



Senate

General Assembly

File No. 126

February Session, 2008

Substitute Senate Bill No. 30

Senate, March 25, 2008

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CONSUMER PRIVACY AND IDENTITY THEFT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 53a-129a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) A person commits identity theft when such person [intentionally
4 obtains personal identifying information of another person without the
5 authorization of such other person and] knowingly uses [that] personal
6 identifying information of another person to obtain or attempt to
7 obtain, money, credit, goods, services, property or medical information
8 in the name of such other person without the consent of such other
9 person.

10 (b) As used in this section, "personal identifying information" means
11 any name, number or other information that may be used, alone or in
12 conjunction with any other information, to identify a specific
13 individual including, but not limited to, such individual's name, date

14 of birth, mother's maiden name, motor vehicle operator's license
15 number, Social Security number, employee identification number,
16 employer or taxpayer identification number, alien registration number,
17 government passport number, health insurance identification number,
18 demand deposit account number, savings account number, credit card
19 number, debit card number or unique biometric data such as
20 fingerprint, voice print, retina or iris image, or other unique physical
21 representation.

22 Sec. 2. Section 53a-130 of the general statutes is repealed and the
23 following is substituted in lieu thereof (*Effective October 1, 2008*):

24 (a) A person is guilty of criminal impersonation when [he] such
25 person: (1) Impersonates another and does an act in such assumed
26 character with intent to obtain a benefit or to injure or defraud another;
27 or (2) pretends to be a representative of some person or organization
28 and does an act in such pretended capacity with intent to obtain a
29 benefit or to injure or defraud another; or (3) pretends to be a public
30 servant other than a sworn member of an organized local police
31 department or the Division of State Police within the Department of
32 Public Safety, or wears or displays without authority any uniform,
33 badge or shield by which such public servant is lawfully
34 distinguished, with intent to induce another to submit to such
35 pretended official authority or otherwise to act in reliance upon that
36 pretense.

37 (b) Criminal impersonation is a class [B] A misdemeanor.

38 Sec. 3. (NEW) (*Effective October 1, 2008*) (a) A person is guilty of
39 unlawful possession of personal information access devices when such
40 person possesses access devices, document-making equipment or
41 authentication implements for the purpose of obtaining, tampering
42 with or using the personal identifying information, as defined in
43 section 53a-129a of the general statutes, as amended by this act, of
44 another person.

45 (b) For the purposes of this section, "access devices" includes any

46 card, plate, code, account number, mobile identification number,
47 personal identification number, telecommunication service access
48 equipment, card-reading device, scanning device, reencoder or other
49 means that could be used to access financial resources or obtain
50 financial information, personal identifying information or benefits of
51 another person.

52 (c) Unlawful possession of access devices is a class A misdemeanor.

53 Sec. 4. (NEW) (*Effective October 1, 2008*) (a) Any license, registration
54 or certificate issued by the state or any political subdivision of the state
55 that was based upon an application containing any material false
56 statement is void from the date of issuance and shall be surrendered,
57 on demand, to the issuing authority. Any moneys paid for such
58 license, registration or certificate shall be forfeited to the issuing
59 authority.

60 (b) No person shall obtain or attempt to obtain any license,
61 registration or certificate for another person by misrepresentation or
62 impersonation, and any license, registration or certificate obtained by
63 misrepresentation or impersonation is void from the date of issuance
64 and shall be surrendered, on demand, to the issuing authority. Any
65 moneys paid for such license, registration or certificate shall be
66 forfeited to the issuing authority.

67 (c) Any person who violates any provision of this section shall be
68 guilty of a class A misdemeanor.

69 Sec. 5. Section 52-571h of the general statutes is repealed and the
70 following is substituted in lieu thereof (*Effective October 1, 2008*):

71 (a) Any person aggrieved by an act constituting a violation of
72 section 53a-129a of the general statutes, revision of 1958, revised to
73 January 1, 2003, or section 53a-129b, 53a-129c, [or] 53a-129d or 53a-129e
74 may bring a civil action in the Superior Court for damages against the
75 person who committed the violation.

76 (b) In any civil action brought under this section in which the

77 plaintiff prevails, the court shall award the greater of one thousand
78 dollars or treble damages, together with costs and a reasonable
79 attorney's fee. Damages shall include, but not be limited to,
80 documented lost wages and any financial loss suffered by the plaintiff
81 as a result of identity theft, as defined in section 53a-129a, as amended
82 by this act. The court shall issue an order that the person found guilty
83 of identity theft shall pay restitution to the prevailing party.

84 (c) No action under this section shall be brought but within [two]
85 three years from the date when the violation is discovered or in the
86 exercise of reasonable care should have been discovered.

87 Sec. 6. Section 54-93a of the general statutes is repealed and the
88 following is substituted in lieu thereof (*Effective October 1, 2008*):

89 Whenever a person is convicted of a violation of section 53a-129a of
90 the general statutes, revision of 1958, revised to January 1, 2003, or
91 section 53a-129b, 53a-129c, [or] 53a-129d [,] or 53a-129e the court [may]
92 shall issue such orders as are necessary to correct a public record that
93 contains false information as a result of such violation.

94 Sec. 7. Subsection (e) of section 54-1d of the general statutes is
95 repealed and the following is substituted in lieu thereof (*Effective*
96 *October 1, 2008*):

97 (e) Any defendant who is charged with a violation of section 53a-
98 129a of the general statutes, revision of 1958, revised to January 1, 2003,
99 or section 53a-129b, 53a-129c, [or] 53a-129d or 53a-129e and any
100 defendant who is charged with any other offense committed as a result
101 of such violation may be presented to the court in the geographical
102 area in which the person whose personal identifying information has
103 been obtained and used by the defendant resides and may be
104 prosecuted in that judicial district or geographical area.

105 Sec. 8. (NEW) (*Effective October 1, 2008*) (a) An employer may
106 maintain a list of employees' Social Security numbers, provided such
107 numbers may not be disclosed in any way, except as required by law,

108 without the written consent of the employee.

109 (b) Notwithstanding any other provision of law, no business entity
110 or nonprofit group may sell or share an individual's personal
111 identifying information, as defined in section 53a-129a of the general
112 statutes, as amended by this act, with any third party without
113 obtaining the consent of the individual whose information is to be
114 shared.

115 (c) This section shall not be construed to prohibit a discount card
116 issuer from requesting a Social Security number for a retailer discount
117 card that can also be used as identification for check cashing purposes
118 or to debit the checking or savings account of the cardholder, provided
119 no discount card issuer may, as a condition of obtaining a retailer
120 discount card, require a cardholder to obtain a retailer discount card
121 that can also be used as identification for check cashing purposes or to
122 debit the checking or savings account of the cardholder.

123 (d) Nothing in this section shall be construed to prohibit a business
124 entity or nonprofit group from providing an individual's name and
125 address to a third party for purposes of mailing information to the
126 individual on behalf of the business entity or nonprofit group. Prior to
127 sharing an individual's name and address, the business entity or
128 nonprofit group shall obtain a written confidentiality agreement from
129 the third party that the third party will not sell or share the
130 information with any other entity. Such third party shall not use the
131 information for any other purpose.

132 (e) Any employer, business entity or nonprofit group in possession
133 of personal identifying information shall safeguard the data, computer
134 files and documents containing the data from misuse by third parties,
135 and any document, computer file or database containing personal
136 identifying information shall be destroyed or erased prior to disposal.

137 (f) Any employer, business entity or nonprofit group that collects
138 Social Security numbers in the course of business shall create a privacy
139 protection policy which shall be published in any employee handbook

140 used by such employer, business entity or nonprofit group or
141 displayed in an accessible and prominent location controlled by such
142 employer, business entity or nonprofit group. Such policy shall: (1)
143 Ensure confidentiality of personal identifying information, (2) prohibit
144 unlawful disclosure of personal identifying information, (3) limit
145 access to personal identifying information, (4) provide for proper
146 disposal of documents containing personal identifying information,
147 and (5) establish penalties for violation of the policy.

148 (g) Any waiver of the provisions of this section shall be contrary to
149 public policy and shall be void and unenforceable.

150 (h) A violation of this section shall constitute an unfair or deceptive
151 trade practice pursuant to section 42-110b of the general statutes.

152 (i) The Commissioner of Consumer Protection may adopt
153 regulations, in accordance with the provisions of chapter 54 of the
154 general statutes, to carry out the provisions of this section.

155 Sec. 9. (NEW) (*Effective October 1, 2008*) (a) Any license, registration
156 or certificate issued by the state, or any political subdivision of the
157 state, that is physically altered to conceal or misrepresent a material
158 fact is void from the date of such alteration and shall be surrendered,
159 on demand, to the issuing authority. Any moneys paid for such
160 license, registration or certificate shall be forfeited to the issuing
161 authority.

162 (b) No person shall alter any license, registration or certificate issued
163 by the state, or any political subdivision of the state, and any license,
164 registration or certificate so altered shall be void from the date of
165 alteration and shall be surrendered, on demand, to the issuing
166 authority. Any moneys paid for such license, registration or certificate
167 shall be forfeited to the issuing authority.

168 (c) Any person who violates any provision of this section shall be
169 guilty of a class A misdemeanor.

170 Sec. 10. Section 54-36h of the general statutes is repealed and the

171 following is substituted in lieu thereof (*Effective October 1, 2008*):

172 (a) The following property shall be subject to forfeiture to the state
173 pursuant to subsection (b) of this section:

174 (1) All moneys used, or intended for use, in the procurement,
175 manufacture, compounding, processing, delivery or distribution of any
176 controlled substance, as defined in subdivision (9) of section 21a-240;

177 (2) All property constituting the proceeds obtained, directly or
178 indirectly, from any sale or exchange of any such controlled substance
179 in violation of section 21a-277 or 21a-278 of the 2008 supplement to the
180 general statutes;

181 (3) All property derived from the proceeds obtained, directly or
182 indirectly, from any sale or exchange for pecuniary gain of any such
183 controlled substance in violation of section 21a-277 or 21a-278 of the
184 2008 supplement to the general statutes;

185 (4) All property used or intended for use, in any manner or part, to
186 commit or facilitate the commission of a violation for pecuniary gain of
187 section 21a-277 or 21a-278 of the 2008 supplement to the general
188 statutes;

189 (5) All property constituting, or derived from, the proceeds
190 obtained, directly or indirectly, by a corporation as a result of a
191 violation of section 53a-276, 53a-277 or 53a-278;

192 (6) All property constituting, or derived from, the proceeds
193 obtained, directly or indirectly, by a person as a result of a violation of
194 section 53a-129b, 53a-129c, 53a-129d or 53a-129e.

195 (b) Not later than ninety days after the seizure of moneys or
196 property subject to forfeiture pursuant to subsection (a) of this section,
197 in connection with a lawful criminal arrest or a lawful search, the Chief
198 State's Attorney or a deputy chief state's attorney, state's attorney or
199 assistant or deputy assistant state's attorney may petition the court in
200 the nature of a proceeding in rem to order forfeiture of said moneys or

201 property. Such proceeding shall be deemed a civil suit in equity, in
202 which the state shall have the burden of proving all material facts by
203 clear and convincing evidence. The court shall identify the owner of
204 said moneys or property and any other person as appears to have an
205 interest therein, and order the state to give notice to such owner and
206 any interested person by certified or registered mail, and shall
207 promptly, but not less than two weeks after notice, hold a hearing on
208 the petition. No testimony offered or evidence produced by such
209 owner or interested person at such hearing and no evidence
210 discovered as a result of or otherwise derived from such testimony or
211 evidence, may be used against such owner or interested person in any
212 proceeding, except that no such owner or interested person shall be
213 immune from prosecution for perjury or contempt committed while
214 giving such testimony or producing such evidence. At such hearing
215 the court shall hear evidence and make findings of fact and enter
216 conclusions of law and shall issue a final order, from which the parties
217 shall have such right of appeal as from a decree in equity.

218 (c) No property shall be forfeited under this section to the extent of
219 the interest of an owner or lienholder by reason of any act or omission
220 committed by another person if such owner or lienholder did not
221 know and could not have reasonably known that such property was
222 being used or was intended to be used in, or was derived from,
223 criminal activity.

224 (d) Notwithstanding the provisions of subsection (a) of this section,
225 no moneys or property used or intended to be used by the owner
226 thereof to pay legitimate attorney's fees in connection with his defense
227 in a criminal prosecution shall be subject to forfeiture under this
228 section.

229 (e) Any property ordered forfeited pursuant to subsection (b) of this
230 section shall be sold at public auction conducted by the Commissioner
231 of Administrative Services or his designee.

232 (f) The proceeds from any sale of property under subsection (e) of
233 this section and any moneys forfeited under this section shall be

234 applied: (1) To payment of the balance due on any lien preserved by
235 the court in the forfeiture proceedings; (2) to payment of any costs
236 incurred for the storage, maintenance, security and forfeiture of such
237 property; and (3) to payment of court costs. The balance, if any, shall
238 be deposited in the drug assets forfeiture revolving account
239 established under section 54-36i, except that any balance attributable to
240 a sale of property in connection with a prosecution for a violation of
241 section 53a-129a, as amended by this act, or 53a-130, as amended by
242 this act, or section 3, 4 or 9 of this act, shall be deposited in the
243 consumer protection enforcement account established under section
244 21a-8a.

245 Sec. 11. Section 36a-40 of the general statutes is repealed and the
246 following is substituted in lieu thereof (*Effective from passage*):

247 (a) The commissioner may, by regulation adopted in accordance
248 with chapter 54, prescribe periods of time for the retention of records
249 of any Connecticut bank or Connecticut credit union. Records which
250 have been retained for the period so prescribed may thereafter be
251 destroyed, and no liability shall thereby accrue against the Connecticut
252 bank or Connecticut credit union destroying them. In any cause or
253 proceeding in which any such records may be called in question or be
254 demanded of any such bank or credit union or any officer or employee
255 thereof, a showing that the period so prescribed has elapsed shall be
256 sufficient excuse for failure to produce them.

257 (b) Each bank, branch in this state of an out-of-state bank,
258 Connecticut credit union, federal credit union and branch in this state
259 of an out-of-state credit union shall take adequate measures to protect
260 against identity theft when disposing of documents containing
261 personal identifying information such as Social Security numbers and
262 bank account numbers. Such measures shall, at a minimum, include
263 the shredding or other means of permanent destruction of such
264 documents in a secure setting.

265 Sec. 12. (NEW) (*Effective from passage*) As used in sections 12 to 21,
266 inclusive, of this act:

267 (1) "Personal identifying information" means an individual's Social
268 Security number, date of birth or age;

269 (2) "Individual" means a resident of this state; and

270 (3) "Commissioner" means the Commissioner of Consumer
271 Protection.

272 Sec. 13. (NEW) (*Effective from passage*) (a) Except as otherwise
273 provided by law, on and after January 1, 2009, no person or entity
274 may:

275 (1) Intentionally communicate or otherwise make an individual's
276 personal identifying information available to the general public or
277 make such information available in return for a fee;

278 (2) Print an individual's personal identifying information on any
279 card required for the individual to receive products or services
280 provided by the person or entity;

281 (3) Require the transmission of an individual's personal identifying
282 information over the Internet unless the connection is secure or the
283 personal identifying information is encrypted;

284 (4) Require the use of an individual's personal identifying
285 information to access an Internet web site, unless a password or
286 unique personal identification number or other authentication device
287 is also required to access the site;

288 (5) Print a number that the person or entity knows to be an
289 individual's personal identifying information on any materials that are
290 mailed to the individual, unless state or federal law requires the
291 personal identifying information to be on the document to be mailed,
292 except that this section shall not prohibit the mailing of documents that
293 include personal identifying information sent as part of an application
294 or enrollment process or to establish, amend or terminate an account,
295 contract or policy or to confirm the accuracy of the personal
296 identifying information. In a transaction involving or otherwise

297 relating to an individual, if a person or entity receives a number from a
298 third party, this section shall not impose any duty on such person or
299 entity to inquire or otherwise determine if the number is or includes
300 any of such individual's personal identifying information. Such person
301 or entity may print such number on materials that are mailed to the
302 individual unless the person or entity that received the number has
303 actual knowledge that the number is or includes the individual's
304 personal identifying information. This section shall not prohibit the
305 mailing to the individual of any copy or reproduction of a document
306 that includes personal identifying information if the personal
307 identifying information was included on the original document before
308 January 1, 2009; or

309 (6) Mail any document which allows personal identifying
310 information to be visible without opening the envelope.

311 (b) Notwithstanding subsection (a) of this section, a person or entity
312 that, before January 1, 2009, used an individual's personal identifying
313 information in a manner inconsistent with said subsection (a) may
314 continue using such individual's personal identifying information in
315 such manner on and after January 1, 2009, subject to the following
316 conditions:

317 (1) The use of the personal identifying information shall be
318 continuous. If the use is stopped for any reason, subsection (a) of this
319 section shall apply;

320 (2) After January 1, 2009, the person or entity shall provide the
321 individual with an annual written disclosure of the individual's right
322 to stop the use of the personal identifying information in a manner
323 prohibited by subsection (a) of this section;

324 (3) If the individual requests, in writing or by electronic means
325 established by the person or entity, such person or entity shall cease
326 using the personal identifying information in a manner prohibited by
327 subsection (a) of this section not later than thirty days after receiving
328 the request. No fee may be charged for implementing such request and

329 the person or entity shall not deny services to the individual because of
330 the request; and

331 (4) A person or entity shall be subject to a civil penalty of not more
332 than five hundred dollars for each act that violates this subsection.
333 Such penalty shall be deposited into the privacy protection guaranty
334 and enforcement account, pursuant to section 18 of this act.

335 (c) This section shall not prohibit the collection, use or release of
336 personal identifying information as required by the laws of this state
337 or the United States.

338 (d) On and after January 1, 2010, this state or any political
339 subdivision of this state may not use an individual's personal
340 identifying information, other than such individual's date of birth, on
341 forms of identification issued by the state or any of its political
342 subdivisions.

343 (e) This section shall not prohibit an agency of this state or a
344 political subdivision of this state from disseminating or using the last
345 four numbers constituting an individual's Social Security number.

346 (f) No agency of this state or any political subdivision of this state
347 may transmit to an individual any material that contains both a piece
348 of the individual's Social Security number and a bank, savings and
349 loan association or credit union account number, except that this
350 subsection shall not prohibit the transmitting of documents that
351 include Social Security and bank, savings and loan association or credit
352 union account numbers as a part of an application or enrollment
353 process or to establish, amend or terminate an account, contract or
354 policy or to confirm the accuracy of the Social Security, bank, savings
355 and loan association or credit union account number.

356 (g) Except as otherwise provided by law, documents or records that
357 are recorded with the state or any political subdivision of the state and
358 made available on the recording entity's public web site after the
359 effective date of this section shall not contain more than five numbers

360 that are reasonably identifiable as being part of an individual's Social
361 Security number and shall not contain an individual's: (1) Credit card,
362 charge card or debit card numbers; (2) retirement account numbers; (3)
363 savings, checking or securities entitlement account numbers; or (4)
364 date of birth or age of the individual.

365 (h) No agency of the state or any of its political subdivisions shall be
366 subject to civil liability for any action relating to information recorded
367 pursuant to subsection (g) of this section.

368 (i) A person or entity shall be subject to a civil penalty of not more
369 than five hundred dollars for each act of recording that violates
370 subsection (g) of this section. Such penalty shall not apply to a person
371 or entity that transmits the document for recording but has no
372 authority for the creation of the document.

373 (j) The Attorney General, at the request of the Commissioner of
374 Consumer Protection, may apply to the Superior Court for an order
375 temporarily or permanently restraining and enjoining any person or
376 entity from violating any provision of this section.

377 Sec. 14. (NEW) (*Effective from passage*) Sections 12 to 21, inclusive, of
378 this act shall not apply to:

379 (1) The use of personal identifying information by the Department
380 of Revenue Services or by a law enforcement agency of this state or a
381 law enforcement agency of a municipality or other political
382 subdivision of this state, except that these agencies shall comply with
383 the provisions of subdivisions (2), (5) and (6) of subsection (a) of
384 section 13 of this act;

385 (2) The use of personal identifying information by an agency or
386 political subdivision of this state in its administration of employee
387 payroll, employee benefits and workers' compensation matters, except
388 that the agency shall comply with subdivisions (1), (2), (4), (5) and (6)
389 of subsection (a) of section 13 of this act;

390 (3) Documents or records that are required to be recorded pursuant

391 to the laws of this state or by court rule or order, including, but not
392 limited to, certificates for births, weddings or deaths;

393 (4) An individual's personal identifying information that is printed
394 or caused to be printed on a document or form of identification by the
395 individual or said individual's legal guardian;

396 (5) The use of personal identifying information by the administrator,
397 as defined in subsection (c) of section 31-222 of the general statutes, or
398 any person deemed to be a party, pursuant to chapter 567 of the
399 general statutes, on documents or records related to an unemployment
400 compensation claim, except that the administrator or any person
401 deemed to be a party shall comply with subdivisions (1) to (4),
402 inclusive, and (6) of subsection (a) of section 13 of this act;

403 (6) The use of personal identifying information by the Workers'
404 Compensation Commission, established under section 31-276 of the
405 2008 supplement to the general statutes, or an intervenor or party, as
406 defined in section 4-166 of the general statutes, on documents or
407 records related to a workers' compensation claim, except that the
408 Workers' Compensation Commission or the intervenor or party shall
409 comply with subdivisions (1) to (4), inclusive, and (6) of subsection (a)
410 of section 13 of this act; and

411 (7) The use of personal identifying information, if the person whose
412 information is being used, or, if the person is a minor, such person's
413 parent or legal guardian, has given permission for its use.

414 Sec. 15. (NEW) (*Effective from passage*) (a) A person or entity that
415 knowingly or intentionally violates any provision of sections 12 to 21,
416 inclusive, of this act, shall be subject to a civil penalty of one hundred
417 dollars for each violation.

418 (b) All civil penalties received pursuant to this section shall be
419 deposited in the privacy protection guaranty and enforcement account,
420 pursuant to section 18 of this act.

421 (c) Violations of sections 12 to 21, inclusive, of this act shall be

422 deemed an unfair or deceptive trade practice, as defined in chapter
423 735a of the general statutes.

424 Sec. 16. (NEW) (*Effective from passage*) (a) The commissioner may
425 conduct investigations and hold hearings on any matter under the
426 provisions of sections 12 to 21, inclusive, of this act. The commissioner
427 may issue subpoenas, administer oaths, compel testimony and order
428 the production of books, records and documents. If any person refuses
429 to appear, to testify or to produce any book, record, paper or document
430 when so ordered, upon application of the commissioner, the Superior
431 Court may make such order, as may be appropriate, to aid in the
432 enforcement of this section.

433 (b) The Attorney General, at the request of the commissioner, may
434 apply to the Superior Court for an order temporarily or permanently
435 restraining and enjoining any person from violating any provision of
436 sections 12 to 21, inclusive, of this act.

437 Sec. 17. (NEW) (*Effective from passage*) (a) There is established a
438 "privacy protection guaranty and enforcement account" which shall be
439 a nonlapsing account within the General Fund. The account may
440 contain any moneys required by law to be deposited in the account.
441 Any balance remaining in the account at the end of any fiscal year shall
442 be carried forward in the account for the fiscal year next succeeding.
443 The account shall be used by the Commissioner of Consumer
444 Protection (1) for the reimbursement of losses sustained by individuals
445 injured by a violation of the provisions of sections 12 to 21, inclusive,
446 of this act related to the release, posting or distribution of personal
447 identifying information, as defined in section 1 of this act, and (2) for
448 the enforcement of sections 12 to 21, inclusive, of this act.

449 (b) Payments received pursuant to sections 12 to 21, inclusive, of
450 this act shall be credited to the privacy protection guaranty and
451 enforcement account until the balance in said account equals seven
452 hundred fifty thousand dollars. Quarterly, if said account has an
453 excess, such excess amount shall be deposited into the General Fund.
454 Any money in the privacy protection guaranty and enforcement

455 account may be invested or reinvested and any interest arising from
456 such investments shall be credited to the account.

457 (c) If, at any time, the money deposited in the privacy protection
458 guaranty and enforcement account is insufficient to satisfy any duly
459 authorized claim or portion thereof, the commissioner shall, when
460 sufficient money has been deposited in the account, satisfy such
461 unpaid claims or portions thereof, in the order that such claims or
462 portions thereof were originally filed.

463 (d) Whenever an individual obtains a court judgment against any
464 person or entity for a violation of sections 12 to 21, inclusive, of this act,
465 such individual may, upon the final determination of, or expiration of
466 time for, appeal in connection with any such judgment, and apply to
467 the commissioner for an order directing payment out of said privacy
468 protection guaranty and enforcement account of the amount unpaid
469 upon the judgment for actual damages and costs taxed by the court
470 against the person or entity, exclusive of punitive damages. The
471 application shall be made on forms provided by the commissioner and
472 shall be accompanied by a certified copy of the court judgment
473 obtained against the person or entity, together with a notarized
474 affidavit, signed and sworn to by the individual, affirming that the
475 individual: (1) Has complied with all the requirements of this
476 subsection; (2) has obtained a judgment stating the amount thereof and
477 the amount owing thereon at the date of application; and (3) has
478 caused to be issued a writ of execution upon said judgment, and the
479 officer executing the same has made a return showing that no bank
480 accounts or real property of the person or entity liable to be levied
481 upon in satisfaction of the judgment could be found, or that the
482 amount realized on the sale of them or of such of them as were found,
483 under the execution, was insufficient to satisfy the actual damage
484 portion of the judgment or stating the amount realized and the balance
485 remaining due on the judgment after application thereon of the
486 amount realized, except that the requirements of this subdivision shall
487 not apply to a judgment obtained by the individual in small claims
488 court. A true and attested copy of said executing officer's return, when

489 required, shall be attached to such application and affidavit. No
490 application for an order directing payment out of the account shall be
491 made later than three years from the final determination of, or
492 expiration time for, appeal of said court judgment.

493 (e) Upon receipt of said application together with said certified copy
494 of the court judgment, notarized affidavit and true and attested copy
495 of the executing officer's return, the commissioner or the
496 commissioner's designee shall inspect such documents for their
497 veracity and upon a determination that such documents are complete
498 and authentic, and a determination that the individual has not been
499 paid, the commissioner shall order payment out of the account of the
500 amount unpaid upon the judgment for actual damages and costs taxed
501 by the court against the person or entity, exclusive of punitive
502 damages.

503 (f) Whenever an individual is awarded an order of restitution
504 against any person or entity for loss or damages sustained by reason of
505 a violation of this act, in a proceeding brought by the commissioner
506 pursuant to sections 12 to 21, inclusive, of this act, or in a proceeding
507 brought by the Attorney General, such individual may, upon the final
508 determination of, or expiration of time for, appeal in connection with
509 any such order of restitution, apply to the commissioner for an order
510 directing payment out of the account of the amount unpaid upon the
511 order of restitution. The commissioner may issue said order upon a
512 determination that the individual has not been paid.

513 (g) Before the commissioner shall issue any order directing payment
514 out of the account to an individual pursuant to subsection (e) or (f) of
515 this section, the commissioner shall first notify the person or entity of
516 the individual's application for an order directing payment out of the
517 account and of the person or entity's right to a hearing to contest the
518 disbursement in the event that the person or entity has already paid
519 the individual. Such notice shall be given to the person or entity within
520 fifteen days of the receipt by the commissioner of the individual's
521 application for an order directing payment out of the guaranty

522 account. If the person or entity requests a hearing in writing by
523 certified mail within fifteen days of receipt of the notice from the
524 commissioner, the commissioner shall grant such request and shall
525 conduct a hearing in accordance with the provisions of chapter 54 of
526 the general statutes. If the commissioner receives no written request by
527 certified mail from the person or entity for a hearing within fifteen
528 days of the person's or entity's receipt of such notice, the commissioner
529 shall determine that the individual has not been paid, and the
530 commissioner shall issue an order directing payment out of the
531 account for the amount unpaid upon the judgment for actual damages
532 and costs taxed by the court against the person or entity, exclusive of
533 punitive damages, or for the amount unpaid upon the order of
534 restitution.

535 (h) The commissioner or the commissioner's designee may proceed
536 against any person or entity for an order of restitution arising from loss
537 or damages sustained by any individual by reason of such person's or
538 entity's violation of any of the provisions of this section. Any such
539 proceeding shall be held in accordance with the provisions of chapter
540 54 of the general statutes. In the course of such proceeding, the
541 commissioner or the commissioner's designee shall decide whether to
542 order restitution arising from said loss or damages, and whether to
543 order payment out of the guaranty account. Notwithstanding the
544 provisions of chapter 54 of the general statutes, the decision of the
545 commissioner or the commissioner's designee shall be final with
546 respect to any proceeding to order payment out of the guaranty
547 account and the commissioner and the commissioner's designee are
548 exempted from the requirements of chapter 54 of the general statutes
549 as they relate to appeal from any such decision. The commissioner or
550 the commissioner's designee may hear complaints of all individuals
551 submitting claims against a single person or entity in one proceeding.

552 (i) No application for an order directing payment out of the account
553 shall be made later than three years from the final determination of, or
554 expiration of time for, appeal in connection with any judgment or
555 order of restitution.

556 (j) Whenever the individual satisfies the commissioner or the
557 commissioner's designee that it is not practicable to comply with the
558 requirements of subdivision (3) of subsection (d) of this section and
559 that the individual has taken all reasonable steps to collect the amount
560 of the judgment or the unsatisfied part thereof and has been unable to
561 collect the same, the commissioner or the commissioner's designee
562 may, in the commissioner's or the commissioner's designee discretion,
563 dispense with the necessity for complying with such requirement.

564 (k) In order to preserve the integrity of the account, the
565 commissioner, in the commissioner's sole discretion, may order
566 payment out of said account of an amount less than the actual loss or
567 damages incurred by the individual or less than the order of restitution
568 awarded by the commissioner or the Superior Court. In no event shall
569 any payment out of said account be in excess of five thousand dollars
570 for any single claim by an individual.

571 (l) If the money deposited in the guaranty account is insufficient to
572 satisfy any duly authorized claim or portion thereof, the commissioner
573 shall, when sufficient money has been deposited in the account, satisfy
574 such unpaid claims or portions thereof, in the order that such claims or
575 portions thereof were originally determined.

576 (m) When the commissioner has caused any sum to be paid from
577 the guaranty account to an individual, the commissioner shall be
578 subrogated to all of the rights of the individual up to the amount paid
579 plus reasonable interest, and prior to receipt of any payment from the
580 guaranty account, the individual shall assign all of this right, title and
581 interest in the claim up to such amount to the commissioner, and any
582 amount and interest recovered by the commissioner on the claim shall
583 be deposited in the guaranty account.

584 (n) If the commissioner orders the payment of any amount as a
585 result of a claim against any party, the commissioner shall determine if
586 the person or entity is possessed of assets liable to be sold or applied in
587 satisfaction of the claim on the account. If the commissioner discovers
588 any such assets, the Attorney General shall take any action necessary

589 for the reimbursement of the account.

590 (o) If the commissioner orders the payment of an amount as a result
591 of a claim against any party, the commissioner may enter into an
592 agreement with the party whereby the party agrees to repay the
593 account in full in the form of periodic payments over a set period of
594 time.

595 Sec. 18. (NEW) (*Effective from passage*) Any person filing with the
596 commissioner any notice, statement or other document, required
597 under the provisions of sections 12 to 21, inclusive, of this act which is
598 false or untrue or contains any material misstatement of fact shall be
599 fined not less than two hundred dollars. All fines received pursuant to
600 this section shall be deposited in the privacy protection guaranty and
601 enforcement account.

602 Sec. 19. (NEW) (*Effective from passage*) Any person aggrieved by any
603 decision, order or regulation of the commissioner pursuant to sections
604 12 to 21, inclusive, of this act may appeal in accordance with the
605 provisions of the Uniform Administrative Procedure Act and chapter
606 54 of the general statutes.

607 Sec. 20. (NEW) (*Effective from passage*) The Commissioner of
608 Consumer Protection may adopt regulations, in accordance with the
609 provisions of chapter 54 of the general statutes, to carry out the
610 provisions of sections 12 to 19, inclusive, of this act.

611 Sec. 21. (NEW) (*Effective from passage*) No provision of this act shall
612 be construed to prevent any person from obtaining personal
613 identifying information, except such information contained in personal
614 telephone records, if such person is attempting to enforce the
615 provisions of sections 53a-122 to 53a-125, inclusive, 53a-125b, 53-142c
616 or 29-128f of the general statutes or of 17 USC Sections 501 to 513,
617 inclusive, or 1201 to 1204, inclusive, or 18 USC Section 2319A or 2319B.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2008</i>	53a-129a
Sec. 2	<i>October 1, 2008</i>	53a-130
Sec. 3	<i>October 1, 2008</i>	New section
Sec. 4	<i>October 1, 2008</i>	New section
Sec. 5	<i>October 1, 2008</i>	52-571h
Sec. 6	<i>October 1, 2008</i>	54-93a
Sec. 7	<i>October 1, 2008</i>	54-1d(e)
Sec. 8	<i>October 1, 2008</i>	New section
Sec. 9	<i>October 1, 2008</i>	New section
Sec. 10	<i>October 1, 2008</i>	54-36h
Sec. 11	<i>from passage</i>	36a-40
Sec. 12	<i>from passage</i>	New section
Sec. 13	<i>from passage</i>	New section
Sec. 14	<i>from passage</i>	New section
Sec. 15	<i>from passage</i>	New section
Sec. 16	<i>from passage</i>	New section
Sec. 17	<i>from passage</i>	New section
Sec. 18	<i>from passage</i>	New section
Sec. 19	<i>from passage</i>	New section
Sec. 20	<i>from passage</i>	New section
Sec. 21	<i>from passage</i>	New section

GL *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Judicial Dept.	GF - Revenue Gain	Minimal	Minimal
Judicial Department (Probation); Correction, Dept.	GF - Cost	Significant	Significant
Consumer Protection, Dept.	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

Section 2 increases the penalty that may be imposed on any person convicted of criminal impersonation.¹ This change would result in a significant state cost for incarceration and probation supervision since approximately 300 people are convicted of this crime annually. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender. Any revenue gain from fines is anticipated to be minimal.

Sections 3, 4 and 9 establish new crimes related to identity theft. To the extent that these changes increase the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. It is anticipated that relatively few fines would be imposed on an annual basis, and, consequently, any revenue gain under the bill is expected to be minimal.

The bill results in a potential cost to the Department of Consumer

Protection (DCP) should identify theft crimes continue to increase. Any new costs would be associated with the increased need for investigations and hearings as required under the bill.

The Out Years

The annualized costs identified above would continue into the future subject to inflation. The annualized, ongoing revenue from criminal fines would remain relatively constant into the future since criminal fine amounts are set by statute.

¹ Current law makes this crime punishable by up to six months in prison and/or a fine of up to \$1,000; the bill makes this crime punishable by up to one year imprisonment and/or a fine of up to \$2,000.

OLR Bill Analysis**sSB 30*****AN ACT CONCERNING CONSUMER PRIVACY AND IDENTITY THEFT.*****SUMMARY:**

This bill makes numerous changes in laws relating to identity theft, Social Security numbers, and restricting the dissemination of personal identifying information.

It changes the criminal law by making the definition of “identity theft” broader, increases the penalty for criminal impersonation, and creates the crime of unlawful possession of personal access devices. The law already makes it a crime to possess skimmers and reencoders under certain circumstances.

It makes void any state- or municipal-issued credential (1) obtained by making a material false statement or (2) physically altered to misrepresent a material fact.

It allows a victim of identity theft to sue for damages if the perpetrator was found guilty of trafficking in personal identifying information. Victims can already sue for damages if the perpetrator was found guilty of identity theft. The bill extends the statute of limitations for these suits from two to three years.

The bill requires, rather than allows, courts to issue orders to correct public records whenever a person is convicted of identity theft.

It allows perpetrators to be prosecuted in the area where the victim lives.

It prohibits employers from disclosing an employee’s Social Security number without the employee’s written consent, with certain

exceptions. The law already prohibits anyone from intentionally communicating or otherwise making an individual's Social Security number available to the general public.

It makes property gained from committing identity theft subject to forfeiture and requires proceeds from its disposition to be deposited in the Department of Consumer Protection's (DCP) Consumer Protection Enforcement Account to pay for enforcing the laws relating to the professions and trades it regulates.

It requires banks and credit unions to take adequate measures to protect against identity theft when disposing of documents containing personal identifying information.

The bill creates another definition of "personal identifying information" (an individual's Social Security number, age, or birth date) and restricts how it may be disseminated. It restricts how state agencies and political subdivisions may use an individual's personal identifying information.

The bill creates a Privacy Protection Enforcement Account to reimburse individuals hurt by violations of the bill's provisions on the dissemination of personal identifying information. It is funded with fines imposed on those who violate them.

EFFECTIVE DATE: October 1, 2008, except for the provisions restricting the dissemination of personal identifying information, establishing the Privacy Protection Guaranty and Enforcement Account, and concerning banks and credit unions, which are effective on passage.

§ 1 — IDENTITY THEFT

The bill redefines "identity theft" by eliminating the requirement that personal identifying information be obtained without permission. Under the bill, a person commits identity theft when he knowingly uses another's personal identifying information to obtain or attempt to obtain money, credit, goods, services, property, or medical

information. Under current law, a person commits identity theft when he intentionally obtains, without permission, another person's personal identifying information and uses it to illegally obtain or attempt to obtain money, credit, goods, services, property, or medical information. A violator commits a class D, C, or B felony, depending on the amount involved (see BACKGROUND for penalties).

By law, "personal identifying information" for this purpose includes any name, number, or other information that may be used, alone or with any other information, to identify a specific individual. It specifies that the information includes a person's name; birth date; mother's maiden name; motor vehicle operator, Social Security, employee identification, employer identification, taxpayer identification, alien registration, government passport, health insurance identification, demand deposit account, savings account, credit or debit card number; or unique biometric data, such as a fingerprint, voice print, retina or iris image, or other unique physical representation.

§ 2 — CRIMINAL IMPERSONATION

The bill increases the penalty for committing criminal impersonation from a class B misdemeanor to a class A misdemeanor (see BACKGROUND for penalties). By law, a person commits criminal impersonation when he:

1. impersonates another and acts in the assumed character with intent to obtain a benefit or to injure or defraud another;
2. pretends to represent a person or organization and acts in the pretended capacity with intent to obtain a benefit or to injure or defraud another; or
3. pretends to be a public servant, other than pretending to be a police officer (which is another crime), with intent to induce another to submit to, or act in reliance on, the pretended authority.

§ 3 — UNLAWFUL POSSESSION OF PERSONAL INFORMATION ACCESS DEVICES

The bill creates the crime of unlawful possession of “personal information access devices.” A person is guilty of committing it when he possesses access devices, document-making equipment, and authentication implements to obtain, tamper with, or use another’s personal identifying information. The law already prohibits possession of a scanning device or reencoder under circumstances manifesting an intent to use it to commit identity theft (see BACKGROUND for Scanning Devices and Reencoders).

For this purpose, “access devices” include a card, plate, code, account number, mobile identification number, personal identification number, telecommunication service access equipment, card-reading device, scanning device, reencoder or other means that could be used to access financial resources or obtain financial information, personal identifying information, or another person’s benefits.

A violator commits a class A misdemeanor (see BACKGROUND for penalty).

§ 4 — CREDENTIALS OBTAINED WITH FALSE INFORMATION

The bill prohibits obtaining or attempting to obtain a license, registration, or certificate of another by misrepresentation or impersonation. It makes any state- or municipal-issued license, registration, or certificate that was based upon an application containing a material false statement void. In both circumstances, it makes a license, registration, or certificate obtained in this manner void from the date of issue and requires it to be surrendered, on demand, to the issuing authority. The bill makes any money paid for such license, registration, or certificate forfeited to the issuing authority.

A violator commits a class A misdemeanor (see BACKGROUND for penalty).

§ 5 — CIVIL ACTION FOR DAMAGES, TRAFFICKING IN PERSONAL IDENTIFYING INFORMATION, AND STATUTE OF LIMITATIONS

By law, victims of identity theft can bring a civil action for damages against their offender in Superior Court. The bill also allows civil actions for damages if the offender was guilty of trafficking in personal identifying information. The law requires courts to award prevailing plaintiffs the greater of \$1,000 or triple damages, costs, and reasonable attorney's fees. The bill specifies that damages include documented lost wages and any financial loss suffered by the plaintiff as a result of identity theft. Further, it requires the court to order that the violator pay restitution.

The bill extends the two-year statute of limitations to three years. By law, the limitation period starts from the date the violation is discovered or reasonably should have been discovered.

§ 6 — CORRECTING PUBLIC RECORDS

The law allows a court to issue orders necessary to correct a public record that contains false information due to identity theft whenever a person is convicted of identity theft. The bill requires, rather than allows, the court to issue orders to correct a public record and makes the requirement also apply to convictions of trafficking in personal identifying information.

§ 7 — VENUE

The law allows alleged identity theft offenders to be presented in the Superior Court for the geographical area where the victim lives rather than the area where the crime was allegedly committed. The bill specifies that the alleged violator may also be prosecuted in that judicial district or geographical area. It also makes the requirement apply to prosecutions for trafficking in personal identifying information.

§ 8 — SOCIAL SECURITY NUMBERS, SHARING PERSONAL IDENTIFYING INFORMATION, AND SAFEGUARDING DATA

The bill specifically allows an employer to keep a list of employees'

Social Security numbers, but prohibits them from being disclosed, except as required by law, without the employee's written consent. This provision is in addition to the current law prohibiting disclosure of Social Security numbers that applies to individuals and businesses (see BACKGROUND).

The bill prohibits, notwithstanding any other law, a business entity or nonprofit group from selling to, or sharing with, a third party an individual's personal identifying information (as defined in criminal law and described above in § 1) without obtaining consent.

Exceptions

The bill states that it must not be construed to prohibit a discount card issuer from requesting a Social Security number for a retailer discount card that can also be used (1) as identification for check cashing purposes or (2) to debit the cardholder's checking or savings account. But the issuer cannot condition the receipt of a retailer discount card on its being used in these two ways.

The bill also states that it must not be construed to prohibit a business entity or nonprofit group from providing an individual's name and address to a third party for purposes of mailing information to the individual on behalf of the business entity or nonprofit group. But it requires the business entity or nonprofit group, prior to sharing an individual's name and address, to obtain a written confidentiality agreement from the third party stating that it will not sell or share the information with any other entity. The bill prohibits the third party from using the information for any other purpose.

Safeguarding Data

The bill requires an employer, business entity, and nonprofit groups that have personal identifying information in their possession to safeguard the data, computer files, and documents containing it from misuse by third parties. Any document, computer file, or database containing personal identifying information must be destroyed or erased prior to disposal.

The bill requires an employer, business entity, or nonprofit group that collects Social Security numbers as a business practice to create a privacy protection policy and publish it as part of an employee handbook or display it in an accessible and prominent location. The policy must:

1. ensure confidentiality of personal identifying information,
2. prohibit its unlawful disclosure,
3. limit access to it,
4. provide for proper disposal of documents containing it, and
5. establish penalties for violation of the policy.

Enforcement and Implementation

The bill makes a waiver of its provisions on Social Security numbers, sharing personal identifying information, and safeguarding data contrary to public policy (1) void and unenforceable and (2) an unfair trade practice (see BACKGROUND on CUTPA).

It authorizes the DCP commissioner to adopt implementing regulations.

§ 9 — ALTERED CREDENTIALS

The bill (1) makes a state- or municipal-issued license, registration, or certificate that is physically altered to conceal or misrepresent a material fact void from the date of alteration and (2) prohibits such alteration. In both circumstances, the bill requires the credential to be surrendered on demand to the issuing authority. The bill makes any money paid for the credential forfeited to the issuing authority.

A violator commits a class A misdemeanor (see BACKGROUND for penalty).

§ 10 — FORFEITURE OF PROCEEDS OF IDENTITY THEFT

The bill subjects to forfeiture all proceeds, or property derived from

the proceeds, obtained, directly or indirectly, from identity theft, trafficking in personal identifying information, and unlawful possession of personal information access devices.

The law establishes procedures for hearings to handle the proceeds from the sale of forfeited property. The proceeds must be used to pay, in order: (1) preserved liens; (2) storage, maintenance, security, and forfeiture costs; and (3) court costs. The bill requires balances from the sale of property made in connection with a prosecution for identity theft (see COMMENT), criminal impersonation, unlawful possession of personal information access devices, making a material misstatement to obtain a state or municipal credential, and altering a state or municipal credential to be deposited in the Consumer Protection Enforcement Account (see BACKGROUND).

§ 11 — BANKS AND CREDIT UNIONS

The bill requires each bank, branch of an out-of-state bank, Connecticut credit union, federal credit union, and branch of an out-of-state credit union to take adequate measures to protect against identity theft when disposing of documents containing personal identifying information such as Social Security and bank account numbers. The measures must, at a minimum, include shredding or permanently destroying the documents in other ways in a secure setting.

§§ 12 & 13 — RESTRICTING THE DISSEMINATION OF PERSONAL IDENTIFYING INFORMATION

For this purpose, the bill defines “personal identifying information” as an individual’s Social Security number, date of birth, or age. Starting on January 1, 2009, the bill prohibits:

1. intentionally communicating or otherwise making an individual’s personal identifying information available to the general public or making it available for a fee;
2. printing an individual’s personal identifying information on a card required for the individual to receive products or services;

3. requiring the transmission of an individual's personal identifying information over the Internet, unless the connection is secure or the personal identifying information is encrypted;
4. requiring the use of an individual's personal identifying information to access an Internet web site, unless a password, unique personal identification number, or other authentication device is also required to access the site;
5. printing a number known to be an individual's personal identifying information on material mailed to the individual, unless state or federal law requires it to be in the document. But the bill does not prohibit mailing documents that include personal identifying information sent as part of an application or enrollment process or to establish, amend, or terminate an account, contract, or policy or to confirm the accuracy of the personal identifying information. In a transaction involving an individual, if a person receives a number from a third party, the bill does not impose any duty to inquire or otherwise determine if the number is or includes an individual's personal identifying information. The number may be printed on material mailed to the individual, unless the person that received the number has actual knowledge that the number is or includes the individual's personal identifying information. The bill states that it does not prohibit mailing a copy of a document that includes personal identifying information to the individual, if the personal identifying information was included in the original document before January 1, 2009; or
6. mailing any document which allows personal identifying information to be visible without opening the envelope.

These provisions are in addition to the current law prohibiting disclosure of Social Security numbers, § 8 of the bill, and except as provided by other law (see BACKGROUND on Restrictions on Disclosing Social Security numbers).

§ 13(b) — Continued Use of Personal Identifying Information

If a person or entity used an individual's personal identifying information before January 1, 2009 in a manner inconsistent with the above prohibitions, the bill allows it to continue using information in the same way, subject to the following:

1. the use of personal identifying information must be continuous;
2. after January 1, 2009, the person or entity must give the individual an annual written disclosure of his or her right to stop using the information that is otherwise prohibited by the bill; and
3. if the individual requests, in writing or electronically, the person or entity must stop using the information in a manner prohibited by the bill within 30 days after receiving the request. The person or entity may not charge a fee for implementing the request or deny services because of it.

Violators are subject to a civil penalty of up to \$500 for each violation. The penalty must be deposited into the Privacy Protection Guaranty and Enforcement Account, which the bill establishes.

§ 13(c) — Relationship to Other Laws

The bill states that it does not prohibit the collection, use, or release of personal identifying information required by federal or other state laws.

§ 13(d) — State and Political Subdivision Forms of Identification

Beginning January 1, 2010, the bill prohibits state agencies and political subdivisions from using an individual's personal identifying information, other than date of birth, on forms of identification they issue.

§ 13(e) — State and Political Subdivision Use of Truncated Social Security Numbers

The bill provides that it does not prohibit a state agency or political

subdivision from disseminating or using the last four numbers of an individual's Social Security number.

§ 13(f) — State and Political Subdivision Correspondence

The bill prohibits a state agency and its political subdivisions from sending to an individual material that includes both a part of the individual's Social Security number and a bank, savings and loan association, or credit union account number, except (1) as a part of an application or enrollment process; (2) to establish, amend, or terminate an account, contract, or policy; or (3) to confirm the accuracy of the Social Security, bank, savings and loan association, or credit union account number.

§ 13(g),(h), and (i) — State and Political Subdivision Web Sites, Immunity from Liability, and Enforcement

Except as otherwise provided by law, the bill provides that documents or records recorded with the state or a political subdivision and made available on the recording entity's public web site must not contain (1) more than five numbers reasonably identifiable as being part of an individual's Social Security number or (2) an individual's: (a) credit card, charge card, or debit card numbers; (b) retirement account numbers; (c) savings, checking, or securities entitlement account numbers; or (d) date of birth or age.

The bill states that state agencies and political subdivisions are not subject to civil liability for any action relating to information recorded under this provision.

The bill subjects a person or entity to a civil penalty of up to \$500 for each act of recording that violates this provision. The penalty does not apply to a person or entity that transmits the document for recording but did not create it.

§ 13(j) — Court Enforcement

The bill authorizes the attorney general, at the request of the DCP commissioner, to apply to Superior Court for temporary or permanent restraining orders.

§14-Exemptions

The bill exempts the following from its provisions restricting the dissemination of personal identifying information:

1. the use of personal identifying information by the Department of Revenue Services or a state, municipal, or other political subdivision law enforcement agency, except that these agencies must comply with the provisions concerning ID cards, mailed documents, and envelopes;
2. the use of personal identifying information by a state agency or political subdivision administering employee payroll, employee benefits, and workers' compensation matters, except that these agencies must comply with the provisions concerning sales of personal identifying information, ID cards, web site access, mailed documents and envelopes;
3. documents or records that state law or court rules or orders require to be recorded, including birth, marriage, or death certificates;
4. an individual's personal identifying information that is printed or caused to be printed on a document or form of identification by the individual or individual's legal guardian;
5. use of personal identifying information by the labor commissioner or a party under unemployment compensation law on documents or records related to an unemployment compensation claim, except that the commissioner and parties must comply with the provisions concerning sales of personal identifying information, ID cards, Internet transmissions, web site access, and envelopes;
6. the use of personal identifying information by the Workers' Compensation Commission, an intervenor, or party on documents or records related to a workers' compensation claim, except that the Workers' Compensation Commission, intervenor

or party must comply with provisions concerning sales of personal identifying information, ID cards, Internet transmissions, web site access, and envelopes; and

7. the use of personal identifying information, if the person whose information is being used, or if the person is a minor, such person's parent or legal guardian, has given permission.

§15 — Penalties

The bill subjects a person or entity that knowingly or intentionally violates its provisions restricting the dissemination of personal identifying information to a civil penalty of \$100 for each violation. Civil penalties must be deposited in the Privacy Protection Guaranty and Enforcement Account, which this bill establishes.

A violation is deemed to be an unfair trade practice (see BACKGROUND).

§16 — Enforcement

The bill authorizes the DCP commissioner to:

1. conduct investigations and hold hearings on any matter under the bill's provisions on the dissemination of personal identifying information and
2. issue subpoenas, administer oaths, compel testimony, and order the production of books, records, and documents.

If any person refuses to appear, testify, or produce documents when ordered, the bill authorizes the Superior Court, on the commissioner's application, to issue appropriate enforcement orders.

The bill authorizes the attorney general, at the commissioner's request, to apply to the Superior Court for temporary or permanent restraining orders.

§17 — PRIVACY PROTECTION GUARANTY AND ENFORCEMENT ACCOUNT

The bill establishes the “Privacy Protection Guaranty and Enforcement Account” as a nonlapsing account within the General Fund. It may contain any money the law requires to be deposited in it. Any balance remaining in it at the end of a fiscal year is carried forward for use in the next fiscal year.

The bill requires the DCP commissioner to use it to:

1. reimburse individuals hurt by violation of the bill’s provisions on dissemination of personal identifying information that are related to the release, posting, or distribution of such information as defined by the law establishing the crime of identity theft; and
2. enforce the bill’s provisions on restricting the dissemination of personal identifying information (see COMMENT).

§ 17(b) — Cap on Account Size

The bill requires payments to be credited to the account until the balance in the account equals \$750,000. If the account has an excess, it must be deposited into the General Fund each quarter. The money in the account may be invested or reinvested and any interest earned by the investments must be credited to the account.

§ 17(c) — Account Shortfall

If the money in the account is insufficient to satisfy a claim, the bill requires the commissioner to pay unsatisfied claims when enough money has been deposited, in the order that such claims were filed (see COMMENT).

§ 17(d) — Applying for Payment

After someone hurt by a violation of the bill’s restriction on disseminating personal identifying information has obtained a court judgment, the individual may apply to the commissioner for a payment from the account for the unpaid amount of the judgment for actual damages and costs, but not for punitive damages. The application must be made on DCP forms and be accompanied by a

certified copy of the court judgment and a notarized, signed, and sworn affidavit affirming that the applicant has:

1. complied with all the application requirements;
2. obtained a judgment;
3. stated its amount and the amount still owed as of the application date; and
4. caused a writ of execution to be issued on the judgment, and the officer executing it has made a return showing (a) that it could not be satisfied, (b) that the amount recovered was not enough to satisfy the actual damage portion of the judgment, or (c) the amount realized and the balance remaining.

The bill also requires a true and attested copy of the executing officer's return, when required, to be attached to such application and affidavit. It does not require an applicant who obtained a judgment in small claims to fulfill these requirements.

Applications may be made after the final determination of, or expiration of time for, appeal in connection with a judgment. The bill requires applications to be made before three years have elapsed from the final determination of, or expiration time for, appeal of the court judgment (see COMMENT).

§ 17(e) — Commissioner's Determination

The bill requires the commissioner or his designee to inspect the application and accompanying documents for veracity. Once he determines that they are complete and authentic and that the applicant has not been paid, he must pay the unpaid amount, other than punitive damages, from the account.

§ 17(f) — Orders of Restitution

The bill allows an individual awarded restitution for loss or damages sustained from a violation of the bill in a proceeding brought by the commissioner or the Attorney General, to apply for payment of

the unpaid amount from the account. The commissioner may make the payment after determining that the individual has not been paid and the time for appeal has passed.

§ 17(g) — Violator’s Right to a Hearing

The bill requires the commissioner, before making a payment from the account, to first notify the person or entity responsible for the damage caused by disseminating personal information of (1) the application for payment from the account and (2) the person or entity’s right to a hearing to contest the disbursement if the person or entity has already paid the individual.

The bill requires the notice to be given within 15 days after the commissioner receives an application for payment from the account. If the person or entity requests a hearing in writing by certified mail within 15 days after receiving the commissioner’s notice, the commissioner must conduct a hearing in accordance with the Uniform Administrative Procedure Act (UAPA). If the commissioner does not receive such a request by certified mail, he must determine that the individual has not been paid and make a payment from the account.

§ 17(h) — Restitution Hearing

The bill allows the commissioner or his designee to proceed for restitution from any person or entity for violating the bill’s provision establishing the Privacy Protection Guaranty and Enforcement Account (see COMMENT). Proceedings must be held according to the UAPA. The bill requires the commissioner or designee to decide in the course of the hearing whether to order restitution and whether to order payment from the account.

Despite the UAPA, the decision of the commissioner or designee is final with respect to any proceeding to order payment from the account and the commissioner and designee are exempt from the UAPA’s requirements relating to appeals. The bill allows the commissioner or designee to hear complaints of all individuals submitting claims against a single person or entity in one proceeding.

§ 17(i) — Deadline for Applying

The bill requires applications to be made before three years have elapsed from the final determination of, or expiration of time for, appeal of the court judgment (see Comment).

§ 17(j) — Exemption from Applicant's Duty to Satisfy Judgment

The bill allows the commissioner or his designee to dispense with the requirement that an applicant attempt to execute a judgment if the applicant satisfies the commissioner or designee that (1) it is not practicable, (2) has taken all reasonable steps to collect, and (3) has been unable to collect.

§ 17(k) — Payment Cap and Preserving the Account's Integrity

The bill establishes a \$5,000 limit on payments from the account for any single claim by an individual.

It allows the commissioner, in his sole discretion, to pay less than the actual loss or damages or the amount of a court or DCP restitution order to preserve the integrity of the account. It requires the commissioner, when sufficient money has been deposited in the account, to satisfy such unpaid claims (see Comment).

§ 17(l) — Account Shortfall

If the money in the account is insufficient to satisfy a claim, the bill requires the commissioner to pay unsatisfied claims when enough money has been deposited, in the order that such claims were filed (see Comment).

§ 17(m) — Subrogation

The bill requires individuals to assign to the commissioner the right to recover the amount they have been paid from the fund, plus reasonable interest. Any amount and interest recovered by the commissioner on the claim must be deposited in the guaranty account.

§17(n) — Commissioner's Duty to Seek Recovery

If the commissioner pays from the account, the bill requires him to determine if the person or entity that caused the injury has assets that

could be sold or applied to satisfy the claim. If he discovers any such assets, the bill requires the attorney general to take necessary action to reimburse the account.

§ 17(o) — Commissioner's Authority to Make Repayment Agreements

The bill authorizes the commissioner to make repayment agreements whereby the party agrees to repay the account in full through periodic payments over a set period of time.

§18 — FALSE STATEMENTS

The bill subjects to a \$200 fine anyone who files a notice, statement, or other document required by the bill's provisions on dissemination of personal identifying information if it is false or untrue or includes a material misstatement of fact.

§19 — APPEALS

The bill authorizes anyone aggrieved by any decision, order, or regulation the commissioner makes under the bill's provisions restricting the dissemination of personal identifying information to appeal in accordance with the UAPA (see Comment).

§20 — REGULATIONS

The bill authorizes the DCP commissioner to adopt regulations implementing the bill's provisions on restricting the dissemination of personal identifying information.

§21 — CRIMINAL INVESTIGATIONS

The bill states that it may not be construed to prevent anyone from obtaining personal identifying information, except information in personal telephone records, if the person is attempting to enforce the laws:

1. prohibiting larceny in the 1st, 2nd, 3rd, 4th, and 6th degrees, but not larceny in the 5th degree;
2. prohibiting knowing participation in the business of black

market records, discs, tapes, the audio portion of movies, or audio or video cassettes or discs;

3. engaging in camcorder piracy in a movie theater;
4. federal copyright law, including circumvention of copyright processes;
5. federal law prohibiting unauthorized trafficking in recordings or videos of live musical performances; and
6. federal law prohibiting the unauthorized recording of movies in movie theaters.

BACKGROUND

Criminal Penalties

<i>Classification</i>	<i>Imprisonment</i>	<i>Fine</i>
Class A misdemeanor	Up to 1 year	Up to \$2,000
Class B misdemeanor	Up to 6 months	Up to 1,000
Class B felony	1 to 20 years	Up to 15,000
Class C felony	1 to 10 years	Up to 10,000
Class D felony	1 to five years	Up to 5,000

Scanning Devices and Reencoders

The law prohibits using a scanning device to access, read, obtain, memorize, or temporarily or permanently store information encoded on a computer chip or a payment card's magnetic strip without the authorized user's permission and with the intent to defraud the authorized user, issuer, or a merchant. It also prohibits using a reencoder to take information encoded on a computer chip or a magnetic strip and putting it onto a computer chip or the strip of a different card without the authorized user's permission and with the

intent to defraud the authorized user, the card issuer, or a merchant.

By law, a “scanning device” is a scanner, reader, or any other electronic device used to access, read, scan, obtain, memorize, or store information on a computer chip or a magnetic strip of a payment card. A “reencoder” is an electronic device that places encoded information from a computer chip or magnetic strip of a payment card onto a computer chip or magnetic strip of another card or any electronic medium that allows an authorized transaction to occur. A “payment card” is a credit, charge, debit, or any other card issued to an authorized user allowing him to obtain goods, services, money, or anything else of value from a merchant. A “merchant” is a person who receives a payment card from its authorized user or someone he believes to be its authorized user in return for goods or services from the merchant.

The law authorizes the attorney general to sue to enforce its scanner and reencoder provisions. A violator is subject to one to 10 years imprisonment, a fine of up to \$10,000, or both.

Restrictions on Disclosing Social Security Numbers

With certain exceptions, the law prohibits individuals and businesses from publicly disclosing Social Security numbers. The prohibition does not prevent the numbers from being (1) collected, used, or released as required by state or federal law or (2) used for internal verification or administrative purposes.

Specifically, the law prohibits any person, firm, corporation, or other entity, other than the state or its political subdivisions, from:

1. intentionally communicating or otherwise making available to the general public an individual’s Social Security number;
2. printing anyone’s Social Security number on any card that the person must use to access the person’s or entity’s products or services;

3. requiring anyone to transmit his Social Security number over the Internet, unless the connection is secure or the number is encrypted; or
4. requiring anyone to use his Social Security number to access an Internet web site, unless a password or unique personal identification number or other authentication is also required to access it.

The penalty for willful violations is a fine of up to \$100 for the first offense, up to \$500 for a second offense, and up to \$1,000 or six months in prison for each subsequent offense.

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Consumer Protection Enforcement Account

The statutorily established account is funded with revenue generated from imposing fines for licensing law violations and with up to \$400,000 per year from the Home Improvement Guaranty Fund. DCP must use the account “to fund positions and other related expenses” to enforce the licensing and registration laws it administers (CGS § 21a-8a).

COMMENT

§ 10 — Forfeiture

The bill dedicates the proceeds of property forfeited in connection with a violation of § 53a-129a to the Consumer Protection Enforcement Account. Section 53a-129a defines “identity theft” for crimes of identity theft in the 1st, 2nd, and 3rd degrees and trafficking in identity theft, which are established by §§ 53a-129b, 53a-129c, 53a-129d, and 53a-129e. The bill apparently refers to prosecutions under these provisions.

In addition, the bill specifies how to distribute proceeds for violations of §§ 3, 4, and 9 of the bill, but it does not expressly authorize forfeiture for violations of those sections.

§ 17 — Privacy Protection Guaranty and Enforcement Account

The bill requires the DCP commissioner to use the guaranty and enforcement account to reimburse individuals for losses sustained from violations of the bill’s provisions restricting the dissemination of personal identifying information under sections 12 to 21 of the bill. Those provisions define “personal identifying information” as an individual’s Social Security number, date of birth, or age (§ 12). But § 17 refers to the definition of “personal identifying information” in § 1 rather than the definition in § 12. The § 1 definition is the one used in the law making identity theft a crime and is much broader. As a result, it is not clear how the guaranty account may be used.

§ 17(h) — Restitution Hearing

The bill authorizes the commissioner to proceed against a person or entity for damages sustained by “violation of any of the provisions of this section.” Since the section establishes the guaranty account and does not contain any prohibitions or penalties, the bill apparently intends to refer to different sections or perhaps to the whole bill.

§ 17(h) and § 19 — Appeals

Section 17(h) provides that decisions made by the DCP commissioner or his designee in restitution hearings “are final with respect to any proceeding to order payment out of the guaranty account” and the commissioner and his designee are “exempted from the requirements of chapter 54 [the UAPA] of the general statutes as

they relate to appeal.” Section 19 states “any person aggrieved by any decision, order or regulation of the commissioner pursuant to sections 12 to 20, inclusive, of this act may appeal in accordance with the provisions of the Uniform Administrative Procedure Act and chapter 54 of the general statutes.” It is unclear how these two conflicting provisions may be reconciled.

§ 17 — Commissioner’s Power to Reduce a Payment

The bill has two nearly-identical provisions authorizing the commissioner to reduce payments if there are insufficient funds in the account (§§ 17(c) and 17(l) and another subsection includes nearly-identical provision (§ 17(k)).

§ 17 — Deadline for Applying

Two identical provisions require applicants to apply within three years, the final sentence of § 17(d) and subsection § 17(i).

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/06/2008)