use of service;

2. To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication or a user of that service, from fraudulent, unlawful or abusive use of service; or

3. Where the consent of the user of that service has been obtained.

C. No provider of a wire or electronic communication service or other person shall sell, and no person may purchase, information derived from any pen register or trap and trace device or information of a similar nature, including but not limited to information compiled by a provider of wire or electronic communication service as an incident to billing, or for other purposes.

D. Any person knowingly violating the provisions of subsection A or C of this section, upon conviction, shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment of not more than one (1) year, or by both such fine and imprisonment.

SECTION 3. 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 considered an open case for purposes such as compiling open case statistics.

SECTION 4. 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. For purposes of Sections 4 and 5 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 shall include, but 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 this subsection.

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 convicted of a violation of this section shall be guilty of a felony punishable by a fine 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 1533.5 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:

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 website, unless a password or unique personal identification number or other authentication device is also required to access the Internet website;

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 U.S. Code, Section 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.

C. This section does not prohibit the collection, use, or release of a social security number as otherwise expressly permitted by the laws of this state 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 6. 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:

As used in Sections 6 through 13 of this act:

1. "Consumer" means any natural person who is a resident of this state;

2. "Consumer file" means all of the information about a consumer that is recorded and retained by a consumer reporting agency regardless of how the information is stored;

3. "Consumer reporting agency" means any person or entity 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. The term does not include a business entity that provides only check verification or check guarantee services;

4. "Credit report" or "consumer report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine the consumer's eligibility for credit or other purpose authorized under Sections 603 and 604 of the Fair Credit Reporting Act, 15 U.S.

Code, Sections 1681a and 1681b, as amended. The term does not include:

- a. a report containing information based solely on a transaction 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 makes a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made under Section 615 of the Fair Credit Reporting Act, 15 U.S. Code, Section 1681m, as amended, to the consumer in the event of adverse action against the consumer,
- 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;

5. "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual association, limited

liability company, corporation, estate, trust, and any other group or combination acting as a unit; and

6. "Security freeze" means a notice placed on a consumer file that prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit involving that consumer file without the express authorization of the consumer.

SECTION 7. 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:

A. A consumer reporting agency shall place a security freeze on a consumer's consumer file no later than five (5) business days after receiving a written or telephone request from the consumer or three (3) business days after receiving a secure electronic mail request, including such identification as a consumer reporting agency may require. Within one year of the effective date of this act, a consumer reporting agency shall place a security freeze on a consumer's credit report no later than three (3) business days after receiving a written or telephone request from the consumer or one (1) business day after receiving a secure electronic mail request. Within two (2) years of the effective date of this act, a consumer reporting agency shall place a security freeze on a consumer's credit report no later than one (1) business day after receiving a written or telephone request.

B. Upon receipt of a request by a consumer for a security freeze which meets the requirements of subsection A of this section, a consumer reporting agency shall disclose to the consumer the process of placing, removing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's consumer file for a specific requestor or period while the security freeze is in effect.

C. Not later than the fifth business day after the date the agency receives the request for a security freeze, a consumer reporting agency shall:

1. Send a written confirmation of a security freeze to the consumer; and

2. Provide the consumer with a unique personal identification number or password to be used by the consumer to authorize a removal or temporary lifting of the security freeze.

D. A consumer may request in writing a replacement personal identification number or password. Such request shall be in compliance with the requirements for requesting a security freeze under subsection A of this section. Not later than the third business day after the receipt of a request for a replacement personal identification number or password, a consumer reporting agency shall provide the consumer with a new and unique personal identification number or password to be used by the consumer instead of the number or password that was provided under subsection C of this section.

E. A consumer reporting agency may charge a reasonable fee not to exceed Five Dollars (\$5.00) for placing a security freeze on a consumer's consumer report. A consumer reporting agency may charge a reasonable fee, not to exceed Five Dollars (\$5.00), if the consumer fails to retain the original personal identification number provided by the consumer reporting agency and must be reissued the same or a new personal identification number. A consumer reporting agency shall not charge a fee for placing a security freeze on a consumer's consumer report if that consumer provides a copy of an incident report.

SECTION 8. 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:

If a security freeze is in place, a consumer reporting agency shall notify the consumer in writing of a change in the consumer file to the consumer's name, date of birth, social security number or address. Such notice shall be provided not later than thirty (30) calendar days after the date the change is made. The agency shall send notification of a change to the new address and the former address. Notice shall not be required for an immaterial change, including street abbreviation change or correction of a transposition of numbers or misspelling of a word.

SECTION 9. 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 consumer reporting agency shall notify any person who requests a consumer or credit report if a security freeze is in effect for the consumer file involved in that report. A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report or rating.

SECTION 10. 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. Upon request by the consumer and with such identification as a consumer reporting agency may require, including the consumer's personal identification number or password provided pursuant to subsection C of Section 7 of this act, a consumer reporting agency shall remove a security freeze not later than the third business day after the date the agency receives the request.

B. Upon request by the consumer and with such identification as a consumer reporting agency may require, including the consumer's personal identification number or password provided under subsection C of Section 7 of this act, a consumer reporting agency, not later

than the third business day after the date the agency receives the request, shall temporarily lift the security freeze for:

1. A certain properly designated period; or
2. A certain properly identified requester.

Within one year of the effective date of this act, a consumer reporting agency shall honor such request no later than one business day after receiving the request.

C. A consumer reporting agency shall develop, as quickly as possible, procedures involving the use of a telephone, a facsimile machine, the Internet, or another electronic medium to receive and process a request from a consumer under this section in an expedited manner. Such procedures shall include those necessary to allow the use of electronic media to receive and process a request from a consumer to temporarily lift a security freeze as quickly as possible, with the goal of processing a request within fifteen (15) minutes of receipt of that request.

D. A consumer reporting agency may remove a security freeze placed on a consumer file if the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing five (5) business days prior to removing the freeze on the consumer's credit report.

SECTION 11. 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:

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

1. A state or local governmental entity, including a law enforcement agency or court or private collection agency, if the

entity, agency, or court is acting under a court order, warrant, subpoena, or administrative subpoena;

2. An agency acting to investigate or collect child support payments or acting under Title IV-D of the Social Security Act, 42 U.S. Code, Section 651 et seq.;

3. The Oklahoma Tax Commission or a county treasurer acting to investigate or collect delinquent taxes or a private collection agency acting pursuant to a contract with the Tax Commission to collect delinquent taxes;

4. A person for the purposes of prescreening as provided by the Fair Credit Reporting Act, 15 U.S. Code, Section 1681 et seq., as amended;

5. A person with whom the consumer has an account or contract or to whom the consumer has issued a negotiable instrument, or the person's subsidiary, affiliate, agent, assignee, prospective assignee, or private collection agency, for purposes related to that account, contract, or instrument;

6. A subsidiary, affiliate, agent or assignee to whom access has been granted under Section 10 of this act;

7. A person who administers a credit file-monitoring subscription service to which the consumer has subscribed;

8. A person for the purpose of providing a consumer with a copy of the consumer's report on the consumer's request; and

9. 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 reporting agencies, and does not maintain a permanent database of credit information from which new consumer reports are produced, except that such a reseller of credit information shall honor any security freeze placed on a consumer report by another consumer reporting agency.

SECTION 12. 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 requirement under this act to place a security freeze on a consumer file does not apply to:

1. A check service or fraud prevention service company that issues consumer reports:

- a. to prevent or investigate fraud, or
- b. for purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment; or

2. A deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution.

SECTION 13. 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. As used in this section, "entity" means any entity that conducts business in this state, or any public entity that compiles or maintains computerized records that include personal information.

B. An entity shall disclose any breach of security of computerized records that include personal information following discovery or notification of the breach to any consumer or customer who is a resident of this state whose personal information was, or is reasonably believed to have been, accessed by an unauthorized person. The disclosure to a consumer or customer shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any

measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

C. For purposes of this section, "notice" to consumers may be provided by one of the following methods:

1. Written notice;

2. Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures, for notices legally required to be in writing, set forth in Section 7001 of Title 15 of the U.S. Code;

3. Substitute notice, if the agency demonstrates that the cost of providing notice would exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) or that the affected class of subject persons to be notified exceeds Five Hundred Thousand (500,000), or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

a. conspicuous posting of the notice on the Internet website of the agency or person, if the agency or person maintains a public Internet website, and

b. notification to major statewide media. The notice to media shall include a toll-free phone number where an individual can learn whether that individual's personal data is included in the security breach.

D. Content of Notice.

Such notice shall include:

a. to the extent possible, a description of the categories of information that was, or is reasonably believed to have been, acquired by an unauthorized person, including social security numbers, driver license numbers or State identification numbers and financial data,

b. a toll-free number:

- (1) that the individual may use to contact the agency or person, or the agent of the agency or person, and
- (2) from which the individual may learn:
 - (a) what types of information the agency or person maintained about that individual or about individuals in general, and
 - (b) whether or not the agency or person maintained information about that individual, and
- (3) the toll-free contact telephone numbers and addresses for the major credit reporting agencies.

E. Any entity that compiles or maintains computerized records that include personal information on behalf of another business or public entity shall notify that business or public entity, who shall notify its Oklahoma consumers or customers, as provided in subsection B of this section, of any breach of security of the computerized records immediately following discovery, if the personal information was, or is reasonably believed to have been, accessed by an unauthorized person.

F. 1. Any entity required under this section to disclose a breach of security of a customer's personal information shall, in advance of the disclosure to the consumer or customer, report the breach of security and any information pertaining to the breach to a local law enforcement agency for investigation or handling, which may include dissemination or referral to other appropriate law enforcement entities.

2. The notification required by this section shall be delayed if a law enforcement agency determines that the notification will impede a criminal or civil investigation and that agency has made a request that the notification be delayed. The notification required

by this section shall be made after the law enforcement agency determines that its disclosure will not compromise the investigation and notifies that business or public entity.

G. In addition to any other disclosure or notification required under this section, in the event that an entity discovers circumstances requiring notification pursuant to this section of more than One Thousand (1,000) persons at one time, the entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile or maintain files on consumers on a nationwide basis of the timing, distribution and content of the notices.

SECTION 14. This act shall become effective November 1, 2006.

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