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FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/2006

SPONSOR HCPAC LAST UPDATED 2/6/2006 HB 251/HCPACS

SHORT TITLE Remedies for Identity Theft Victims SB _____

ANALYST McOlash

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$350.0	\$350.0		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

In the House Consumer and Public Affairs Committee Substitute:

Sections 1 – 5 are essential duplicates of provisions of HB 251. See paragraphs in one of the following sections.

Section 6: HB 251/HCPACs defines and substitutes “credit bureau” for consumer reporting agency. A credit bureau is defined as any business engaged in furnishing credit information about consumers and is broader in definition than consumer reporting agency in HB 251. Section

6 also adds and defines a “security freeze” as a prohibition on a credit bureau from releasing all of parts of a credit report or any information derived from a credit report.

Section 7 adds new material allowing a consumer to place a security freeze on a credit report by making a written request by certified or overnight mail, telephone call, or email.

In five days after such a request, the credit bureau shall:

- (1) place a security freeze on report;
- (2) send written confirmation of freeze to consumer
- (3) provide a unique personal identification number or password to the consumer for authorizing later release of credit report

The credit bureau shall also notify the consumer if there have been any third party requests or releases of information during the period of the freeze.

Section 8 provides conditions under which a consumer-reporting agency shall block, decline to block or rescind a block of the reporting of information after a person submits a police report indicating identity theft. The Act further provides that if blocked information is unblocked, the person shall be notified. The credit bureau must delete credit reports based upon credit requests that the credit bureau verifies were initiated because of alleged identity theft.

Section 9 provides penalties for releasing information placed under a security freeze. The affected consumer may bring civil action against the credit bureau for injunctive relief to prevent further violations and for actual damages, penalties, and fees.

Section 10 provides the effective date of July 1, 2006.

AOC

Observes that:

Section 1: HB 251 extends the statute of limitations for commencing prosecution for an identity theft crime to within 5 years from the time the crime was *discovered*.

Section 2: HB 251 amends Section 30-16-24.1 NMSA 1978 to expand the elements of the crime of theft of identity to include willfully obtaining, recording or transferring personal identifying information of another with the intent to sell or distribute the information to another for an illegal purpose, and using the identifying information of another, dead or alive or of a fictitious person, to avoid summons, arrest or prosecution or to impede a criminal investigation. The Act adds to the definition of “personal identifying information” to track with technological advancements. The Act further provides that a sentencing court may issue orders as are necessary to correct errors in credit reports or identifying information, in addition to public records.

Section 3: HB 251 provides that a law enforcement officer who interviews an alleged identity theft victim shall make a written report of the information provided by the victim and by witnesses on appropriate forms provided by the Attorney General (AG). The Act requires that a copy of the police report be filed with the AG.

Section 4: HB 251 provides that a person whose identity was used, without consent or au-

thorization, by another person who was charged, arrested or convicted of a crime while using such identity, may file a petition in a pending criminal action or in a court of competent jurisdiction requesting a determination of factual innocence and an expungement of the petitioner's personal identifying information from the record. The Act also provides that if a court finds the person factually innocent, the court shall order: 1) that the person's identifying information contained in the court records be removed; and 2) that the arrest information be expunged pursuant to Section 29-3-8.1 NMSA 1978. Additionally, under the Act, a court may at any time vacate the determination of factual innocence if the petition, or information submitted in support of the petition, contains a material misrepresentation or fraud.

Section 5: HB 251 provides that if a person claiming to be a victim of identity theft provides specified documents to the AG, the AG, in cooperation with the Department of Public Safety and the Motor Vehicle Division of the Taxation and Revenue Department, shall issue that person an identity theft passport. The passport must contain a picture of the person to whom it was issued and other information, as the AG deems appropriate. The Act provides that the passport shall be accepted by law enforcement officers and others challenging the holder's identity. The Act further provides that upon issuance, the Motor Vehicle Department shall note on the person's driver record that a passport has been issued. Under the Act, the AG is required to maintain a database of identity theft victims who have reported to a law enforcement agency or have been issued an identity theft passport. The AG may provide access to the database to criminal justice agencies. For purposes of identification and authentication, the AG may allow access to specific information about a person who has become a victim of identity theft to that person or that person's authorized representative. The Act also requires that the AG prepare and distribute to local law enforcement agencies and to the general public an information packet regarding how to prevent identity theft.

Section 6: HB 251 provides conditions under which a consumer-reporting agency shall block, decline to block or rescind a block of the reporting of information that a person alleges appears on his credit report because of identity theft. The Act further provides that if blocked information is unblocked, the person shall be notified. Additionally, the Act provides that a consumer-reporting agency shall delete from a person's credit report inquiries for credit reports based upon credit requests that the consumer-reporting agency verifies were initiated because of identity theft. The Act defines "consumer reporting agency" and "credit report."

Section 7: The effective date of the Act is July 1, 2006.

FISCAL IMPLICATIONS

The portion of the bill which directs the Office of the Attorney General to start, administer and maintain an identity theft passport program will require software, hardware, staff and training to successfully complete. This will take considerable money to initiate. A similar program started by the Ohio Attorney General's Office cost approximately \$350,000.00 to start up. The state of Virginia, which also has an identity theft passport program, was able to develop their program for considerably less money, but their program appears less sophisticated than the one in Ohio.

ADMINISTRATIVE IMPLICATIONS (AOC)

House Bill 251 provides that a person whose identity was used, without consent or authorization, by another person who was charged, arrested or convicted of a crime while using such identity, may file a petition in a pending criminal action or in a court of competent jurisdiction requesting a determination of factual innocence and an expungement of the petitioner's personal identifying information from the record. This may increase caseloads in the courts, where additional resources will be required to handle the increase.

AMENDMENTS (AOC)

- 1) Section 4.C.: Provide guidance as to who may request a vacation of the determination of factual innocence, and the procedure for doing so.
- 2) Define "identity theft passport" and provide additional direction to the AG et.al, if necessary, as to what information a passport shall contain and the form it shall assume.

BMC/nt