

***Financial Institutions &
Insurance***

HB 1321

Brief Description: Prohibiting identity theft.

Sponsors: Representatives McIntire, Bush, Benson, Hatfield, Keiser, Kessler, O'Brien, Hunt, D. Schmidt, Simpson, Conway, Kenney, Roach, Rockefeller, Edmonds, Wood, Jackley, Schual-Berke, Kagi, Haigh and Ruderman; by request of Attorney General.

Brief Summary of Bill

- *Amends the identity theft statute to expand the definition of the crime, increase the potential penalties, require businesses to assist victims by providing access to information, and allow the court to enter orders requiring the correction of the victim's financial records.*
- *Restricts contact by collection agencies with identity theft victims regarding debts that may be the result of the identity theft. The victim is required to provide the agency with specified information substantiating the victim's claim that the debt is the result of an identity theft.*
- *Requires credit reporting agencies to omit certain information from a credit report upon a showing by the victim of an alleged identity theft that the credit information may be the result of such a theft.*

Hearing Date: 2/7/01

Staff: Thamas Osborn (786-7129).

Background:

In 1999 the legislature enacted a set of laws designed to address the problem of so-called "identity theft" and related crimes involving the improper use or acquisition of personal financial information. In so doing, the legislature found that unlawfully obtained financial information can be a source of significant harm to a person's privacy, financial

security, and other interests. That legislation is codified as Chapter 9.35 RCW, Identity Crimes.

The crime of identity theft is currently a class C felony, which allows for a maximum sentence of five years in prison, or a fine of \$10,000, or both. In addition to the criminal penalty, a person convicted of identity theft must pay the victim \$500, or actual damages, including costs to repair the victim's credit report, whichever is greater, as well as reasonable attorneys' fees. If a business repeatedly commits identity theft, it also violates the Consumer Protection Act.

This bill has been requested by the Attorney General, and stems from the findings of a consumer privacy task force initiated by the Attorney General in 1999.

Summary of Bill:

Persons or business entities who have information relating to violations of the identity theft act and who may have done business with the identity thief must provide, upon the request of the victim, copies of all information relevant to the identity theft. Providers of this information may require the victim to provide positive identification and a copy of a police report before giving the victim the information requested. The providers may seek compensation for the reasonable costs of providing the information and are immune from criminal prosecution and/or civil actions for providing the information in good faith.

A collection agency may not initiate oral contact with a debtor more than one time in 180 days in order to collect on debts created because of an identity theft, provided the debtor/victim forwards specified information to the collection agency regarding the alleged theft. The victim must notify the collection agency in writing that someone has stolen the victim's checkbook or other preprinted written material. In addition, the victim must provide the collection agency with a certified copy of a police report, and identify the financial institution, account, and check numbers or other preprinted instruments including the check or preprinted instrument subject to collection. The victim must also give the collection agency a copy of a government issued photo identification card showing a signature, and advise the collection agency that the victim disputes the debt because of fraud or because someone stole a check or instrument.

Under certain circumstances a collection agency may be exempted from liability despite repeated oral contacts with a debtor that would otherwise violate the statute. A collection agency does not violate the statute if it is acting in good faith and the contacts with the debtor fall under any one of several specified exceptions.

If a consumer gives a credit reporting agency copies of a certified police report showing that the consumer has been the victim of identity theft, the company must block information from a credit report that may be in the report as the result of the theft. The credit reporting company must tell the entities providing information that the information has been blocked. Under certain circumstances, such as errors or misrepresentation by the consumer, the credit reporting company or the entity providing the information may rescind the block..

Identity theft may be prosecuted as either a class B or a class C felony, depending on the aggregate value of the credit, property, or services obtained via the theft. If the aggregate value is more than \$1,500, the offense is a class B felony. If the aggregate value does not exceed \$1,500, the offense is a class C felony.

The definition of the crime of identity theft is expanded to include the act of obtaining and/or possessing either a means of identification or financial information, when accompanied by the requisite criminal intent. The law currently criminalizes only the "use" or "transfer" of certain information, and does not specifically include financial information.

Following a defendant's conviction for identity theft, the sentencing court is empowered to issue an order to correct any public record that contains false information resulting from the theft.

The Consumer Protection Act is made applicable with respect to the provisions set forth Chapter 9.35 RCW.

Appropriation: None.

Fiscal Note: Requested on February 6, 2001.

Effective Date: Ninety days after adjournment of session in which bill is passed.