S T A T E O F N E W Y O R K

1339

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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:

Section 1. The criminal procedure law is amended by adding a new section 160.65 to read as follows:

S 160.65 PETITION FOR DETERMINATION OF FACTUAL INNOCENCE.

1. ANY PERSON WHOSE NAME OR OTHER IDENTIFYING INFORMATION WAS USED, WITHOUT CONSENT OR AUTHORIZATION, BY ANOTHER PERSON WHO WAS CHARGED OR ARRESTED USING SUCH NAME OR IDENTIFICATION MAY, WITH NOTICE TO THE OFFICE OF THE PROSECUTOR, FILE A PETITION IN THE APPROPRIATE COURT REQUESTING A DETERMINATION OF FACTUAL INNOCENCE. IF THE COURT FINDS THAT THERE IS NO REASONABLE CAUSE TO BELIEVE THAT THE PERSON COMMITTED THE OFFENSE WITH WHICH THE PERSON'S IDENTITY HAS BEEN ASSOCIATED, THE COURT SHALL ISSUE AN ORDER CERTIFYING THE PERSON'S FACTUAL INNOCENCE.

2. WHEN A COURT FINDS A PERSON FACTUALLY INNOCENT PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE COURT SHALL ORDER THE PERSON'S NAME AND OTHER IDENTIFYING INFORMATION CONTAINED IN THE COURT RECORDS BE REMOVED AND THE RECORDS LABELED TO SHOW THAT THE INFORMATION IS NOT ACCURATE AND DOES NOT REFLECT THE PERPETRATOR'S IDENTITY DUE TO IDENTITY THEFT. THE COURT SHALL ALSO ORDER EXPUNGEMENT OF THE ARREST INFORMATION OTHERWISE PERMITTED BY LAW.

3. A COURT MAY AT ANY TIME VACATE THE DETERMINATION OF FACTUAL INNOCENCE IF THE PETITION, OR INFORMATION SUBMITTED IN SUPPORT OF THE PETITION, CONTAINS A MATERIAL MISREPRESENTATION OR FRAUD. IF THE COURT VACATES THE DETERMINATION, AN ORDER SHALL BE ENTERED RESCINDING ANY 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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S 2. The executive law is amended by adding a new section 171 to read as follows:

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

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

(B) A FULL SET OF FINGERPRINTS;

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

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

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

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

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

5. THE ATTORNEY GENERAL SHALL KEEP ON FILE EACH APPLICATION FOR AN IDENTITY THEFT PASSPORT AND EACH POLICE REPORT OF IDENTITY THEFT SUBMITTED TO THE ATTORNEY GENERAL BY A LAW ENFORCEMENT AGENCY.

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

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

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

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

(A) THE INFORMATION WAS BLOCKED DUE TO A MISREPRESENTATION OF A MATERIAL FACT BY THE PERSON;

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

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

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

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

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

3. IF BLOCKED INFORMATION IS UNBLOCKED PURSUANT TO THIS SECTION, THE PERSON SHALL BE NOTIFIED IN THE SAME MANNER AS CONSUMERS ARE NOTIFIED OF THE REINSERTION OF INFORMATION PURSUANT TO THE FEDERAL FAIR CREDIT REPORTING ACT, 15 U.S.C. 168LI, AS AMENDED, OR WITHIN FIVE BUSINESS DAYS, WHICHEVER IS LATER.

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

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