

HB 0741

2004

A bill to be entitled

An act relating to identity theft; providing a criminal penalty for identity theft; providing a definition; requiring court records to reflect certain information under certain circumstances; authorizing a person to initiate a law enforcement investigation into certain circumstances of identity theft and use; authorizing a person to petition a court for a determination of innocence in certain circumstances of identity theft and use; providing procedures and requirements for such determinations; requiring consumer credit reporting agencies to provide certain consumers with a statement of their legal rights under certain circumstances; requiring consumer credit reporting agencies to provide certain consumers with free copies of their credit report under certain circumstances; providing an exception; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) IDENTITY THEFT; CRIMINAL PENALTY.--

(a) Every person who willfully obtains personal identifying information of another person and uses that information for any unlawful purpose, including, but not limited to, obtaining or attempting to obtain credit, goods, services, or medical information in the name of the other person without the consent of that person, or who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information of another person, commits identity

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30 theft, a misdemeanor of the first degree, punishable as provided
 31 in s. 775.082 or s. 775.083, Florida Statutes.

32 (b) For purposes of this subsection, the term "personal
 33 identifying information" means the name, address, telephone
 34 number, health insurance identification number, taxpayer
 35 identification number, school identification number, state or
 36 federal driver's license number or identification number, social
 37 security number, place of employment, employee identification
 38 number, mother's maiden name, demand deposit account number,
 39 savings account number, checking account number, personal
 40 identification number or password, alien registration number,
 41 government passport number, date of birth, unique biometric data
 42 including fingerprint, facial scan identifiers, voice print,
 43 retina or iris image, or other unique physical representations,
 44 unique electronic data including identification number, address,
 45 or routing code, telecommunication identifying information or
 46 access device, information contained in a birth or death
 47 certificate, or credit card number of an individual person.

48 (c) In any case in which a person willfully obtains
 49 personal identifying information of another person, uses that
 50 information to commit a crime in addition to a violation of
 51 paragraph (a), and is convicted of that offense, the court
 52 records shall reflect that the person whose identity was falsely
 53 used to commit the crime did not commit the crime.

54 (2) USE OF PERSONAL IDENTIFYING INFORMATION.--

55 (a) A person who has learned or reasonably suspects that
 56 his or her personal identifying information has been unlawfully
 57 used by another, as provided in subsection (1), may initiate a
 58 law enforcement investigation by contacting the local law

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59 enforcement agency that has jurisdiction over his or her actual
60 residence, which agency shall make a police report of the
61 matter, provide the complainant with a copy of that report, and
62 begin an investigation of the facts or, if the suspected crime
63 was committed in a different jurisdiction, refer the matter to
64 the law enforcement agency where the suspected crime was
65 committed for an investigation of the facts.

66 (b) A person who reasonably believes that he or she is the
67 victim of identity theft may petition a court, or a court on its
68 own motion or upon application of a prosecuting attorney may
69 move, for an expedited judicial determination of such person's
70 factual innocence when the perpetrator of the identity theft was
71 arrested for, cited for, or convicted of a crime under the
72 victim's identity; when a criminal complaint has been filed
73 against the perpetrator in the victim's name; or when the
74 victim's identity has been mistakenly associated with a record
75 of criminal conviction. Any judicial determination of factual
76 innocence made pursuant to this paragraph may be heard and
77 determined upon declarations, affidavits, police reports, or
78 other material, relevant, and reliable information submitted by
79 the parties or ordered to be part of the record by the court. If
80 the court determines that the petition or motion is meritorious
81 and that there is no reasonable cause to believe that the victim
82 committed the offense for which the perpetrator of the identity
83 theft was arrested, cited, convicted, or subject to a criminal
84 complaint in the victim's name, or that the victim's identity
85 has been mistakenly associated with a record of criminal
86 conviction, the court shall find the victim factually innocent

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87 of that offense. If the victim is found factually innocent, the
 88 court shall issue an order certifying this determination.

89 (c) After a court has issued a determination of factual
 90 innocence pursuant to paragraph (b), the court may order the
 91 name and associated personal identifying information contained
 92 in court records, files, and indexes accessible by the public to
 93 be deleted, sealed, or labeled to show that the data is
 94 impersonated and does not reflect the defendant's identity.

95 (d) A court that has issued a determination of factual
 96 innocence pursuant to paragraph (b) may at any time vacate that
 97 determination if the petition, or any information submitted in
 98 support of the petition, is found to contain any material
 99 misrepresentation or fraud.

100 (e) The Florida Supreme Court shall develop a form for use
 101 in issuing an order pursuant to paragraph (c).

102 (3) STATEMENT OF RIGHTS OF VICTIMS OF IDENTITY THEFT.--

103 (a) In addition to any other rights the consumer may have
 104 under this section, every consumer credit reporting agency,
 105 after being contacted by telephone, mail, or in person by any
 106 consumer who has reason to believe he or she may be a victim of
 107 identity theft, shall promptly provide to that consumer a
 108 statement, written in a clear and conspicuous manner, describing
 109 the legal rights of victims of identity theft under this
 110 subsection. For purposes of this subsection, the term "consumer
 111 credit reporting agency" means a credit reporting agency
 112 regulated under 15 U.S.C. ss. 1681 et seq.

113 (b) Every consumer credit reporting agency shall, upon the
 114 receipt from a victim of identity theft of a police report
 115 prepared pursuant to subsection (2), or a valid investigative

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116 report made by a Department of Highway Safety and Motor Vehicles
117 investigator who is a law enforcement officer regarding the
118 offenses described in subsection (2), provide the victim, free
119 of charge and upon request, with up to 12 copies of his or her
120 file during a consecutive 12-month period, not to exceed one
121 copy per month, following the date of the police report.
122 Notwithstanding any other provision of this section, the maximum
123 number of free reports a victim of identity theft is entitled to
124 obtain under this subsection is 12 per year, as provided by this
125 paragraph.

126 (c) Paragraph (a) does not apply to a consumer credit
127 reporting agency that acts only as a reseller of credit
128 information by assembling and merging information contained in
129 the database of another consumer credit reporting agency or
130 agencies and that does not maintain a permanent database of
131 credit information from which new credit reports are produced.

132 Section 2. This act shall take effect upon becoming a law.