

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 246 & 734

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO IDENTITY THEFT; EXTENDING THE TIME LIMIT FOR
PROSECUTION; CLARIFYING CRIMINAL DEFINITION; REQUIRING POLICE
REPORTS; PROVIDING REMEDIES TO VICTIMS; INCREASING A PENALTY;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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.--
[No] A person shall not be prosecuted, tried or punished in any
court of this state unless the indictment is found or
information or complaint is filed [~~therefor~~] within the time as
provided:

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

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underscored material = new
[bracketed material] = delete

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

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

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

7 E. for any crime against or violation of the
8 revenue laws of this state or of Section 51-1-38 NMSA 1978,
9 within three years from the time the crime was committed;

10 F. for an identity theft crime, within five years
11 from the time the crime was discovered;

12 ~~[F.]~~ G. for any crime not contained in the Criminal
13 Code, or where a limitation is not otherwise provided for,
14 within three years from the time the crime was committed; and

15 ~~[G.]~~ H. for a capital felony or a first degree
16 violent felony, no limitation period shall exist and
17 prosecution for these crimes may commence at any time after the
18 occurrence of the crime."

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

21 "30-16-24.1. THEFT OF IDENTITY.--

22 A. Theft of identity consists of:

23 (1) willfully obtaining, recording or
24 transferring personal identifying information of another person
25 without the authorization or consent of that person and with

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1 the intent to defraud that person or another or with the intent
2 to sell or distribute the information to another for an illegal
3 purpose; or

4 (2) using personal identifying information of
5 another person or of a false or fictitious person, whether that
6 person is dead or alive, to avoid summons, arrest or
7 prosecution or to impede a criminal investigation.

8 B. As used in this section:

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

22 (2) "biometric data" means data, such as
23 finger, voice, retina and iris prints, that capture, represent
24 or enable the reproduction of unique physical attributes of a
25 person.

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1 C. Whoever commits theft of identity is guilty of a
2 [~~misdemeanor~~] fourth degree felony.

3 D. Prosecution pursuant to this section shall not
4 prevent prosecution pursuant to any other provision of the law
5 when the conduct also constitutes a violation of that other
6 provision.

7 E. In a prosecution brought pursuant to this
8 section, the theft of identity shall be considered to have been
9 committed in the county where the person whose identifying
10 information was appropriated resided at the time of the
11 offense, or in which any part of the offense took place,
12 regardless of whether the defendant was ever actually present
13 in the county.

14 F. A person found guilty of theft of identity
15 shall, in addition to any other punishment, be ordered to make
16 restitution for any financial loss sustained by a person
17 injured as the direct result of the theft of identity. In
18 addition to out-of-pocket costs, restitution may include
19 payment for costs, including attorney fees, incurred by that
20 person in clearing his credit history or credit rating or costs
21 incurred in connection with a civil or administrative
22 proceeding to satisfy a debt, lien, judgment or other
23 obligation of that person arising as a result of the theft of
24 identity.

25 G. The sentencing court shall issue written

1 findings of fact and may issue orders as are necessary to
2 correct [~~a public record~~] public records and errors in credit
3 reports or identifying information that contains false
4 information as a result of the theft of identity."

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

7 "[NEW MATERIAL] IDENTITY THEFT REPORTS.--When a law
8 enforcement officer interviews an alleged identity theft
9 victim, the law enforcement officer shall make a written report
10 of the information provided by the victim and by witnesses on
11 appropriate forms provided by the attorney general. A copy of
12 the police report shall be filed with the office of the
13 attorney general."

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

17 A. A person whose name or other identifying
18 information was used, without consent or authorization, by
19 another person who was charged, arrested or convicted of a
20 crime using such name or identification may, with notice to the
21 prosecutor, file a petition in the criminal action, if pending,
22 or if the criminal action is not pending, then in a court of
23 competent jurisdiction requesting a determination of factual
24 innocence and an expungement of the petitioner's personal
25 identifying information from the record. If the court finds by

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1 clear and convincing evidence that the petitioner did not
2 commit the offense with which the petitioner's identity has
3 been associated, the court shall issue an order certifying the
4 petitioner's factual innocence.

5 B. When a court finds a petitioner factually
6 innocent pursuant to Subsection A of this section, the court
7 shall order that the petitioner's name and other identifying
8 information contained in the court records be removed and the
9 records labeled to show that, due to identity theft, the
10 information is not accurate and does not reflect the
11 perpetrator's true identity. The court shall also order
12 expungement of the arrest information pursuant to Section 29-3-
13 8.1 NMSA 1978.

14 C. A court may at any time vacate the determination
15 of factual innocence if the petition, or information submitted
16 in support of the petition, contains a material
17 misrepresentation or fraud. If the court vacates the
18 determination, an order shall be entered rescinding any orders
19 made pursuant to this section.

20 Section 5. [NEW MATERIAL] IDENTITY THEFT PASSPORT--
21 DATABASE.--

22 A. The attorney general, in cooperation with the
23 department of public safety and the motor vehicle division of
24 the taxation and revenue department, shall issue an identity
25 theft passport to a person who claims to be a victim of

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1 identity theft pursuant to Section 30-16-24.1 NMSA 1978, and
2 who provides to the attorney general:

3 (1) a certified copy of a court order obtained
4 pursuant to Section 4 of this act or a full set of
5 fingerprints;

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

8 (3) other information as required by the
9 attorney general.

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

13 C. The attorney general may enter into a memorandum
14 of understanding with the motor vehicle division of the
15 taxation and revenue department for the development and
16 issuance of a secure form of identity theft passport. When an
17 identity theft passport is issued, the motor vehicle division
18 shall note on the person's driver record that an identity theft
19 passport has been issued.

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

23 E. The attorney general shall maintain a database
24 of identity theft victims who have reported to a law
25 enforcement agency or have been issued an identity theft

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1 passport. The attorney general may provide access to the
2 database only to criminal justice agencies. For purposes of
3 identification and authentication, the attorney general may
4 allow access to specific information about a person who has
5 become a victim of identity theft to that person or to that
6 person's authorized representative.

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

10 G. The attorney general shall prepare and make
11 available to local law enforcement agencies and to the general
12 public an information packet that includes information on how
13 to prevent and stop identity theft.

14 Section 6. [NEW MATERIAL] IDENTITY THEFT--CREDIT
15 REPORTS.--

16 A. If a person submits a copy of a police report
17 indicating identity theft or an identity theft passport to a
18 consumer reporting agency, the agency shall within thirty days
19 block the reporting of any information that the person alleges
20 appears on his credit report as a result of a violation of
21 Section 30-16-24.1 NMSA 1978.

22 B. A consumer reporting agency may decline to block
23 or may rescind a block of a person's information if, in the
24 exercise of good faith and judgment, the consumer reporting
25 agency believes that:

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1 (1) the information was blocked due to a
2 misrepresentation of a material fact by the person;

3 (2) the information was blocked due to fraud,
4 in which the person participated or of which the person had
5 knowledge, and which may for purposes of this section be
6 demonstrated by circumstantial evidence;

7 (3) the person agrees that portions of the
8 blocked information or all of it were blocked in error;

9 (4) the person knowingly obtained or should
10 have known that he obtained possession of goods, services or
11 money as a result of the blocked transaction or transactions;
12 or

13 (5) the consumer reporting agency, in the
14 exercise of good faith and reasonable judgment, has substantial
15 reason based on specific, verifiable facts to doubt the
16 authenticity of the alleged violation of Section 30-16-24.1
17 NMSA 1978.

18 C. If blocked information is unblocked pursuant to
19 this section, the person shall be notified in the same manner
20 as consumers are notified of the reinsertion of information
21 pursuant to the federal Fair Credit Reporting Act, 15 U.S.C.
22 1681i, as amended, or within five business days, whichever is
23 later.

24 D. A consumer reporting agency shall delete from a
25 person's credit report inquiries for credit reports based upon

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1 credit requests that the consumer reporting agency verifies
2 were initiated as a result of a violation of Section 30-16-24.1
3 NMSA 1978.

4 E. As used in this section:

5 (1) "consumer reporting agency" means a person
6 that, for monetary fees, dues or on a cooperative nonprofit
7 basis, regularly engages in the practice of assembling or
8 evaluating consumer credit information or other information on
9 consumers for the purpose of furnishing consumer reports to
10 third parties; and

11 (2) "consumer report" or "credit report" means
12 a written, oral or other communication of information by a
13 consumer reporting agency bearing on a consumer's credit
14 worthiness, credit standing, credit capacity, character,
15 general reputation, personal characteristics or mode of living
16 that is used or expected to be used or collected for the
17 purpose of serving as a factor in establishing the consumer's
18 eligibility for credit, insurance, investment, benefit,
19 employment or other purpose as defined by the Fair Credit
20 Reporting Act, 15 U.S.C. 1681a.