

Murdo, Patricia

From: Robert Pyfer [pyfer@mcun.org]
Sent: Friday, September 08, 2006 1:36 PM
To: Murdo, Patricia
Cc: 'Tracie Kenyon'; 'Donya Parrish'; steve@montanabankers.com
Subject: RE: more on identity theft victim assistance

Hi Pat,

I went to the committee website and reviewed the bills recently, but somehow missed this one. And I just received this email from you today. As luck would have it, this is the only bill that I find to be problematic. We are not able to send anyone to the meeting due to major conflicts. So please accept these comments "for the record".

Sections two and three would create new compliance burdens for credit unions. Although I didn't attend the work group meetings personally, I believe I got good reports and I don't recall these new requirements coming up.

Section 2 would impose a new notification requirement. I don't know whether this is done as a matter of course and I don't have time to survey our credit unions. The best source on this might be the Montana Collectors Association in Missoula or Collection Bureau Services Inc. (406-721-4454). They are always interested in anything to do with collections. In a delinquent loan situation, certainly there is a good deal of communication prior to any assignment as the credit union will have tried to work with the member to deal with the situation before the last resort. So any identity theft should be fleshed out as part of that process. I don't know that this section would do much of anything to help the narrow cause of identity theft, but just add another general legal requirement that could lead to liability for the credit union.

Section 3 would indeed impose a new regulation. Sub (1)(a) would impose the FDCPA on credit unions and other financial institutions. This would be a general new requirement to address a specific narrow issue. There is no contention that I am aware of that financial institutions are abusing the collections process. Credit unions, as member owned not-for-profits, work closely with their members to find solutions to debt problems. So this seems punitive and overkill.

Sub (1)(b) would prohibit more than one oral communication with a victim of identity theft holding a passport. This seems to go against the spirit and intent of the passport law, which was intended to provide an information base for victims and their financial institutions to cooperate to do all things necessary and appropriate to try to sort out the problem—restricting communication could be very counter productive.

If these sections must stay in, heavily regulated financial institutions should be exempt.

As to your first question about alternative identities, I'm not sure I fully understand the question. But if a member comes to the credit union with proper identifying information, the credit union can share any information relating to that person identified, because they would essentially be giving that member their own information with their consent. Proper identification and consent are the key issues. But again, I'm not totally sure I understand the question.

Thanks to you and the committee for your consideration. We appreciate the opportunity to participate in the working group, and we are supportive of the other bills.

Bob Pyfer
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-----Original Message-----

From: Murdo, Patricia [mailto:pmurdo@mt.gov]
Sent: Friday, September 08, 2006 10:18 AM
To: Robert C. Pyfer
Subject: more on identity theft victim assistance

Hi - I sent this yesterday but don't think it worked. So, if you haven't seen it:

It isn't quite the 11th hour, before the Economic Affairs Committee meetings Monday and Tuesday (Sept. 11 and 12), but it's close. Having not quite addressed the various issues that Kelsen Young raised for victim assistance, I have been doing additional research.

One issue is **notification of an ID theft victim if alternative identities are out there** . Current law allows an individual to find out from a consumer reporting agency any details about sources of information used to compile credit reports. (31-3-122) But this still didn't answer Kelsen's concern -- what if someone learns that there are alternate identities using her personal information. Are they required to provide notice to her? The difficulty here is that many financial institutions consider that type of sharing to be prohibited under Gramm-Leach-Bliley. But what about government agencies and law enforcement? Is a provision needed that would specifically allow sharing of the identity theft passport information, classified as confidential criminal justice information, or even use of a "flag" so that law enforcement officers checking a data base can see that there is a potential problem regarding identities? The effort here is to let some sharing occur, but only with entities to whom an ID theft victim might need to show an identity theft passport. </p>

Section 2 would require a creditor to notify a debtor in writing of the assignment of collection. This might let ID theft victims know if a debt collector is coming after them for someone else's debt, but maybe not. Is this already being done?

Section 3 would expand the Fair Debt Collection Practices Act to a creditor to prevent harassing communications. The Fair Debt Collection Act only covers third-party debt collectors but does allow states to impose more stringent requirements. The language is a modification of language used in Washington State for both subsections (1)(a) and (1)(b).

The terms for section (1)(a) are similar to those in the Fair Debt Collection Act.

Section 4 revises existing law relating to consumer reporting agencies by adding a "qualifying" section about who has a legitimate business need for a credit report "in connection with a business transaction involving the consumer". In part, the new subsection (4) is an effort to address businesses represented by

Section 5 is cleanup. 31-3-152 was missed when the consumer protection act was put under the department of justice. There is a suggestion for a new Section 6 to amend the identity theft passport statute to allow other state or local agencies that acquire social security numbers or personal identifying information to accept an ID theft passport.

http://leg.mt.gov/content/committees/interim/2005_2006/econ_affairs/Committee_legislation/LC9833_more_victim_assistance.pdf

Comments are welcome. Either before September 11 or on September 11.

And, just in case I somehow forget to send a message later: Thank you to all of you for participating in the work group. Herding cats is never easy and you're all a bunch of wonderful cats. (Not that I felt like I tried to herd you anywhere, just that we were all on the road together.)

Pat Murdo
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www.zabasearch.com , which provides information on people and takes money from anyone for information about anyone. The question is: is the existing subsection (3)(e) so broad as to allow entities without direct contact with a consumer to sell information about them to others without their knowledge? I checked with Greg Petesch about whether someone could sell social security numbers, and he said that without the consent of the owner of the social security number, that would be a violation of the Constitution's right to privacy. So this section attempts to require those using subsection (3)(e) of 31-3-111 to obtain the consent of the owner of the personal information. <http://www.ftc.gov/os/statutes/fdcpa/fdcpart.htm> <http://apps.leg.wa.gov/RCW/default.aspx?cite=19.16.250>