

FIRST REGULAR SESSION

# SENATE BILL NO. 381

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time February 21, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1569S.011

## AN ACT

To repeal sections 407.1355 and 570.223, RSMo, and to enact in lieu thereof two new sections relating to the use of personal information, with penalty provisions and an emergency clause.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 407.1355 and 570.223, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 407.1355 and 570.223, to read as follows:

407.1355. 1. A person or entity, not including a state or local agency, shall not do any of the following:

(1) Publicly post or publicly display in any manner an individual's Social Security number. "Publicly post" or "publicly display" is defined in this section to intentionally communicate or otherwise make available to the general public **or to an individual's co-workers;**

(2) Require an individual to transmit his or her Social Security number over the Internet, unless the connection is secure or the Social Security number is encrypted;

(3) Require an individual to use his or her Social Security number to access an Internet web site, unless a password, unique personal identification number, or other authentication device is also required to access the Internet web site;

**(4) Require an individual to use his or her Social Security number as an employee number for any type of employment-related activity except as allowed by this section.**

2. [Except as provided in subsection 3 of this section,] The provisions of subsection 1 of this section apply only to the use of Social Security numbers on or after [July 1, 2006] **the effective date of this act.**

3. [Except as provided in subsection 6 of this section, a person or entity, not including

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

a state or local agency, that has used, prior to July 1, 2006, an individual's Social Security number in a manner inconsistent with subsection 1 of this section may continue using that individual's Social Security number in that manner on or after July 1, 2006, if any of the following conditions are met:

(1) The use of the Social Security number is continuous. If the use is stopped for any reason, subsection 1 of this section shall apply;

(2) The individual is provided an annual disclosure, beginning in 2006, that informs the individual that he or she has the right to stop the use of his or her Social Security number in a manner prohibited by subsection 1 of this section; or

(3) A written request by an individual to stop the use of his or her Social Security number in a manner prohibited by subsection 1 of this section shall be implemented within thirty days of the receipt of the request. There shall be no fee or charge for implementing the request. A person or entity, not including a state or local agency, shall not deny services to an individual because the individual makes a written request pursuant to this subdivision.

4.] This section does not prevent the collection, use, or release of a Social Security number as required by state or federal law or the use of a Social Security number for internal verification or administrative purposes.

[5.] 4. This section does not apply to documents that are recorded or required to be open to the public pursuant to chapter 610, RSMo. This section does not apply to records that are required by statute, case law, or Missouri court rules to be made available to the public.

[6.] 5. If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, any person or entity that complies with the federal law shall be deemed in compliance with this section.

570.223. 1. A person commits the crime of identity theft if he or she knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his or her use.

2. The term "means of identification" as used in this section includes, but is not limited to, the following:

- (1) Social Security numbers;
- (2) Drivers license numbers;
- (3) Checking account numbers;
- (4) Savings account numbers;
- (5) Credit card numbers;
- (6) Debit card numbers;
- (7) Personal identification (PIN) code;

- (8) Electronic identification numbers;
- (9) Digital signatures;
- (10) Any other numbers or information that can be used to access a person's financial resources;
- (11) Biometric data;
- (12) Fingerprints;
- (13) Passwords;
- (14) Parent's legal surname prior to marriage;
- (15) Passports; or
- (16) Birth certificates.

3. A person found guilty of identity theft shall be punished as follows:

(1) Identity theft or attempted identity theft which does not result in the theft or appropriation of credit, money, goods, services, or other property is a class B misdemeanor;

(2) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding **[ten] five** thousand dollars in value is a class C felony;

(4) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding **[ten] five** thousand dollars and not exceeding **[one hundred] fifty** thousand dollars in value is a class B felony;

(5) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding **[one hundred] fifty** thousand dollars in value is a class A felony.

4. In addition to the provisions of subsection 3 of this section, the court may order that the defendant make restitution to any victim of the offense. Restitution may include payment for any costs, including attorney fees, incurred by the victim:

- (1) In clearing the credit history or credit rating of the victim; and
- (2) In connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising from the actions of the defendant.

5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person who commits an act made unlawful by subsection 1 of this section shall be liable to the person to whom the identifying information belonged for civil damages of up to five thousand dollars for each incident, or three times the amount of actual damages, whichever amount is greater. A person damaged as set forth in subsection 1 of this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of subsection 1 of this section. The court, in an action brought under this subsection, may

award reasonable attorneys' fees to the plaintiff.

6. If the identifying information of a deceased person is used in a manner made unlawful by subsection 1 of this section, the deceased person's estate shall have the right to recover damages pursuant to subsection 5 of this section.

7. Civil actions under this section must be brought within five years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

8. Civil action pursuant to this section does not depend on whether a criminal prosecution has been or will be instituted for the acts that are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

9. This section and section 570.224 shall not apply to the following activities:

(1) A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors;

(2) A person obtains means of identification or information in the course of a bona fide consumer or commercial transaction;

(3) A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;

(4) A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so;

(5) A person is otherwise authorized by law to engage in the conduct that is the subject of the prosecution.

10. Notwithstanding the provisions of subdivision (1) or (2) of subsection 3 of this section, every person who has previously pled guilty to or been found guilty of identity theft or attempted identity theft, and who subsequently pleads guilty to or is found guilty of identity theft or attempted identity theft of credit, money, goods, services, or other property not exceeding five hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

11. The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes, but is not limited to, market value within the community, actual value, or replacement value.

12. If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

Section B. Because of the need to protect the personal information of the citizens of this state, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

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