

CS for SB 1748

THE STATE SENATE
Tuesday, February 14, 2006

Committee Substitute for
Senate Bill No. 1748

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1748 - By: BASS and LAWLER
of the Senate and INGMIRE of the House.

[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 6 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

1 rights or property of such provider, or to the protection of users
2 of that service from abuse of service or unlawful use of service;

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

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

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

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

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1533.3 of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

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

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

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1533.4 of Title 21, unless there
22 is created a duplication in numbering, reads as follows:

23 A. For purposes of Sections 4 and 5 of this act:

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

8 2. "Dispose" includes:

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

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

- 20 a. a name,
- 21 b. signature,
- 22 c. social security number,
- 23 d. fingerprint,

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

13 4. "Records" means any material on which written, drawn,
14 spoken, visual or electromagnetic information is recorded or
15 preserved, regardless of physical form or characteristics. Records
16 does not include publicly available directories containing
17 information an individual has voluntarily consented to have publicly
18 disseminated or listed, such as name, address or telephone number.

19 B. Any business that conducts business in Oklahoma and any
20 business that maintains or otherwise possesses personal information
21 of residents of Oklahoma shall take all reasonable measures to
22 protect against unauthorized access to or use of the information in

1 connection with, or after its disposal. The reasonable measures
2 shall include, but not be limited to:

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

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

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

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

19 b. obtaining information about the disposal company from
20 several references or other reliable sources and
21 requiring that the disposal company be certified by a
22 recognized trade association or similar third party

1 with a reputation for high standards of quality
2 review, or
3 c. reviewing and evaluating the information security
4 policies or procedures of the disposal company, or
5 taking other appropriate measures to determine the
6 competency and integrity of the disposal company; and

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

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

19 D. Any person or business that violates this section may be
20 subject to a fine of not to exceed Three Thousand Dollars
21 (\$3,000.00) for each offense.

22 E. An individual aggrieved by a violation of this section may
23 bring a civil action against the person or business to enjoin

1 further violations of this act and may recover actual damages,
2 costs, and reasonable attorney fees.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1533.5 of Title 21, unless there
5 is created a duplication in numbering, reads as follows:

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

8 1. Intentionally communicate or otherwise make available to the
9 general public the social security number of an individual;

10 2. Print the social security number on any card provided to the
11 individual and required for the individual to access products or
12 services provided by the person or entity;

13 3. Require an individual to transmit his or her social security
14 number over the Internet, unless the connection is secure or the
15 social security number is encrypted by the use of an algorithmic
16 process to transform data into a form in which there is a low
17 probability of assigning meaning without use of a confidential
18 process or key;

19 4. Require an individual to use his or her social security
20 number to access an Internet website, unless a password or unique
21 personal identification number or other authentication device is
22 also required to access the Internet website;

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

13 6. Sell, lease, loan, trade, rent, or otherwise disclose the
14 social security number of an individual to a nonaffiliated third
15 party for any purpose without written consent, or electronic consent
16 provided by means of a confidential personalized digital key, code,
17 or number used for secure electronic transmissions which identifies
18 and authenticates the signatory, to the disclosure from the
19 individual, unless such transaction is done for a lawful purpose.
20 The provisions of this paragraph do not apply to financial
21 institutions as defined by 15 United States Code, Section 6809(3),
22 officers, directors or employees of the institution, a consumer
23 reporting agency as defined by 15 United States Code, Sections

1 1681a(f), officers, directors, or employees of the agency, or a
2 licensee as defined by Oklahoma Rule 365:35-1-4(17).

3 B. This section shall not apply to documents that are recorded
4 or required to be open to the public pursuant to the Oklahoma Open
5 Records Act.

6 C. This section does not prohibit the collection, use, or
7 release of a social security number as otherwise expressly permitted
8 by the laws of this state or the United States, or the use of a
9 social security number for internal verification or administrative
10 purposes.

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

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

19 F. As used in this section, "nonaffiliated third party" means
20 any business that is not officially associated or attached to that
21 business.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 149 of Title 24, unless there is
3 created a duplication in numbering, reads as follows:

4 A. For purposes of this section, "security freeze" means a
5 notice placed in a consumer's credit report that prohibits the
6 consumer credit reporting agency from releasing the consumer's
7 credit report or any information from such report without the
8 express authorization of the consumer.

9 B. Upon written request by a consumer, a consumer credit
10 reporting agency shall place a security freeze on a consumer's
11 credit report no later than the fifth business day after the date
12 the agency receives the request. No later than the tenth business
13 day after the date the agency receives the request, the agency shall
14 send a written confirmation of the security freeze to the consumer
15 and shall provide the consumer with a unique personal identification
16 number or password to be used by the consumer to authorize a removal
17 or temporary lifting of the security freeze. A consumer credit
18 reporting agency shall not provide a credit report on which a
19 consumer has placed a security freeze to a person requesting the
20 credit report of such consumer, but the agency may notify the
21 requesting person that a security freeze is in place on such report.

22 C. Upon a consumer's written request or a request by telephone
23 which includes the consumer's personal identification number or

1 password provided pursuant to subsection B of this section, a
2 consumer credit reporting agency shall remove or temporarily lift a
3 security freeze no later than the third business day after the date
4 the agency receives the request. A temporary lift of a security
5 freeze must be for a specific time period or for a specific person
6 or entity requesting a consumer's credit report.

7 D. No fee shall be assessed by a consumer credit reporting
8 agency for the placement, removal or temporary lifting of a security
9 freeze pursuant to this section if the requesting consumer provides
10 a copy of an incident report filed pursuant to Section 3 of this
11 act. If a consumer does not provide a copy of such report, the
12 agency may assess a fee of Ten Dollars (\$10.00) for each placement,
13 removal or temporary lifting of a security freeze requested pursuant
14 to this section.

15 E. A security freeze shall not apply to a consumer report
16 provided to a state or local governmental entity, including a law
17 enforcement agency, court or private collection agency, if the
18 entity is acting under a court order, warrant, subpoena or
19 administrative subpoena.

20 SECTION 7. This act shall become effective November 1, 2006.

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-7-06 - DO PASS,
22 As Amended and Coauthored.