

SENATE BILL REPORT

ESSB 5449

As Passed Senate, March 13, 2001

Title: An act relating to identity theft.

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).

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 1/29/01, 3/5/01 [DPS].
Passed Senate: 3/13/01, 49-0.

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: That Substitute Senate Bill No. 5449 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Gardner, Vice Chair; Benton, Deccio, Fairley, Franklin, Hochstatter, Patterson, Rasmussen, Regala, West and Winsley.

Staff: Catherine Mele (786-7470)

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 them assist law enforcement.

Summary of Bill: 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 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.

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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This is one of the fastest growing scams in America. In nearly 90 percent of the cases, the thief is a stranger to the victim. A common example is when a thief creates a credit card account in the consumer's name. Before the consumer realizes the card exists, the thief has charged lots of money and created a credit mess for the consumer. It can take years to get back the consumer's good name and credit history. According to the Federal Trade Commission, there have been 1200 calls regarding identity theft for Washington consumers in one year. Identity theft is already a crime. However, we need to help victims find their way out of the paperwork maze. This bill provides tools to help the consumer regain their identity.

Concerns: The good news is that this year the employer community unites with regard to its responses to commercial privacy issues. The employer community is committed to passing a strong identity theft bill this year. However, we cannot support SB 5449 in its present form. The bill contains some excellent provisions, particularly with regard to strengthening criminal provisions but it creates disproportionate and inappropriate penalties for one of the other victims of identity theft-businesses. It also provides insufficient safeguards before requiring businesses to release private consumer information to strangers. We urge you to consider placing violations of this criminal statute under the Rico Act which provides financial incentive for prosecutors to go after these crimes and creates a private right of action that empowers victims. Financial institutions are committed to coming to an agreement on an effective identity theft bill this session. Your constituents expect a solution, our customers deserve a solution. Our concerns with the bill include a misplaced Consumer Protection Act.

Other administrative remedies are more appropriate. The trade line blocking provisions also provide the Washington Bankers' Association with some significant concerns. We know our friends in credit reporting will be working on these concerns. This bill would be strengthened with the establishment of a better gate-keeping mechanism beyond the filing of a police report. We will work on this and produce an agreed to piece of legislation.

Testimony Against: The Idaho bill regarding blocking on credit reports does not contain punitive treble damages like this bill. We believe other businesses are victims of identity theft and we want it to be more difficult for people to engage in identity theft. This year the credit reporting industry started trade line blocking voluntarily. Credit reporting companies remain concerned about a one way fits all- approach to trade line blocking. Idaho and California have a law and they are very different. We are concerned about the lack of uniformity. The industry wants to be able to have flexibility in how to trade line block as its needs change. This bill threatens the integrity of credit reports because of the trade line blocking provisions.

Testified: Attorney General Christine Gregoire; Denny Eliason, WA Bankers Assn. (pro w/concerns); Cliff Webster (con); Jan Gee, WA Retail Assn. (pro/amend.); Charles Hammond, FTC; Gary Gardner, Boeing Employees Credit Union (pro); Jenni Davis, victim, identity theft (pro); Stacy Augustine, WA Credit Union League (pro w/concerns); Eileen Stauss, victim (pro); Wendy Reilly (pro).

House Amendment(s): The amendments add language describing some circumstances when a collection agency may need to contact a victim of identity theft. For example, there may be more contact needed when a collection agency confirms or authenticates information received from a victim. The House amendments make technical changes and clarify collection agency procedures with respect to a victim's accounts.