

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 1329

By: Martin (Steve), Braddock,
Inman, Sears, Terrill and
Kern of the House

6 and

7 Ford of the Senate

8
9
10 COMMITTEE SUBSTITUTE

11 [crimes and punishments - identity theft - property
12 damage - penalty - effective date]

13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1533.1, as
16 amended by Section 1, Chapter 279, O.S.L. 2004 (21 O.S. Supp. 2006,
17 Section 1533.1), is amended to read as follows:

18 Section 1533.1 A. It is unlawful for any person to willfully
19 and with fraudulent intent obtain the name, address, social security
20 number, date of birth, place of business or employment, debit,
21 credit or account numbers, driver license number, or any other
22 personal identifying information of another person, living or dead,
23 with intent to use, sell, or allow any other person to use or sell
24 such personal identifying information to obtain or attempt to obtain

1 money, credit, goods, property, or service in the name of the other
2 person without the consent of that person.

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

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

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

22 E. Any person convicted of violating any provision of this
23 section shall be guilty of identity theft. Identity theft is a
24 felony offense punishable by imprisonment in the custody of the

1 Department of Corrections for a ~~period not to exceed two (2)~~ term of
2 not less than one (1) year nor more than five (5) years, or a fine
3 not to exceed One Hundred Thousand Dollars (\$100,000.00), or by both
4 such fine and imprisonment. Restitution to the victim may be
5 ordered in addition to any criminal penalty imposed by the court.
6 The victim of identity theft may bring a civil action for damages
7 against any person participating in furthering the crime or
8 attempted crime of identity theft.

9 SECTION 2. AMENDATORY 11 O.S. 2001, Section 22-112.2, is
10 amended to read as follows:

11 Section 22-11.2 A. Any person who shall maliciously damage,
12 deface, or destroy any property located within a municipality by any
13 form of graffiti shall be guilty of a misdemeanor, upon conviction,
14 punishable by a fine not exceeding One Thousand Two Hundred Dollars
15 (\$1,200.00), or by imprisonment in the county jail for a term not
16 more than six (6) months, or by both such fine and imprisonment.

17 B. A municipal governing body may cause graffiti to be removed
18 from property within the municipal limits in accordance with the
19 following procedures:

20 1. The property owner and the tenant, if any, may give their
21 written consent to the municipality authorizing removal of the
22 graffiti. By giving such written consent, the owner and the tenant
23 each waives the right to notice and a hearing by the municipality as
24 otherwise required by this section;

1 2. If the consent of the property owner and the tenant, if any,
2 to remove graffiti from the property cannot be obtained, the
3 municipality may remove the graffiti without such consent pursuant
4 to the procedures set forth in this section;

5 3. To remove graffiti from property without the consent of the
6 property owner and the tenant, if any, at least ten (10) days'
7 notice shall be given by mail directed to the address shown by the
8 current year's tax rolls in the county treasurer's office. Notice
9 to the tenant, if any, shall be given by mail directed to the
10 property address. The notice shall order the property owner and the
11 tenant, if any, to remove graffiti from the property and shall
12 further state that unless such work is performed within twenty (20)
13 days of the date of the notice the work shall be done by the
14 municipality. At the time of mailing of notice to the property
15 owner and the tenant, if any, the municipality shall obtain a
16 receipt of mailing from the postal service, which receipt shall
17 indicate the date of mailing and the name and address of the
18 mailee(s). In addition, notice shall be given by posting a copy of
19 the notice on the property at least one time not less than ten (10)
20 days prior to any hearing or action by the municipality. If a
21 municipal governing body anticipates summary abatement of graffiti
22 in accordance with the provisions of subsection B of this section,
23 the notice shall state that any accumulations of graffiti on the
24 property occurring within one (1) year from and after the date of

1 the notice may be summarily abated by the municipality without a
2 hearing and further prior notice to the property owner or the
3 tenant, if any, except by posting of notice at least one time on the
4 property once not less than two (2) business days prior to such
5 summary abatement;

6 4. A hearing may be held by the municipal governing body to
7 determine whether the accumulation of graffiti on the property has
8 caused the property to become detrimental or a hazard to the health,
9 safety, or general welfare of the public and the community;

10 5. Upon finding that the condition of the property constitutes
11 a detriment or hazard, and that the property, the public, and the
12 community would be benefited by removal of such conditions, the
13 agents of the municipality are granted the right of entry onto the
14 property for the removal of the graffiti thereon and for performance
15 of the necessary duties as a governmental function of the
16 municipality; and

17 6. The municipality may designate by ordinance an
18 administrative officer or administrative body to perform the
19 functions set forth in this section. The property owner and the
20 tenant, if any, shall have a right of appeal to the municipal
21 governing body from any order of the administrative officer or
22 administrative body. Such appeal shall be taken by filing written
23 notice of appeal with the municipal clerk within ten (10) business
24 days after the administrative order is rendered.

1 ~~B.~~ C. If a notice is given by a municipal governing body to a
2 property owner and tenant, if any, ordering graffiti to be removed
3 from property within the municipal limits in accordance with the
4 procedures provided for in subsection ~~A~~ B of this section, any
5 subsequent accumulations of graffiti on the property occurring
6 within a one (1) year period may be summarily abated without further
7 prior notice to the property owner or the tenant, if any. However,
8 prior to the summary abatement by the municipality, notice thereof
9 shall be posted at least one time on the property not less than two
10 (2) business days prior to such summary abatement. This subsection
11 shall not apply if the records of the county clerk show that the
12 ownership and/or tenancy of the property was transferred after
13 notice was given pursuant to subsection ~~A~~ B of this section.

14 ~~C.~~ D. Removal of graffiti by a municipality pursuant to the
15 provisions of this section shall be performed at the sole expense of
16 the municipality. In removing the graffiti, the municipality shall
17 restore the property as nearly as possible to the condition as it
18 existed immediately prior to the graffiti being placed on the
19 property.

20 ~~D.~~ E. Nothing in the provisions of this section shall prevent
21 the municipality from abating graffiti as a nuisance or otherwise
22 exercising its police power to protect the health, safety, or
23 general welfare of the public.

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1 ~~E.~~ F. The municipality and its officers, employees or agents
2 shall not be liable for any damages or loss of property due to the
3 removal of graffiti performed pursuant to the provisions of this
4 section.

5 ~~F.~~ G. Nothing in this section shall prohibit the municipal
6 governing body from enacting ordinances concerning the removal of
7 graffiti that are more strict than this section.

8 ~~G.~~ H. For the purposes of this section:

9 1. "Advertising" means any letter, word, name, number, symbol,
10 slogan, message, drawing, picture, writing, or other mark of any
11 kind lawfully placed on property by an owner or tenant of the
12 property, or an agent of such owner or tenant, for the purpose of
13 promoting products or services or conveying information to the
14 public;

15 2. "Graffiti" means, without limitation, any letter, word,
16 name, number, symbol, slogan, message, drawing, picture, writing, or
17 other mark of any kind visible to the public that is drawn, painted,
18 chiseled, scratched or etched on a rock, tree, wall, bridge, fence,
19 gate, statue, sign, street, roadway, building or other structure;
20 provided, this definition shall not include advertising or any other
21 letter, word, name, number, symbol, slogan, message, drawing,
22 picture, writing, or other mark of any kind lawfully placed on
23 property by an owner of the property, a tenant of the property, or
24 by an authorized agent for such owner or tenant;

1 3. "Owner" means the owner of record as shown by the most
2 current tax rolls of the county treasurer;

3 4. "Removal", "remove", or "removed", when used in relation to
4 the eradication of graffiti means the act of taking graffiti off of,
5 or masking the presence of graffiti on, a rock, tree, wall, bridge,
6 fence, gate, building or other structure; and

7 5. "Tenant" means any person shown by the records of the county
8 clerk's office as a lessee of property, or any person lawfully in
9 actual physical possession of property.

10 SECTION 3. This act shall become effective November 1, 2007.

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