

FINAL BILL REPORT

ESSB 5449

C 217 L 01
Synopsis as Enacted

Brief Description: Prohibiting identity theft.

Sponsors: Senate Committee on Labor, Commerce & Financial Institutions (originally sponsored by Senators Prentice, Long, Winsley, Gardner, Franklin, Costa, Rasmussen and Kohl-Welles; by request of Attorney General).

Senate Committee on Labor, Commerce & Financial Institutions
House Committee on Financial Institutions & Insurance

Background: In 1999 the Legislature passed a law making identity theft a class C felony. If a defendant is guilty of a class C felony, the defendant may be confined for five years or be fined \$10,000, or both. In addition to the criminal penalty, a person who commits identity theft is liable for \$500 or actual damages, including costs to repair the victim's credit report, whichever is greater, and reasonable attorneys' fees. If a business repeatedly commits identity theft, it also violates the Consumer Protection Act.

In July 1999, the Attorney General formed a consumer privacy task force representing a wide variety of interests including retailers, banks, the technology industry, legislators, and victims of identity theft. During the public hearing phase of the task force, many consumers testified about identity theft. From this testimony and other consumer inquiries and complaints, the Attorney General concluded that the incidence of identity theft is growing rapidly, and that victims need help in obtaining information to reestablish their identity, deal with creditors, and help assist law enforcement.

Summary: Businesses that have information relating to identity theft must provide, upon written request of the victim, copies of all information relevant to the identity theft. In order to receive the information from the business, the victim must provide to the business: a government issued photo identification card or a copy by mail; a police report; a written statement by a law enforcement agency stating that the patrol has on file documentation of the victim's identity through personal identification procedures. Businesses that are otherwise able to verify the victim's identity need not request this information from a victim. Businesses may seek compensation for the reasonable costs of providing the information and may not be liable if they provide the information in good faith to victims and those assisting in the prosecution of identity thieves.

If businesses do not provide information to victims, they may be in violation of the Consumer Protection Act. This version of the Consumer Protection Act only allows the consumer to recover actual damages unless the business is not providing information wilfully. A wilful violation of the act creates an action for actual damages, costs, attorneys' fees, and a monetary penalty of \$1,000.

Procedures are created for victims to work with credit reporting agencies to block information on their credit report resulting from an identity theft. The credit reporting agencies may decline to block the information in certain circumstances with a good faith and reasonable judgment standard. The section on credit reporting agencies is placed in the Fair Credit Reporting Act and contains the same Consumer Protection Act remedies available under the Fair Credit Reporting Act.

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 if the victim provides certain information to the collection agency. 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 other pertinent information regarding the specific financial transaction. 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 identity theft. Any information provided by the victim to a collection agency must match information contained in the collection agency's file. This requirement terminates in April of 2004. Under certain circumstances, a collection agency does not violate the law if the agency contacts the victim more than once. The Consumer Protection Act applicable to current collection agency prohibited practices also applies to these new collection agency prohibited practices.

If a person violates the law and the aggregate monetary amount is more than \$1,500, the person commits a class B felony. If a person violates the law and the aggregate monetary amount does not exceed \$1,500, the person commits a class C felony. These crimes are ranked and criminal profiteering provisions apply. Identity theft criminal proceedings take place in any locality where the victim resides or where any part of the crime took place regardless of whether the defendant actually entered the locality. A sentencing court may issue orders necessary to correct a public record that contains false information resulting from an identity theft.

Votes on Final Passage:

Senate	49	0	
House	97	0	(House amended)
Senate	46	0	(Senate concurred)

Effective: July 22, 2001
April 1, 2004 (Section 5)