

**ATTORNEY GENERAL'S LEGISLATIVE PROGRAM  
PROGRAM BILL # 22-05**

**Senate #**

**Assembly #**

**Attorney General Eliot Spitzer  
The Capitol, Albany, NY 12224  
(518) 486-3000**

**MEMORANDUM**

AN ACT to amend the general business law,  
the criminal procedure law and the  
executive law, in relation to identity  
theft and mitigation

**PURPOSE**

This bill provides protections for those who are victims of identity theft.

**SUMMARY OF PROVISIONS**

Section 1 of the bill entitles the act as the “Identity Theft Prevention and Mitigation Act.

Section 2 of the bill sets forth Legislative Findings.

Section 3 of the bill adds a new provision to General Business Law §380-a that defines “security freeze.”

Sections 4 and 5 of the bill add new provisions to General Business Law §380-d to require a consumer reporting agency to advise that victims of identity theft can request a security freeze.

Section 6 of the bill adds a new paragraph (3-a) to General Business Law § 380-e(e) to prohibits charging for confirmation that a security freeze has been removed.

Section 7 of the bill adds a new section 380-u to the General Business Law to establish the terms and conditions of a security freeze.

Section 8 of the bill adds a new section 380-v to the General Business Law to authorize enforcement by the Attorney General.

Section 9 of the bill adds a new section 396-ss to the General Business Law to place limits on the use and disclosure of an individual’s federal Social Security account number.

Section 10 of the bill adds a new subdivision (e) to General Business Law § 380-b to

permit disclosure of Social Security numbers by consumer reporting agencies in accordance with the provisions of section 380-b.

Section 11 of the bill adds a new section 396-tt to the General Business Law to require notification of a security breach that affects the personal information of more than 500 New York residents.

Section 12 of the bill amends Criminal Procedure Law § 20.40(4)(1) to require law enforcement officials to accept reports of identity theft, and provide a copy of the filed complaint to the victim.

Section 13 of the bill amends Executive Law § 646 to entitle a victim of identity theft to a free copy of the police report concerning the crime.

## **JUSTIFICATION**

The prevalence of identity theft continues to increase, costing victims and businesses billions in losses and other consequences. In its report entitled *National and State Trends in Fraud and Identity Theft*, the Federal Trade Commission (FTC) reported that 38 % of fraud claims in 2004 related to identity theft, and New York ranked seventh in the nation in per-capita identity theft reports. These statistics reflect complaints to government entities, but there are many more cases that are never formally reported. In fact, a national survey conducted by the FTC estimated that the number of victims in 2002 approached 10 million, including 663,300 New Yorkers.

The costs associated with this crime are significant. The FTC estimates the total annual cost to business at \$50 billion for 2002, and the Better Business Bureau 2005 Identity Fraud Survey Report estimated that the total annual identity fraud cost was \$52.6 billion. The Identity Theft Resource Center found that the average victim spent nearly \$1500 and 600 hours attempting to resolve the consequences of the crime.

In order to reduce the incidence of identity theft, it is essential that businesses implement procedures to protect the personal information they gather about their customers, and also establish a plan for responding to events in which such data is improperly accessed or released. Such procedures are an essential mechanism for businesses to reduce their own damages in terms of cost, reputation and liability.

Numerous security breaches of data systems have occurred during the past several years. Most recently, ChoicePoint – which stores an estimated 19 billion records on American residents, including personal information such as name, address and Social Security account numbers – admitted that data had been stolen from its files. This security breach may have compromised up to 100,000 records. California law requires notice of a security breach to the subjects of the records that have been accessed, and ChoicePoint has sent notice to affected persons, and has recommended that they check their credit reports for unauthorized activity.

This bill would establish a similar notification requirement to protect New York residents,

by providing individuals with early warning so that they can take appropriate steps to safeguard themselves against identity theft or to mitigate the crime's impact.

The ChoicePoint case is just one example underscoring the ease in which individuals can access another person's Social Security account number. The Federal Trade Commission, the Social Security Administration, the General Accounting Office and others acknowledge that the widespread public exposure of personal information, especially Social Security account numbers, plays a significant role in identity theft. Even worse, terrorists may steal or create Social Security account numbers to operate in our society and commit nefarious acts. While many businesses have become more aware of the possible misuse of such information and have taken measures to guard against unnecessary dissemination, there is a need to better protect the privacy and integrity of this data.

Because consumers are increasingly concerned about widespread transmission, access, and use of their Social Security number, several states – including Arizona, California, Connecticut, Illinois and Texas – have enacted legislation regarding the private sector use of Social Security numbers, and legislation is pending in New Jersey, Vermont and elsewhere. This bill would extend similar protections to New York residents, by prohibiting businesses from communicating Social Security numbers or derivatives of such numbers, while permitting lawful uses of the number to conduct business.

To help prevent repeated victimization and further harm, those who believe that they have become a victim of identity theft should be able to mitigate the crime's consequences by initiating a "security freeze" on their credit reports. This tool essentially blocks access to a credit report and information derived from it until the consumer affirmatively unlocks the files by contacting the credit reporting agency and providing a security code. With the security freeze activated, if an identity thief attempts to apply for credit in a consumer's name, the creditor would not have access to the consumer's report and consequently would not approve the new application. Security freezes would not apply to any entity with which the consumer has existing accounts, and a limited number of other parties who may access the files for specific purposes. The security freeze not only assists consumers, but also reduces the risk of exposing businesses to losses as a result of granting credit to imposters. In recognition of the value of this tool, several states including California, Vermont, Texas and Louisiana have passed similar legislation.

Identity theft can cause substantial harm to consumers. In 2003, Congress amended the federal Fair Credit Reporting Act (Pub. L. 108-159) to provide victims with additional remedies and rights including the right to block the reporting of theft-related information from a credit file and the right to business transaction information involving the thief. Some of these remedies require victims to present a report from a law enforcement agency. When a consumer suspects that he or she has been the victim of identity theft, his or her obvious recourse is the local police department. Unfortunately, there have been incidents where victims have been unable to secure a police report or complaint number. California, Connecticut, the District of Columbia, Illinois, Vermont and Louisiana have enacted legislation ensuring the right to a police report regarding identity theft, and this bill extends that right to New York residents.

In sum, this bill adopts several essential safeguards and remedies that will protect New York consumers from identity thieves. Enactment of this legislation will both help prevent identity theft from occurring in the first place, and also will reduce the time, energy and money that identity theft victims must expend to clear their reputations and reestablishing their good credit histories and ratings.

### **LEGISLATIVE HISTORY**

This is a new proposal.

### **FISCAL IMPLICATIONS**

There are no fiscal implications.

### **EFFECTIVE DATE**

This bill is effective 90 days after enactment.