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SENATE BILL 720

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

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO CRIMINAL LAW; CREATING A NEW CRIMINAL OFFENSE KNOWN AS OBTAINING IDENTITY BY ELECTRONIC FRAUD; PROVIDING PENALTIES AND CIVIL LIABILITY.

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

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

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

A. Theft of identity consists of willfully obtaining, recording or transferring personal identifying information of another person without the authorization or consent of that person and with the intent to defraud that person or another.

B. Obtaining identity by electronic fraud consists

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1 of knowingly and willfully soliciting, requesting or taking any  
2 action by means of a fraudulent electronic communication with  
3 intent to obtain the personal identifying information of  
4 another.

5 [B-] C. As used in this section:

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

15 (2) "personal identifying information" means  
16 information that alone or in conjunction with other information  
17 identifies a person, including the person's name, address,  
18 telephone number, driver's license number, social security  
19 number, place of employment, maiden name of the person's  
20 mother, demand deposit account number, checking or savings  
21 account number, credit card or debit card number, personal  
22 identification number, passwords or any other numbers or  
23 information that can be used to access a person's financial  
24 resources.

25 [C-] D. Whoever commits theft of identity is guilty

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1 of a misdemeanor.

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

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

8 [~~E.~~] G. In a prosecution brought pursuant to this  
9 section, the theft of identity or obtaining identity by  
10 electronic fraud shall be considered to have been committed in  
11 the county:

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

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

18 [~~F.~~] H. A person found guilty of theft of identity  
19 or of obtaining identity by electronic fraud shall, in addition  
20 to any other punishment, be ordered to make restitution for any  
21 financial loss sustained by a person injured as the direct  
22 result of the [~~theft of identity~~] offense. In addition to out-  
23 of-pocket costs, restitution may include payment for costs,  
24 including attorney fees, incurred by that person in clearing  
25 [~~his~~] the person's credit history or credit rating or costs

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1 incurred in connection with a civil or administrative  
2 proceeding to satisfy a debt, lien, judgment or other  
3 obligation of that person arising as a result of the [~~theft of~~  
4 ~~identity~~] offense.

5 [G-] I. The sentencing court shall issue written  
6 findings of fact and may issue orders as are necessary to  
7 correct a public record that contains false information as a  
8 result of the theft of identity or of obtaining identity by  
9 electronic fraud. "

10 Section 2. A new section of Chapter 30, Article 16 NMSA  
11 1978 is enacted to read:

12 "[NEW MATERIAL] CIVIL LIABILITY--IDENTITY THEFT AND  
13 OBTAINING IDENTITY BY ELECTRONIC FRAUD.--A person who suffers  
14 financial injury or damages by reason of violations pursuant to  
15 Section 30-16-24.1 NMSA 1978 may sue in district court. Upon a  
16 showing that a violation has been committed, the court may  
17 award damages and order injunctive relief and shall award the  
18 cost of the suit, including reasonable attorney fees. When the  
19 court finds the defendant has willfully engaged in a pattern  
20 and practice of violating Section 30-16-24.1 NMSA 1978, the  
21 court may award treble damages to the party complaining of the  
22 violation. A criminal action need not be brought against a  
23 person as a condition precedent to enforcement of civil  
24 liability pursuant to this section. "

25 Section 3. EFFECTIVE DATE.--The effective date of the  
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provisions of this act is July 1, 2005.

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