

HOUSE BILL NO. 35
INTRODUCED BY KEANE
BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ASSISTANCE TO VICTIMS OF IDENTITY THEFT; CLARIFYING THE PROCESS FOR LAW ENFORCEMENT IN RELATION TO IDENTITY THEFT PASSPORTS; REQUIRING LAW ENFORCEMENT TO TAKE REPORTS IN IDENTITY THEFT CASES; EXPANDING THE APPLICATION OF THE IDENTITY THEFT PASSPORT PROGRAM TO ALL STATE RESIDENTS; PROVIDING THAT AN IDENTITY THEFT PASSPORT IS EQUIVALENT TO A POLICE REPORT OR INVESTIGATIVE REPORT; PROVIDING PENALTIES FOR FALSE REPORTS; REQUIRING CONSUMER REPORTING AGENCIES TO BLOCK INFORMATION RESULTING FROM IDENTITY THEFT; ALLOWING A VICTIM OF IDENTITY THEFT TO REQUEST THAT RECORDS OF ARREST OR CONVICTION BE EXPUNGED IN CERTAIN CIRCUMSTANCES; PROVIDING FOR INSURANCE PREMIUM REFUNDS UPON EXPUNGEMENT; AND AMENDING SECTION 46-24-220, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Identity theft report -- process -- investigation.** (1) A law enforcement agency that receives a report of identity theft, as described in 45-6-332, from a victim of identity theft shall request two forms of identification sufficient to determine the identity of the victim. The forms of identification may include but are not limited to:

(a) a driver's license or other current, valid photo identification card, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification that shows the individual's name;

(b) a birth certificate; or

(c) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and address.

(2) The law enforcement agency shall:

(A) NOTWITHSTANDING SUBSECTION (1), IMMEDIATELY BEGIN TO INVESTIGATE THE REPORT OF IDENTITY THEFT, BASED UPON WHATEVER PROOF OF IDENTITY THE VICTIM IS ABLE TO PROVIDE, IF ANY, AT THE TIME OF MAKING THE REPORT AND PROCEED WITH THE INVESTIGATION AS FAR AS THE AGENCY IS ABLE;

~~(a)~~(B) within 72 hours of receiving an identity theft victim's complaint, provide to the victim one copy of the police report, law enforcement investigative report, or filed complaint; and

~~(b)~~(C) as provided in 46-24-220, send another copy along with the victim's completed application for an identity theft passport to the attorney general.

(3) WITHIN 72 HOURS AFTER MAKING THE REPORT OF IDENTITY THEFT, THE VICTIM SHALL PROVIDE THE FORMS OF IDENTIFICATION REQUESTED PURSUANT TO SUBSECTION (1). IF THE VICTIM IS UNABLE TO PROVIDE THAT IDENTIFICATION WITHIN THAT TIME, THE VICTIM SHALL EXPLAIN TO THE LAW ENFORCEMENT AGENCY RECEIVING THE REPORT WHY THE VICTIM IS UNABLE TO PROVIDE THOSE FORMS OF IDENTIFICATION.

~~(3)~~(4) The law enforcement agency shall take a complaint as provided under subsection (1) even if jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft. The law enforcement agency that takes the complaint may refer the complaint to a law enforcement agency that has apparent jurisdiction.

~~(4)~~(5) (a) The law enforcement agency with which the original police report, investigative report, or complaint is filed shall cooperate FULLY with other law enforcement agencies OF THE SAME OR ANOTHER JURISDICTION and investigate the identity theft within its resources.

(b) A complaint filed under this section is not required to be counted as an open case for purposes of compiling open case statistics.

Section 2. Section 46-24-220, MCA, is amended to read:

"46-24-220. Identity theft passport -- application -- issuance -- uses -- penalty for false report. (1)

(a) The attorney general, in cooperation with any law enforcement agency, may issue an identity theft passport to a person who is a victim of identity theft in this state ~~and~~ or to a resident of this state who has filed a police report in this state or another state citing that the person is a victim of ~~a violation of~~ identity theft as described in 45-6-332.

(b) A victim who has filed a report of identity theft with a law enforcement agency may apply for an identity theft passport through any law enforcement agency. The agency shall send a copy of the police report and the application to the attorney general.

(c) For a resident who became an identity theft victim in another state, the victim may apply directly to the department of justice and shall provide a copy of the police report or other substantial evidence of having filed a complaint.

(d) The attorney general shall process the application and supporting report and may issue the victim

an identity theft passport in the form of a card or certificate.

(2) (a) A victim of identity theft may present the victim's identity theft passport issued under subsection (1) to any of the following:

(i) a law enforcement agency to help prevent the victim's arrest or detention for an offense committed by someone other than the victim who is using the victim's identity;

(ii) any of the victim's creditors to aid in the creditors' investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity; or

(iii) a consumer reporting agency, as defined in 31-3-102, which shall accept the passport as the direct conveyance of a dispute under 31-3-124 and shall include notice of the dispute in all future reports that contain disputed information caused by identity theft.

(b) Acceptance of the identity theft passport presented by the victim to a law enforcement agency or creditor pursuant to subsection (2)(a) is at the discretion of the law enforcement agency or creditor. A law enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

(c) An identity theft passport is equivalent to a police report or investigative report when a police report or investigative report is required as proof that the holder is a victim of identity theft.

(3) An application made with the attorney general pursuant to subsection (1), including any supporting documentation, is confidential criminal justice information, as defined in 44-5-103, and must be disseminated accordingly.

(4) The attorney general shall adopt rules to implement this section. The rules must include a procedure by which the attorney general is assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated.

(5) A person who knowingly gives a false report to obtain an identity theft passport is ~~subject to criminal penalties under 45-7-203~~ GUILTY OF A FELONY AND UPON CONVICTION SHALL BE PUNISHED AS PROVIDED BY LAW and BY revocation of the passport."

NEW SECTION. Section 3. Block of information on credit report. (1) Within 30 days after a consumer reporting agency receives from a consumer a complaint of identity theft and documentation as provided in subsection (2), the consumer reporting agency shall permanently block any information that the consumer identifies from the consumer's report that resulted from identity theft as defined in 45-6-332.

(2) To request a block of information on a consumer report, a consumer shall provide a consumer reporting agency with:

(a) a copy of a police report or an identity theft passport as provided in 46-24-220;

(b) the specific description of information that is to be blocked because it was a result of a violation of 45-6-332.

(3) A consumer reporting agency shall notify the person furnishing the information that a police report has been filed and that a block has been requested and shall notify the person of the effective date of the block.

(4) A consumer reporting agency may decline to block information or may rescind any block of information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes that:

(a) the information was blocked because of a misrepresentation of fact by the consumer in requesting the block under this section;

(b) the consumer agrees that the blocked information or portions of the blocked information were blocked in error; or

(c) the consumer knowingly obtained possession of goods, services, or money as a result of the transaction for which information was blocked or the consumer should have known that possession of goods, services, or money occurred because of the transaction for which information was blocked.

(5) If a consumer reporting agency declines to block information or rescinds a blocking of information under this section, the consumer reporting agency shall notify the consumer promptly in the same manner as required in 15 U.S.C. 1681i. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money.

(6) In order to facilitate a consumer's right to block information as provided in subsection (1), a law enforcement agency shall provide to the consumer at the consumer's request a copy of a police report filed by the consumer that indicates that the consumer is a victim of 45-6-332.

NEW SECTION. Section 4. Application to expunge record -- identity theft passport required -- notice -- fee waiver -- rules. (1) A victim of identity theft, as described in 45-6-332, may apply to a district court to expunge from the victim's record any records or entries relating to a charge or conviction in which another person used personal identifying information of the victim to commit an offense or violation, including records or entries relating to a charge or conviction that was dismissed or set aside.

(2) A victim who applies to have a record expunged shall provide to the court an identity theft passport

as provided under 46-24-220 and other documents or information necessary to establish that the charge or conviction referred to in subsection (1) was the result of a person using the personal identifying information of the victim to commit the offense or violation.

(3) After granting the expungement, the court shall forward a copy of the expungement order to the department of justice. Upon receipt of the court order, the department shall expunge the pertinent records.

(4) Notwithstanding any other provision of law, a victim seeking expungement under this section may not be charged a fee by the court.

(5) The department of justice may adopt rules to implement procedures regarding law enforcement agency procedures for handling the expunged records.

NEW SECTION. Section 5. Refund for expunged record. An insurance company that charges an additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged because of identity theft pursuant to [section 4] shall refund the additional premiums to the policyholder upon notification and verification of the expungement.

NEW SECTION. Section 6. Codification instruction. (1) [Sections 1 and 4] are intended to be codified as an integral part of Title 46, chapter 24, part 2, and the provisions of Title 46, chapter 24, part 2, apply to [sections 1 and 4].

(2) [Section 3] is intended to be codified as an integral part of Title 31, chapter 3, part 1, and the provisions of Title 31, chapter 3, part 1, apply to [section 3].

(3) [Section 5] is intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [section 5].

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