

1339

2009-2010 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2009

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Introduced by M. of A. WRIGHT, ALFANO -- read once and referred to the  
Committee on Codes

AN ACT to amend the criminal procedure law, the executive law and the  
general business law, in relation to theft of identity

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,  
DO ENACT AS FOLLOWS:

1     Section 1. The criminal procedure law is amended by adding a new  
2     section 160.65 to read as follows:  
3     S 160.65 PETITION FOR DETERMINATION OF FACTUAL INNOCENCE.  
4     1. ANY PERSON WHOSE NAME OR OTHER IDENTIFYING INFORMATION WAS USED,  
5     WITHOUT CONSENT OR AUTHORIZATION, BY ANOTHER PERSON WHO WAS CHARGED OR  
6     ARRESTED USING SUCH NAME OR IDENTIFICATION MAY, WITH NOTICE TO THE  
7     OFFICE OF THE PROSECUTOR, FILE A PETITION IN THE APPROPRIATE COURT  
8     REQUESTING A DETERMINATION OF FACTUAL INNOCENCE. IF THE COURT FINDS THAT  
9     THERE IS NO REASONABLE CAUSE TO BELIEVE THAT THE PERSON COMMITTED THE  
10    OFFENSE WITH WHICH THE PERSON'S IDENTITY HAS BEEN ASSOCIATED, THE COURT  
11    SHALL ISSUE AN ORDER CERTIFYING THE PERSON'S FACTUAL INNOCENCE.  
12    2. WHEN A COURT FINDS A PERSON FACTUALLY INNOCENT PURSUANT TO SUBDIVI-  
13    SION ONE OF THIS SECTION, THE COURT SHALL ORDER THE PERSON'S NAME AND  
14    OTHER IDENTIFYING INFORMATION CONTAINED IN THE COURT RECORDS BE REMOVED  
15    AND THE RECORDS LABELED TO SHOW THAT THE INFORMATION IS NOT ACCURATE AND  
16    DOES NOT REFLECT THE PERPETRATOR'S IDENTITY DUE TO IDENTITY THEFT. THE  
17    COURT SHALL ALSO ORDER EXPUNGEMENT OF THE ARREST INFORMATION OTHERWISE  
18    PERMITTED BY LAW.  
19    3. A COURT MAY AT ANY TIME VACATE THE DETERMINATION OF FACTUAL INNO-  
20    CENCE IF THE PETITION, OR INFORMATION SUBMITTED IN SUPPORT OF THE PETI-  
21    TION, CONTAINS A MATERIAL MISREPRESENTATION OR FRAUD. IF THE COURT  
22    VACATES THE DETERMINATION, AN ORDER SHALL BE ENTERED RESCINDING ANY  
23    ORDERS MADE PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 S 2. The executive law is amended by adding a new section 171 to read  
2 as follows:

3 S 171. IDENTITY THEFT PASSPORT. 1. THE ATTORNEY GENERAL SHALL ISSUE AN  
4 IDENTITY THEFT PASSPORT TO A PERSON WHO CLAIMS TO BE A VICTIM OF IDENTI-  
5 TY THEFT PURSUANT TO ARTICLE ONE HUNDRED NINETY OF THE PENAL LAW, AND  
6 WHO PROVIDES TO THE ATTORNEY GENERAL:

7 (A) A CERTIFIED COPY OF A COURT ORDER OBTAINED PURSUANT TO SECTION  
8 160.65 OF THE CRIMINAL PROCEDURE LAW, IF APPLICABLE;

9 (B) A FULL SET OF FINGERPRINTS;

10 (C) A DRIVER'S LICENSE OR OTHER GOVERNMENT ISSUED IDENTIFICATION OR  
11 RECORD; AND

12 (D) ANY OTHER INFORMATION AS REQUIRED BY THE ATTORNEY GENERAL.

13 2. AN IDENTITY THEFT PASSPORT SHALL STATE THE BASIS FOR ITS ISSUANCE  
14 AND SHALL BE ACCEPTED AS EVIDENCE OF IDENTITY BY LAW ENFORCEMENT OFFI-  
15 CERS AND OTHERS WHO MAY CHALLENGE THE PERSON'S IDENTITY.

16 3. WHEN AN IDENTITY THEFT PASSPORT IS ISSUED, THE ATTORNEY GENERAL  
17 SHALL TRANSMIT A RECORD OF THE ISSUANCE TO THE DEPARTMENT OF MOTOR VEHI-  
18 CLES. THE DEPARTMENT OF MOTOR VEHICLES SHALL NOTE ON THE PERSON'S DRIVER  
19 RECORD THAT AN IDENTITY THEFT PASSPORT HAS BEEN ISSUED.

20 4. THE ATTORNEY GENERAL SHALL MAINTAIN A DATA BASE OF IDENTITY THEFT  
21 VICTIMS WHO HAVE REPORTED TO A LAW ENFORCEMENT AGENCY OR HAVE BEEN  
22 ISSUED AN IDENTITY THEFT PASSPORT. THE ATTORNEY GENERAL MAY PROVIDE  
23 ACCESS TO THE DATA BASE TO CRIMINAL JUSTICE AGENCIES AND TO THOSE WHO  
24 HAVE BEEN ISSUED AN IDENTITY THEFT PASSPORT AND TO THEIR AUTHORIZED  
25 REPRESENTATIVES.

26 5. THE ATTORNEY GENERAL SHALL KEEP ON FILE EACH APPLICATION FOR AN  
27 IDENTITY THEFT PASSPORT AND EACH POLICE REPORT OF IDENTITY THEFT SUBMIT-  
28 TED TO THE ATTORNEY GENERAL BY A LAW ENFORCEMENT AGENCY.

29 6. THE ATTORNEY GENERAL SHALL PREPARE AND DISTRIBUTE TO LOCAL LAW  
30 ENFORCEMENT AGENCIES AND TO THE GENERAL PUBLIC AN INFORMATION PACKET  
31 THAT INCLUDES INFORMATION ON HOW TO PREVENT AND STOP IDENTITY THEFT.

32 S 3. Section 380-u of the general business law, as relettered by chap-  
33 ter 63 of the laws of 2006, is relettered 380-v and a new section 380-u  
34 is added to read as follows:

35 S 380-U. IDENTITY THEFT CREDIT REPORT. 1. IF A PERSON SUBMITS A COPY  
36 OF A POLICE REPORT INDICATING IDENTITY THEFT OR AN IDENTITY THEFT PASS-  
37 PORT TO A CONSUMER REPORTING AGENCY, THE AGENCY SHALL WITHIN THIRTY DAYS  
38 BLOCK THE REPORTING OF ANY INFORMATION THAT THE PERSON ALLEGES APPEARS  
39 ON HIS OR HER CREDIT REPORT AS A RESULT OF A VIOLATION OF ARTICLE ONE  
40 HUNDRED NINETY OF THE PENAL LAW.

41 2. A CONSUMER REPORTING AGENCY MAY DECLINE TO BLOCK OR MAY RESCIND A  
42 BLOCK OF A PERSON'S INFORMATION IF, IN THE EXERCISE OF GOOD FAITH AND  
43 JUDGMENT, THE CONSUMER REPORTING AGENCY BELIEVES THAT:

44 (A) THE INFORMATION WAS BLOCKED DUE TO A MISREPRESENTATION OF A MATE-  
45 RIAL FACT BY THE PERSON;

46 (B) THE INFORMATION WAS BLOCKED DUE TO FRAUD, IN WHICH THE PERSON  
47 PARTICIPATED OR OF WHICH THE PERSON HAD KNOWLEDGE, AND WHICH MAY FOR  
48 PURPOSES OF THIS SECTION BE DEMONSTRATED BY CIRCUMSTANTIAL EVIDENCE;

49 (C) THE PERSON AGREES THAT PORTIONS OF THE BLOCKED INFORMATION OR ALL  
50 OF IT WERE BLOCKED IN ERROR;

51 (D) THE PERSON KNOWINGLY OBTAINED OR SHOULD HAVE KNOWN THAT HE OR SHE  
52 OBTAINED POSSESSION OF GOODS, SERVICES OR MONEY AS A RESULT OF THE  
53 BLOCKED TRANSACTION OR TRANSACTIONS; OR

54 (E) THE CONSUMER REPORTING AGENCY, IN THE EXERCISE OF GOOD FAITH AND  
55 REASONABLE JUDGMENT, HAS SUBSTANTIAL REASON BASED ON SPECIFIC, VERIFI-

1 ABLE FACTS TO DOUBT THE AUTHENTICITY OF THE ALLEGED VIOLATION OF ARTICLE  
2 ONE HUNDRED NINETY OF THE PENAL LAW.

3 3. IF BLOCKED INFORMATION IS UNBLOCKED PURSUANT TO THIS SECTION, THE  
4 PERSON SHALL BE NOTIFIED IN THE SAME MANNER AS CONSUMERS ARE NOTIFIED OF  
5 THE REINSERTION OF INFORMATION PURSUANT TO THE FEDERAL FAIR CREDIT  
6 REPORTING ACT, 15 U.S.C. 1681i, AS AMENDED, OR WITHIN FIVE BUSINESS  
7 DAYS, WHICHEVER IS LATER.

8 4. A CONSUMER REPORTING AGENCY SHALL DELETE FROM A PERSON'S CREDIT  
9 REPORT INQUIRIES FOR CREDIT REPORTS BASED UPON CREDIT REQUESTS THAT THE  
10 CONSUMER REPORTING AGENCY VERIFIES WERE INITIATED AS A RESULT OF A  
11 VIOLATION OF ARTICLE ONE HUNDRED NINETY OF THE PENAL LAW.

12 S 4. This act shall take effect on the sixtieth day after it shall  
13 have become a law.