

ATTORNEY GENERAL
STATE OF MONTANA

Exhibit No. 5
Date 3-7-05
Bill No. H.B. 110

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To: Senator Michael Wheat, Chair and Members of Senate Judiciary
From: Attorney General Mike McGrath *MM*
Date: February 7, 2005
Re: CDIA amendments

The purpose of the Identity Theft Passport Program is to quickly and efficiently assist Montana residents in dealing with the horrors of the crime of identity theft. This bill would allow someone who has had his/her identity stolen to have proof of the theft in the form of a passport. This passport will assist with the process of "disputing" and eventually "blocking" the incorrect information.

A. "Disputing"

Disputing an item on your credit report allows that item to stay on your credit report but information from the consumer appears as well indicating that the item is currently disputed. It also forces the credit bureau to investigate the matter to determine if the consumer's dispute information is correct. The Montana Dispute Law, Mont. Code Ann. § 31-3-124, provides a simple process by which Montana citizens may report disputes to a credit bureau. Under current Montana law, disputing an item is as simple as sending a letter to the credit bureau explaining the nature of the dispute. A passport under the Identity Theft Passport program would trigger the current law. The current Montana Dispute law is referenced below.

31-3-124 Procedure in case of disputed accuracy.

- (1) If the completeness or accuracy of any item of information contained in this file is disputed by a consumer and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete the information and notify all users, of whom the consumer reporting agency has records, of the information's deletion. The users shall also delete the information.
- (2) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.
- (3) Whenever a statement of a dispute is filed, unless there are reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof. The consumer reporting agency shall notify the consumer of all users, of whom it has records, who have the disputed information.

2. "Blocking"

Blocking an item on your credit report is a remedy under federal law that allows an identity theft victim to have the information caused by an identity theft blocked from being used to determine their credit score. In order to "block" information the victim must send four (4) items to the credit bureau. The Passport would most likely satisfy two of the requirements. Additional work would be required on the part of the consumer to get the "block". The exact federal law is listed below.

15 U.S.C. § 1681c-2 – Block of information resulting from identity theft.

- (a) Block. Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of
- (1) appropriate proof of identity of the consumer;
 - (2) a copy of an identity theft report;
 - (3) the identification of such information by the consumer; and
 - (4) a statement by the consumer that the information is not information relating to any transaction by the consumer.

1. Do not change “accept” to “consider” or remove the requirement “that a dispute be identified on a credit report”.

The CDIA on behalf of its clients the credit bureaus is attempting to weaken this bill by removing their clients’ duty to act on behalf of Montana consumers. Using the word “consider” is similar to saying “may”. It effectively removes all mandatory duties from the credit bureaus and makes any action on their part discretionary. While the CDIA may want specific information like social security numbers, dates of birth and specific account information, nothing in Montana’s Dispute law requires such information.

The CDIA dislikes Montana’s dispute process because it requires them to take action with less information than is required for the Federal blocking process. It makes them confirm that their records are accurate as opposed to the consumer having to do the work. In the end, consumers will want to have the incorrect information “blocked”, but “blocking” takes longer and the “dispute” process can occur while the consumer gathers the information needed to complete the “blocking” process.

The CDIA is misstating the current federal laws by confusing the federal remedy of “blocking” with the Montana remedy of “disputing”. They are also misstating what it takes under the federal act to “block” information on a credit report. This is a bold attempt to shift the burden away from their clients and directly onto the victims of identity theft. If you accept the CDIA amendment, you would effectively weaken the protection for Montana Consumers leaving them with less protection than they have currently.