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As of: August 29, 2006 (12:42pm)

LC8877

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing assistance to victims of identity theft; requiring law enforcement to take reports in identity theft cases; expanding application of identity theft passport program to all state residents; expanding definition of identity theft crime to include false representation to avoid prosecution; clarifying process for law enforcement in relation to identity theft passports; requiring consumer reporting agency to block information resulting from identity theft; allowing victim of identity theft to expunge record of arrest or conviction in certain circumstances; 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 from a victim 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

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tribal photo identification that shows the individual's name; and

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

(b) 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 if the agency is in Montana.

(3) The law enforcement agency shall take a complaint from a local resident 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 where jurisdiction is suspected.

(4) (a) The law enforcement agency with which the original police report, investigative report, or complaint is filed shall cooperate with other law enforcement agencies 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 such as compiling open case statistics.

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

"46-24-220. Identity theft passport -- application --

issuance -- 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 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 defined 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 if the agency is in Montana.

(c) For a resident who became an identity theft victim in another state, the victim may apply directly to the department of justice with 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.

(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) Except for the purposes of obtaining an identity theft passport under this section, 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.

(6) A person who knowingly gives a false report to obtain an identity theft passport is subject to criminal penalties under 45-7-203 and revocation of the passport."

{Internal References to 46-24-220: None.}

NEW SECTION. **Section 3. Block of information on credit report.** (1) Within 30 days of a consumer reporting agency receiving from a consumer a complaint of identity theft and documentation as provided in subsection (2), the consumer reporting agency shall permanently block any information 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 furnisher of the information that a police report has been filed, that a block has been requested, and the effective date of the block.

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

(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 blocked transaction or the consumer should have known that possession of goods, services, or money occurred because of the blocked transaction.

(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 section 611 of 15 U.S.C. Sec. 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 the consumer is a victim of 45-6-332.

NEW SECTION. Section 4. Application to expunge record -- identity theft passport required -- notice to department of justice -- insurance premium reimbursement -- no fees -- 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 own record any

records or any entries relating to a charge or conviction in which another person used personal identifying information of the victim to commit an offense or violation and that the charge or conviction was dismissed or set aside.

(2) A victim who applies to expunge a record 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 was the result of a person using the personal identifying information of the victim to commit the offense or violation and that the charge or conviction was dismissed or set aside.

(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. {standard} 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 3].

(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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