

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1389

By: Nichols

AS INTRODUCED

An Act relating to debtor and creditor; creating the Oklahoma Identity Theft Act; providing short title; defining terms; requiring consumer reporting agency to place security freeze on certain file under specified circumstance; requiring disclosure of specified information by consumer reporting agency; requiring written confirmation of security freeze and notice of certain information within specified time period; providing for replacement personal identification number or password under specified circumstances; authorizing fee for service; requiring consumer reporting agency to provide certain notice to consumer of specified changes within certain time period; requiring consumer reporting agency to provide notice of security freeze to requestors of consumer or credit report; providing requirements for removal and for temporary removal of security freeze; requiring development of specified procedures for removal; providing for removal of security freeze when material facts are misrepresented; prohibiting consumer reporting agency from charging a fee for specified requests; limiting the application of security freeze for reports provided to certain agencies or persons; excluding certain entities from the requirement to place a security freeze on a consumer report; defining term; requiring certain disclosure to a consumer or customer after breach of specified records; providing exception to disclosure requirement; requiring disclosure to law enforcement agency under certain circumstances and making exceptions thereto; amending 21 O.S. 2001, Section 1533.1, as amended by Section 1, Chapter 279, O.S.L. 2004 (21 O.S. Supp. 2005, Section 1533.1), which relates to the crime of identity theft; increasing maximum prison penalty; amending 74 O.S. 2001, Section 150.2, as last amended by Section 15, Chapter 461, O.S.L. 2003 (74 O.S. Supp. 2005, Section 150.2), which relates to powers and duties of the Oklahoma State Bureau of Investigation; including investigation of violations of the Oklahoma Identity Theft Act; amending 74 O.S. 2001, Section 18b, which relates to the duties of the Attorney General; authorizing investigation of crimes relating to the Oklahoma Identity Theft Act and the Oklahoma Computer Crimes Act; providing for certain agencies to assist in certain investigations; limiting construction of certain provisions concerning certain victims; 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 9 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 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.C., 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.C., 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 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 reporting agency shall place a security freeze on a consumer's consumer file not later than the fifth business day after the date the agency receives a request to place a security freeze on the file, if the consumer sends a written request for such freeze by certified mail and includes such identification as a consumer reporting agency may require.

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 tenth 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 fee not to exceed Eight Dollars (\$8.00) for placing a security freeze on a consumer's consumer file or for providing a replacement personal identification number or password.

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:

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 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 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.

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. 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 Section 3 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 Section 3 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.

C. A consumer reporting agency shall develop 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 reporting agency determines that the security freeze was placed due to a material misrepresentation of fact by the consumer. The consumer reporting agency shall notify the consumer in writing before removing the security freeze under this subsection.

E. A consumer reporting agency shall not charge a fee for a request made pursuant to subsections A or B of this section.

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:

A security freeze does not apply to a consumer report provided to:

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.C., 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 Oklahoma 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.C., 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 6 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;
9. 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;

10. 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; or

11. A consumer reporting agency that:

- a. acts only to resell credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies, and
- b. does not maintain a permanent database of credit information from which new consumer reports are produced.

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:

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 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:

A. As used in this section, "entity" means any entity that conducts business in the State of Oklahoma, 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. Disclosure of a breach of security to a consumer or customer shall not be required under this section if the entity determines that misuse of the information is not reasonably possible. Any such determination shall be documented in writing and retained for five (5) years.

C. 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.

D. 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.

E. An entity that maintains its own notification procedures as part of an information security policy for the treatment of personal information, and is otherwise consistent with the requirements of this section, shall be deemed to be in compliance with the notification requirements of this section if the entity notifies subject consumers or customers in accordance with its policies in the event of a breach of security of the system.

F. 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 10. AMENDATORY 21 O.S. 2001, Section 1533.1, as amended by Section 1, Chapter 249, O.S.L. 2004 (21 O.S. Supp. 2005, Section 1533.1), is amended to read as follows:

Section 1533.1 A. It is unlawful for any person to willfully and with fraudulent intent obtain the name, address, social security number, date of birth, place of business or employment, debit, credit or account numbers, driver license number, or any other personal identifying information of another person, living or dead, with intent to use, sell, or allow any other person to use or sell such personal identifying information to obtain or attempt to obtain money, credit, goods, property, or service in the name of the other person without the consent of that person.

B. It is unlawful for any person to use with fraudulent intent the personal identity of another person, living or dead, or any information relating to the personal identity of another person, living or dead, to obtain or attempt to obtain credit or anything of value.

C. It is unlawful for any person with fraudulent intent to lend, sell, or otherwise offer the use of such person's own name, address, social security number, date of birth, or any other personal identifying information or document to any other person with the intent to allow such other person to use the personal identifying information or document to obtain or attempt to obtain any identifying document in the name of such other person.

D. It is unlawful for any person to willfully create, modify, alter or change any personal identifying information of another person with fraudulent intent to obtain any money, credit, goods, property, service or any benefit or thing of value, or to control, use, waste, hinder or encumber another person's credit, accounts, goods, property, title, interests, benefits or entitlements without the consent of that person.

E. Any person convicted of violating any provision of this section shall be guilty of identity theft. Identity theft is a felony offense punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed ~~two~~(2) ten

(10) years, or a fine not to exceed One Hundred Thousand Dollars (\$100,000.00), or by both such fine and imprisonment. Restitution to the victim may be ordered in addition to any criminal penalty imposed by the court. The victim of identity theft may bring a civil action for damages against any person participating in furthering the crime or attempted crime of identity theft.

SECTION 11. AMENDATORY 74 O.S. 2001, Section 150.2, as last amended by Section 15, Chapter 461, O.S.L. 2003 (74 O.S. Supp. 2005, Section 150.2), is amended to read as follows:

Section 150.2 The Oklahoma State Bureau of Investigation shall have the power and duty to:

1. Maintain a nationally accredited scientific laboratory to assist all law enforcement agencies in the discovery and detection of criminal activity;
2. Maintain fingerprint and other identification files including criminal history records, juvenile identification files, and DNA profiles;
3. Establish, coordinate and maintain the automated fingerprinting identification system (AFIS) and the deoxyribonucleic acid (DNA) laboratory;
4. Operate teletype, mobile and fixed radio or other communications systems;
5. Conduct schools and training programs for the agents, peace officers, and technicians of this state charged with the enforcement of law and order and the investigation and detection of crime;
6. Assist the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Chief Medical Examiner, and all law enforcement officers and district attorneys when such assistance is requested, in accordance with the policy determined by the Oklahoma State Bureau of Investigation Commission established in Section 150.3 of this title;

7. Investigate and detect criminal activity when directed to do so by the Governor;

8. Investigate, detect, institute and maintain actions involving vehicle theft pursuant to Section 150.7 of this title or oil, gas or oil field equipment theft pursuant to Sections 152.2 through 152.9 of this title;

9. Investigate any criminal threat made to the physical safety of elected or appointed officials of this state or any political subdivision of the state and forward the results of that investigation to the Department of Public Safety, and provide security to foreign elected or appointed officials while they are in this state on official business;

10. Investigate and detect violations of the Oklahoma Computer Crimes Act and the Oklahoma Identity Theft Act; and

11. Investigate and enforce all laws relating to any crime listed as an exception to the definition of "nonviolent offense" as set forth in section 571 of Title 57 of the Oklahoma Statutes that occur on the turnpikes.

SECTION 12. AMENDATORY 74 O.S. 2001, Section 18b, is amended to read as follows:

Section 18b. A. The duties of the Attorney General as the chief law officer of the state shall be:

1. To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court and Court of Criminal Appeals in which the state is interested as a party;

2. To appear for the state and prosecute and defend all actions and proceedings in any of the federal courts in which the state is interested as a party;

3. To initiate or appear in any action in which the interests of the state or the people of the state are at issue, or to appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any

commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein;

4. To consult with and advise district attorneys, when requested by them, in all matters pertaining to the duties of their offices, when said district attorneys shall furnish the Attorney General with a written opinion supported by citation of authorities upon the matter submitted;

5. To give an opinion in writing upon all questions of law submitted to the Attorney General by the Legislature or either branch thereof, or by any state officer, board, commission or department, provided, that the Attorney General shall not furnish opinions to any but district attorneys, the Legislature or either branch thereof, or any other state official, board, commission or department, and to them only upon matters in which they are officially interested;

6. At the request of the Governor, State Auditor and Inspector, State Treasurer, or either branch of the Legislature, to prosecute any official bond or any contract in which the state is interested, upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their Departments;

7. Whenever requested by any state officer, board or commission, to prepare proper drafts for contracts, forms and other writing which may be wanted for the use of the state;

8. To prepare drafts of bills and resolutions for individual members of the Legislature upon their written request stating the gist of the bill or resolution desired;

9. To enforce the proper application of monies appropriated by the Legislature and to prosecute breaches of trust in the administration of such funds;

10. To institute actions to recover state monies illegally expended, to recover state property and to prevent the illegal use of any state property, upon the request of the Governor or the Legislature;

11. To pay into the State Treasury, immediately upon its receipt, all monies received by the Attorney General belonging to the state;

12. To keep and file copies of all opinions, contracts, forms and letters of the office, and to keep an index of all opinions, contracts and forms according to subject and section of the law construed or applied;

13. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by the Attorney General in behalf of the state. Said register or docket shall give the style of the case or investigation, where pending, court number, office number, the gist of the matter, result and the names of the assistants who handled the matter;

14. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the state;

15. To report to the Legislature or either branch thereof whenever requested upon any business relating to the duties of the Attorney General's office;

16. To institute civil actions against members of any state board or commission for failure of such members to perform their duties as prescribed by the statutes and the Constitution and to prosecute members of any state board or commission for violation of the criminal laws of this state where such violations have occurred in connection with the performance of such members' official duties;

17. To respond to any request for an opinion of the Attorney General's office, submitted by a member of the Legislature, regardless of subject matter, by written opinion determinative of the law regarding such subject matter;

18. To convene multicounty grand juries in such manner and for such purposes as provided by law; provided, such grand juries are composed of citizens from each of the counties on a pro rata basis by county;

19. To investigate any report by the State Auditor and Inspector filed with the Attorney General pursuant to Section 223 of this title and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of this state;

20. To represent and protect the collective interests of all utility consumers of this state in rate-related proceedings before the Corporation Commission or in any other state or federal judicial or administrative proceeding;

21. To represent and protect the collective interests of insurance consumers of this state in rate-related proceedings before the Insurance Property and Casualty Rate Board or in any other state or federal judicial or administrative proceeding;

22. To certify local crimestoppers programs qualified to receive repayments of rewards pursuant to Section 991a of Title 22 of the Oklahoma Statutes; and

23. To investigate and prosecute any criminal action relating to insurance fraud, the Oklahoma Identity Theft Act, and the Oklahoma Computer Crimes Act, if in the opinion of the Attorney General a criminal prosecution is warranted, or to refer such matters to the appropriate district attorney. The Attorney General may request assistance from the Oklahoma State Bureau of Investigation, any law enforcement agency, or any state or local

agency to aid an investigation by the Office of the Attorney General as authorized by this paragraph or as otherwise allowed by law.

B. Nothing in this section shall be construed as requiring the Attorney General to appear and defend or prosecute in any court any cause or proceeding for or on behalf of the Oklahoma Tax Commission, the Board of Managers of the State Insurance Fund, ~~or~~ the Commissioners of the Land Office, or any victim of a crime related to the Oklahoma Identity Theft Act or the Oklahoma Computer Crimes Act.

C. In all appeals from the Corporation Commission to the Supreme Court of Oklahoma in which the state is a party, the Attorney General shall have the right to designate counsel of the Corporation Commission as the Attorney General's legally appointed representative in such appeals, and it shall be the duty of the said Corporation Commission counsel to act when so designated and to consult and advise with the Attorney General regarding such appeals prior to taking action therein.

SECTION 13. This act shall become effective November 1, 2006.

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