

FIRST REGULAR SESSION

# HOUSE BILL NO. 171

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COOPER (158).

Pre-filed December 19, 2006 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0774L.01I

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### AN ACT

To amend chapter 407, RSMo, by adding thereto six new sections relating to identity theft.

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

Section A. Chapter 407, RSMo, is amended by adding thereto six new sections, to be  
2 known as sections 407.991, 407.992, 407.993, 407.994, 407.995, and 407.996, to read as  
3 follows:

**407.991. As used in sections 407.991 to 407.996 the following terms shall mean:**

2 (1) "Claimant", a person who has or purports to have a claim for money or an  
3 interest in property in connection with a transaction procured through identity theft;

4 (2) "Identity theft", the unauthorized use of another person's personal identifying  
5 information to obtain credit, goods, services, money, or property;

6 (3) "Personal identifying information", a person's name, address, telephone  
7 number, driver's license number, Social Security number, place of employment, employee  
8 identification number, mother's maiden name, demand deposit account identification  
9 number, savings account number, or credit card number;

10 (4) "Victim of identity theft", a person who had his or her personal identifying  
11 information used without authorization by another to obtain credit, goods, services, money,  
12 or property obtained by the identity theft, and filed a police report in this regard under  
13 section 570.223, RSMo.

2 **407.992. 1. A person may bring an action against a claimant to establish that the  
person is a victim of identity theft in connection with the claimant's claim against that**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

3 person. If the claimant has brought an action to recover on its claim against the person,  
4 the person may file a cross-complaint to establish that the person is a victim of identity  
5 theft in connection with the claimant's claim.

6 2. A person shall establish that he or she is a victim of identity theft by a  
7 preponderance of the evidence.

8 3. A person who proves that he or she is a victim of identity theft, as defined in  
9 section 570.223, RSMo, as to a particular claim, shall be entitled to a judgment providing  
10 all of the following, as appropriate:

11 (1) A declaration that he or she is not obligated to the claimant on that claim;

12 (2) A declaration that any security interest or other interest the claimant had  
13 purportedly obtained in the victim's property in connection with that claim is void and  
14 undefendable;

15 (3) An injunction restraining the claimant from collecting or attempting to collect  
16 from the victim on that claim, from enforcing or attempting to enforce any security interest  
17 or other interest in the victim's property in connection with that claim, or from enforcing  
18 or executing on any judgment against the victim on that claim;

19 (4) If the victim has filed a cross-complaint against the claimant, the dismissal of  
20 any cause of action in the complaint filed by the claimant based on a claim which arose as  
21 a result of the identity theft;

22 (5) Actual damages, attorney's fees, and costs, and any equitable relief that the  
23 court deems appropriate. In order to recover actual damages or attorney's fees in an  
24 action or cross-complaint filed by a person alleging that he or she is a victim of identity  
25 theft, the person shall show that he or she provided written notice to the claimant that a  
26 situation of identity theft might exist, including, upon written request of the claimant, a  
27 valid copy of the police report at least thirty days prior to his or her filing of the action, or  
28 within his or her cross-complaint under this section;

29 (6) A civil penalty, in addition to any other damages, of up to thirty thousand  
30 dollars if the victim establishes by clear and convincing evidence all of the following:

31 (a) That at least thirty days prior to filing an action or within the cross-complaint  
32 under this section, he or she provided written notice to the claimant at the address  
33 designated by the claimant for complaints related to credit reporting issues that a situation  
34 of identity theft might exist and explaining the basis for that belief;

35 (b) That the claimant failed to diligently investigate the victim's notification of a  
36 possible identity theft; and

37 (c) That the claimant continued to pursue its claim against the victim after the  
38 claimant was presented with facts that were later held to entitle the victim to a judgment  
39 under this section.

407.993. An action or cross-complaint brought under sections 407.991 to 407.996  
2 that joins other claimants as defendants in the same action or cross-complaint shall be  
3 deemed to comply with the provisions of chapter 507, RSMo, regarding joinder of parties.

407.994. A court shall have continuing jurisdiction over an action or cross-  
2 complaint filed under sections 407.991 to 407.996 in order to provide for the joinder of  
3 related causes of action based on the theft of the same person's identity and the joinder of  
4 further defendants based upon the theft of the same person's identity, regardless of  
5 whether a final judgment has been entered as to any defendant. The court's continuing  
6 jurisdiction shall terminate ten years after filing of the original action unless the court,  
7 prior to that date, finds good cause to extend jurisdiction over the matter.

407.995. Any action brought under sections 407.991 to 407.996 may be brought  
2 within four years of the date the person who alleges that he or she is a victim of identity  
3 theft knew or, in the exercise of reasonable diligence, should have known of the existence  
4 of facts which would give rise to the bringing of the action or joinder of the defendant.

407.996. 1. Nothing in sections 407.991 to 407.996 shall be construed to affect a  
2 claimant's rights and remedies against a person who perpetrates identity theft or against  
3 any person who used or possessed the credit, goods, services, or property obtained by  
4 identity theft.

2. Sections 407.991 to 407.996 are cumulative to the rights and remedies provided  
6 under other laws.

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