

EHB 1985

1 THE STATE SENATE
2 Wednesday, April 13, 2005

3 ENGROSSED
4 House Bill No. 1985
5 As Amended

6 ENGROSSED HOUSE BILL NO. 1985 - By: INGMIRE, NANCE, TREBILCOCK,
7 KIESEL, DUNCAN, DORMAN and PRUETT of the House and BASS, CRAIN and
8 LAMB of the Senate.

9 [crimes and punishments - Identity Theft Protection Act -
10 codification - noncodification - effective date]

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

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

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

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

19 A. Notwithstanding the fact that jurisdiction may lie elsewhere
20 for investigation and prosecution of a crime of identity theft,
21 victims of identity theft may contact the local law enforcement
22 agency where the victim is domiciled and request that an incident
23 report about the identity theft be prepared and filed. The local
24 law enforcement agency that prepares and files the incident report
25 shall **upon request** provide the victim with a copy of the incident

1 report. The law enforcement agency may share the incident report
2 with law enforcement agencies located in other jurisdictions. For
3 purposes of this section, "incident report" means a loss or other
4 similar report prepared and filed by a local law enforcement agency.

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

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

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

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

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

21 3. Require an individual to transmit his or her Social Security
22 number over the Internet, unless the connection is secure or the
23 Social Security number is encrypted;

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

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

17 6. Sell, lease, loan, trade, rent, or otherwise disclose
18 the Social Security number of an individual to a third party for any
19 purpose without written consent to the disclosure from the
20 individual. The provisions of this paragraph do not apply to
21 financial institutions as defined by 15 United States Code, Section
22 6809(3), officers, directors or employees of the institution, or a
23 licensee as defined by Oklahoma Rule 365:35-1-4(17).

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

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

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

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

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

21 A. For purposes of this section:

22 1. "Business" means sole proprietorship, partnership,
23 corporation, association, or other group, however organized and

1 whether or not organized to operate at a profit. "Business" does
2 not mean a financial institution as defined by 15 United States
3 Code, Section 6809(3), officer, director, or employee of the
4 institution, or a licensee as defined by Oklahoma Rule 365:35-1-
5 4(17). The term also includes an entity that destroys records;

6 2. "Dispose" includes:

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

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

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

18 a. a name,

19 b. signature,

20 c. Social Security number,

21 d. fingerprint,

22 e. photograph or computerized image,

23 f. physical characteristics or description,

- 1 g. address,
- 2 h. telephone number,
- 3 i. passport number,
- 4 j. driver license or state identification card number,
- 5 k. date of birth,
- 6 l. medical information,
- 7 m. bank account number,
- 8 n. credit card number,
- 9 o. debit card number, or
- 10 p. any other financial information; and

11 4. "Records" means any material on which written, drawn,
12 spoken, visual or electromagnetic information is recorded or
13 preserved, regardless of physical form or characteristics.

14 "Records" does not include publicly available directories containing
15 information an individual has voluntarily consented to have publicly
16 disseminated or listed, such as name, address or telephone number.

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

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

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

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

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

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

1 c. reviewing and evaluating the information security
2 policies or procedures of the disposal company, or
3 taking other appropriate measures to determine the
4 competency and integrity of the disposal company; and

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

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

17 D. Any person or business that violates this section may be
18 subject to a fine of not to exceed Three Thousand Dollars
19 (\$3,000.00) for each offense.

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

1 SECTION 5. The provisions of this act are severable and if any
2 part or provision shall be held void the decision of the court so
3 holding shall not affect or impair any of the remaining parts or
4 provisions of this act.

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

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,
7 As Amended and Coauthored.