

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 251

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING REMEDIES TO VICTIMS OF  
IDENTITY THEFT; PROVIDING FOR IDENTITY THEFT PASSPORTS;  
REQUIRING POLICE REPORTS; ALLOWING FOR REMOVAL OF A FALSE  
IDENTITY IN CRIMINAL RECORDS; ALLOWING FOR A SECURITY FREEZE ON  
CREDIT REPORTS; PROVIDING FOR BLOCKING OF FRAUDULENT  
INFORMATION ON CREDIT REPORTS; EXTENDING THE TIME LIMIT FOR  
PROSECUTION OF CERTAIN CRIMES; CLARIFYING DEFINITIONS;  
PROVIDING FOR CIVIL LIABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-1-8 NMSA 1978 (being Laws 1963,  
Chapter 303, Section 1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--  
[Nø] A person shall not be prosecuted, tried or punished in any  
court of this state unless the indictment is found or

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1 information or complaint is filed [~~therefor~~] within the time as  
2 provided:

3 A. for a second degree felony, within six years  
4 from the time the crime was committed;

5 B. for a third or fourth degree felony, within five  
6 years from the time the crime was committed;

7 C. for a misdemeanor, within two years from the  
8 time the crime was committed;

9 D. for a petty misdemeanor, within one year from  
10 the time the crime was committed;

11 E. for any crime against or violation of Section  
12 51-1-38 NMSA 1978, within three years from the time the crime  
13 was committed;

14 F. for a felony pursuant to [~~Sections~~] Section  
15 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978 [~~or Section 4 of this 2005~~  
16 ~~act~~], within five years from the time the crime was committed;  
17 provided that for a series of crimes involving multiple filing  
18 periods within one calendar year, the limitation shall begin to  
19 run on December 31 of the year in which the crimes occurred;

20 G. for an identity theft crime pursuant to Section  
21 30-16-24.1 NMSA 1978, within five years from the time the crime  
22 was discovered;

23 [~~G.~~] H. for any crime not contained in the Criminal  
24 Code or where a limitation is not otherwise provided for,  
25 within three years from the time the crime was committed; and

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1           [~~H.~~] I. for a capital felony or a first degree  
2 [~~violent~~] felony, no limitation period shall exist and  
3 prosecution for these crimes may commence at any time after the  
4 occurrence of the crime."

5           Section 2. Section 30-16-24.1 NMSA 1978 (being Laws 2001,  
6 Chapter 138, Section 1, as amended) is amended to read:

7           "30-16-24.1. THEFT OF IDENTITY--OBTAINING IDENTITY BY  
8 ELECTRONIC FRAUD.--

9           A. Theft of identity consists of:

10                   (1) willfully obtaining, recording or  
11 transferring personal identifying information of another person  
12 without the authorization or consent of that person and with  
13 the intent to defraud that person or another or with the intent  
14 to sell or distribute the information to another for an illegal  
15 purpose; or

16                   (2) using personal identifying information of  
17 another person, whether that person is dead or alive, or of a  
18 false or fictitious person, to avoid summons, arrest or  
19 prosecution or to impede a criminal investigation.

20           B. Obtaining identity by electronic fraud consists  
21 of knowingly and willfully soliciting, requesting or taking any  
22 action by means of a fraudulent electronic communication with  
23 intent to obtain the personal identifying information of  
24 another.

25           C. As used in this section:

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1 (1) "fraudulent electronic communication"  
2 means a communication by a person that is an electronic mail  
3 message, web site or any other use of the internet that  
4 contains fraudulent, false, fictitious or misleading  
5 information that depicts or includes the name, logo, web site  
6 address, email address, postal address, telephone number or any  
7 other identifying information of a business, organization or  
8 state agency, to which the person has no legitimate claim of  
9 right; ~~[and]~~

10 (2) "personal identifying information" means  
11 information that alone or in conjunction with other information  
12 identifies a person, including the person's name, address,  
13 telephone number, driver's license number, social security  
14 number, date of birth, biometric data, place of employment,  
15 mother's maiden name ~~[of the person's mother]~~, demand deposit  
16 account number, checking or savings account number, credit card  
17 or debit card number, personal identification number,  
18 electronic identification code, automated or electronic  
19 signature, passwords or any other numbers or information that  
20 can be used to access a person's financial resources, obtain  
21 identification, act as identification or obtain goods or  
22 services; and

23 (3) "biometric data" means data, such as  
24 finger, voice, retina or iris prints or deoxyribonucleic acid,  
25 that capture, represent or enable the reproduction of unique

1 physical attributes of a person.

2 D. Whoever commits theft of identity is guilty of a  
3 fourth degree felony.

4 E. Whoever commits obtaining identity by electronic  
5 fraud is guilty of a fourth degree felony.

6 F. Prosecution pursuant to this section shall not  
7 prevent prosecution pursuant to any other provision of the law  
8 when the conduct also constitutes a violation of that other  
9 provision.

10 G. In a prosecution brought pursuant to this  
11 section, the theft of identity or obtaining identity by  
12 electronic fraud shall be considered to have been committed in  
13 the county:

14 (1) where the person whose identifying  
15 information was appropriated, obtained or sought resided at the  
16 time of the offense; or

17 (2) in which any part of the offense took  
18 place, regardless of whether the defendant was ever actually  
19 present in the county.

20 H. A person found guilty of theft of identity or of  
21 obtaining identity by electronic fraud shall, in addition to  
22 any other punishment, be ordered to make restitution for any  
23 financial loss sustained by a person injured as the direct  
24 result of the offense. In addition to out-of-pocket costs,  
25 restitution may include payment for costs, including attorney

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1 fees, incurred by that person in clearing the person's credit  
2 history [~~or~~], credit rating, criminal history or criminal  
3 charges or costs incurred in connection with a [~~civil or~~  
4 ~~administrative~~] legal proceeding to satisfy a debt, lien,  
5 judgment or other obligation of that person arising as a result  
6 of the offense.

7 I. The sentencing court shall issue written  
8 findings of fact and may issue orders as are necessary to  
9 correct [~~a public record~~] public records and errors in credit  
10 reports and identifying information that [~~contains~~] contain  
11 false information as a result of the theft of identity or of  
12 obtaining identity by electronic fraud."

13 Section 3. A new section of Chapter 29 NMSA 1978 is  
14 enacted to read:

15 "[NEW MATERIAL] IDENTITY THEFT REPORTS.--When a law  
16 enforcement officer interviews an alleged identity theft  
17 victim, the law enforcement officer shall make a written report  
18 of the information provided by the victim and by witnesses on  
19 appropriate forms provided by the attorney general. A copy of  
20 the police report shall be filed with the office of the  
21 attorney general."

22 Section 4. [NEW MATERIAL] USE OF FALSE IDENTITY BY A  
23 PERSON CHARGED WITH A CRIME--EXPUNGEMENT FROM POLICE AND COURT  
24 RECORDS.--

25 A. A person whose name or other identifying

1 information was used, without consent or authorization, by  
2 another person who was charged, arrested or convicted of a  
3 crime while using such name or identification may, with notice  
4 to the prosecutor, file a petition in the criminal action, if  
5 pending, or if the criminal action is not pending, then in a  
6 court of competent jurisdiction, requesting a determination of  
7 factual innocence and an expungement of the petitioner's  
8 personal identifying information from the record. If the court  
9 finds by clear and convincing evidence that the petitioner did  
10 not commit the offense with which the petitioner's identity has  
11 been associated, the court shall issue an order certifying the  
12 petitioner's factual innocence.

13 B. When a court finds a petitioner factually  
14 innocent pursuant to Subsection A of this section, the court  
15 shall order that the petitioner's name and other identifying  
16 information contained in the court records be removed and the  
17 records labeled to show that, due to identity theft, the  
18 information is not accurate and does not reflect the  
19 perpetrator's true identity. The court shall also order  
20 expungement of the arrest information pursuant to Section  
21 29-3-8.1 NMSA 1978.

22 C. A court may at any time vacate the determination  
23 of factual innocence if the petition, or information submitted  
24 in support of the petition, contains a material  
25 misrepresentation or fraud. If the court vacates the

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1 determination, the court shall rescind all orders made pursuant  
2 to this section.

3 Section 5. [NEW MATERIAL] IDENTITY THEFT PASSPORT--  
4 DATABASE.--

5 A. The attorney general, in cooperation with the  
6 department of public safety and the motor vehicle division of  
7 the taxation and revenue department, shall issue an identity  
8 theft passport to a person who claims to be a victim of  
9 identity theft pursuant to Section 30-16-24.1 NMSA 1978, and  
10 who provides to the attorney general:

11 (1) a certified copy of a court order obtained  
12 pursuant to Section 4 of this 2006 act or a full set of  
13 fingerprints;

14 (2) a driver's license or other government-  
15 issued identification or record; and

16 (3) other information as required by the  
17 attorney general.

18 B. An identity theft passport shall contain a  
19 picture of the person to whom it was issued and other  
20 information as the attorney general deems appropriate.

21 C. The attorney general may enter into a memorandum  
22 of understanding with the motor vehicle division of the  
23 taxation and revenue department for the development and  
24 issuance of a secure form of identity theft passport. When an  
25 identity theft passport is issued, the motor vehicle division

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1 shall note on the person's driver record that an identity theft  
2 passport has been issued.

3 D. An identify theft passport shall be accepted as  
4 evidence of identity by law enforcement officers and others who  
5 may challenge the person's identity.

6 E. The attorney general shall maintain a database  
7 of identity theft victims who have reported to a law  
8 enforcement agency or have been issued an identity theft  
9 passport. The attorney general may provide access to the  
10 database only to criminal justice agencies. For purposes of  
11 identification and authentication, the attorney general may  
12 allow access to specific information about a person who has  
13 become a victim of identity theft to that person or to that  
14 person's authorized representative.

15 F. The attorney general shall keep on file each  
16 application for an identity theft passport and each police  
17 report of identity theft submitted by a law enforcement agency.

18 G. The attorney general shall prepare and make  
19 available to local law enforcement agencies and to the general  
20 public an information packet that includes information on how  
21 to prevent and stop identity theft.

22 Section 6. Section 56-3-1 NMSA 1978 (being Laws 1969,  
23 Chapter 259, Section 1, as amended) is amended to read:

24 "56-3-1. DEFINITIONS.--As used in [~~this act~~] Chapter 56,  
25 Article 3 NMSA 1978:

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1           A. "credit bureau" means any business engaged in  
2           furnishing credit information about consumers; [~~and~~]

3           B. "credit report" means a written, oral or other  
4           communication of information by a credit bureau bearing on a  
5           consumer's credit, credit worthiness, credit standing, credit  
6           capacity, character, general reputation, personal  
7           characteristics or mode of living that is used or expected to  
8           be used or collected for the purpose of serving as a factor in  
9           establishing the consumer's eligibility for credit, insurance,  
10           investment, benefit, employment or other purpose as authorized  
11           by the federal Fair Credit Reporting Act, 15 U.S.C. 1681a;

12           ~~[B.]~~ C. "consumer" means any natural person in the  
13           general consuming public who seeks or is seeking credit for  
14           personal, family or household purposes or who is a subject of a  
15           credit report; and

16           D. "security freeze" means a prohibition on a  
17           credit bureau from releasing all or any part of a credit report  
18           or any information derived from a credit report."

19           Section 7. A new section of Chapter 56, Article 3 NMSA  
20           1978 is enacted to read:

21           "[NEW MATERIAL] SECURITY FREEZE.--

22           A. A consumer may elect to place a security freeze  
23           on the consumer's credit report by making a request to a credit  
24           bureau in writing by means of certified or overnight mail, by  
25           telephone or through a secure electronic mail connection.

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1           B. No later than five business days after receiving  
2 a request for a security freeze, a credit bureau shall:

3                   (1) place a security freeze on a consumer's  
4 credit report;

5                   (2) send a written confirmation of the  
6 security freeze to the consumer; and

7                   (3) provide the consumer with a unique  
8 personal identification number or password to use if the  
9 consumer chooses to authorize the release of the consumer's  
10 credit report to a specific person or to lift the security  
11 freeze temporarily or permanently.

12           C. While a security freeze is in place, a consumer  
13 may authorize a credit bureau to release the consumer's credit  
14 report to a specific person or to lift the security freeze for  
15 a specific period of time by providing the credit bureau with  
16 the personal identification number or password, verification of  
17 the consumer's identity and information regarding the person  
18 who is to have access to the credit report or the period of  
19 time for which the security freeze is to be lifted. The credit  
20 bureau shall authorize the release of the consumer's credit  
21 report or lift the security freeze as requested within three  
22 business days after receiving the request from the consumer.

23           D. If a third party requests access to a credit  
24 report on which a security freeze is in effect for the purpose  
25 of receiving, extending or otherwise using the credit in that

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1 report, the credit bureau shall notify the consumer that an  
2 attempt was made to access the consumer's credit report.

3 E. If a credit bureau releases information on a  
4 credit report on which a security freeze is in effect, it shall  
5 notify the consumer within five business days of the release of  
6 information, including the specific information released and  
7 the third party to whom it has been released.

8 F. A security freeze shall remain in place until a  
9 consumer requests that the security freeze be removed. A  
10 credit bureau shall remove the security freeze within three  
11 business days after receiving a request from a consumer who  
12 provides the personal identification number or password and  
13 verification of the consumer's identity.

14 G. A credit bureau shall not charge a fee for  
15 security freeze services, including the placement or lifting of  
16 a security freeze.

17 H. Nothing in this section prevents a credit bureau  
18 from advising a third party that a security freeze has been  
19 placed on a credit report. A credit bureau shall not suggest  
20 or otherwise state or imply to a third party that the security  
21 freeze reflects a negative credit score, history, report or  
22 rating.

23 I. Nothing in this section prevents a credit bureau  
24 from supplying information to a non-credit-granting  
25 governmental agency pursuant to the provisions of Section

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1 56-3-3 NMSA 1978 or to governmental agencies investigating  
2 fraud, delinquent taxes, unpaid court orders or other statutory  
3 responsibilities."

4 Section 8. A new section of Chapter 56, Article 3 NMSA  
5 1978 is enacted to read:

6 "[NEW MATERIAL] BLOCKING FRAUDULENT INFORMATION.--

7 A. If a consumer alleges identity theft and  
8 provides to a credit bureau a copy of a valid police report  
9 describing the identity theft circumstances, the credit bureau  
10 shall promptly block the reporting of any information that the  
11 consumer alleges appears on the consumer's credit report as a  
12 result of identity theft.

13 B. A credit bureau may decline to block or may  
14 rescind a block of information in a credit report if:

15 (1) in the exercise of good faith and  
16 judgment, the credit bureau believes that the information was  
17 blocked due to a misrepresentation of a material fact by the  
18 consumer;

19 (2) the consumer agrees that portions or all  
20 of the blocked information was blocked in error;

21 (3) the consumer knowingly received goods,  
22 services or money as a result of the blocked information; or

23 (4) the credit bureau, in the exercise of good  
24 faith and judgment, has substantial reason based on specific,  
25 verifiable facts to doubt the authenticity of the alleged

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1 identity theft.

2 C. If the block on credit report information is  
3 rescinded pursuant to Subsection B of this section, the  
4 consumer shall be notified by the credit bureau within five  
5 business days that the information is no longer blocked and the  
6 reasons why it is no longer blocked.

7 D. A credit bureau shall delete from a consumer's  
8 credit report inquiries for credit reports based upon credit  
9 requests that the credit bureau verifies were initiated as a  
10 result of the alleged identity theft."

11 Section 9. A new section of Chapter 56, Article 3 NMSA  
12 1978 is enacted to read:

13 "[NEW MATERIAL] VIOLATION OF SECURITY FREEZE--CIVIL  
14 LIABILITY.--If a credit bureau releases information placed  
15 under a security freeze in violation of the provisions of  
16 Section 7 of this 2006 act, the affected consumer may bring a  
17 civil action against the credit bureau for:

18 A. injunctive relief to prevent further violation  
19 of the security freeze;

20 B. any actual damages sustained by the consumer as  
21 a result of the violation;

22 C. a civil penalty in an amount not to exceed ten  
23 thousand dollars (\$10,000) for each violation of the security  
24 freeze; and

25 D. costs of the action and reasonable attorney

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1 fees."

2 Section 10. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2006.

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