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COMMERCE, REGULATION & LABOR

HOUSE FILE **2484**
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Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to identity theft including providing for the
2 notification of a breach in the security of computerized data
3 of personal information, allowing a security alert or block on
4 a consumer report, allowing the issuance of an identity theft
5 passport, requiring the deletion of certain records relating
6 to dishonored checks, prohibiting the collection of certain
7 unauthorized debt obligations, requiring the protection and
8 destruction of customer records containing personal
9 information, and providing for civil remedies and penalties.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 715C.1 DEFINITIONS.

2 As used in this chapter unless the context otherwise
3 requires:

4 1. "Breach of the security of the system" means
5 unauthorized acquisition of computerized data maintained by a
6 person that compromises the security, confidentiality, or
7 integrity of personal information maintained by the person.
8 Good faith acquisition of personal information by an employee
9 or agent of the person for the purposes of the person is not a
10 breach of the security of the system, provided that the
11 personal information is not used for or subject to further
12 unauthorized disclosure.

13 2. "Consumer" means a natural person.

14 3. "Consumer report" means the same as defined by the
15 federal Fair Credit Reporting Act, 15 U.S.C. § 1681a.

16 4. "Consumer reporting agency" means the same as defined
17 by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681a.

18 5. "Debt collector" means the same as provided in section
19 537.7102.

20 6. "File", when used in connection with information on any
21 consumer, means all of the information on that consumer
22 recorded and retained by a consumer reporting agency
23 regardless of how the information is stored.

24 7. "Personal information" means the same as
25 "identification information" as defined in section 715A.8.
26 "Personal information" does not include publicly available
27 information that is lawfully made available to the general
28 public from federal, state, or local government records.

29 8. "Security alert" means a notice placed on a consumer
30 file at the request of the consumer that is sent to a
31 recipient of a consumer report involving that consumer file,
32 signifying the fact that the consumer's identity may have been
33 used without the consumer's consent to fraudulently obtain
34 goods or services in the consumer's name.

35 9. "Security block" means a notice placed on a consumer

1 file that prohibits a consumer reporting agency from releasing
2 a consumer report relating to the extension of credit
3 involving that consumer file without the express authorization
4 of the consumer.

5 10. "State agency" means any executive, judicial, or
6 legislative department, commission, board, institution,
7 division, bureau, office, agency, or other entity of state
8 government.

9 Sec. 2. NEW SECTION. 715C.2 NOTIFICATION OF SECURITY
10 BREACH -- REMEDIES.

11 1. A person that owns or licenses computerized data that
12 includes personal information shall provide notice of any
13 breach of the security of the system following discovery or
14 notification of the breach in the security of the data to any
15 resident of this state whose unencrypted personal information
16 was, or is reasonably believed to have been, acquired by an
17 unauthorized person. The notice shall be made in the most
18 expedient manner possible and without unreasonable delay,
19 consistent with the legitimate needs of law enforcement, as
20 provided in subsection 3, or any measures necessary to
21 determine the scope of the breach and restore the reasonable
22 integrity of the data system. The notice shall include
23 contact information for applicable state and federal services
24 available for victims of identity theft.

25 2. A person that maintains computerized data that includes
26 personal information that the person does not own shall notify
27 the owner or licensee of the information of any breach of the
28 security of the system maintaining the data immediately
29 following discovery, if the personal information was, or is
30 reasonably believed to have been, acquired by an unauthorized
31 person.

32 3. The notice required by subsection 1 may be delayed if a
33 law enforcement agency determines that the notification will
34 impede a criminal investigation. The notice required by
35 subsection 1 shall be made after the law enforcement agency

1 determines that such notice will not compromise the
2 investigation.

3 4. The notice required by subsection 1 shall be provided
4 by one of the following methods:

5 a. Written notice.

6 b. Electronic notice, if the notice provided is consistent
7 with the provisions regarding electronic records and
8 signatures required in chapter 554D and 15 U.S.C. § 7001.

9 c. Substitute notice, if the person demonstrates that the
10 cost of providing notice would exceed two hundred fifty
11 thousand dollars, or that the affected class of subject
12 persons to be notified exceeds five hundred thousand persons,
13 or the person does not have sufficient contact information.

14 Substitute notice shall consist of all of the following:

15 (1) Electronic mail notice when the person has an
16 electronic mail address for the subject persons.

17 (2) Conspicuous posting of the notice on the person's
18 internet website, if the person maintains an internet website.

19 (3) Notification to major statewide media.

20 5. Notwithstanding subsection 4, a person that maintains
21 its own notification procedures as part of an information
22 security policy for the treatment of personal information and
23 is otherwise consistent with the timing requirements of this
24 section shall be deemed to be in compliance with the notice
25 requirements of subsection 1 if the person notifies subject
26 persons in accordance with the person's policies in the event
27 of a breach of security of the system.

28 6. a. A person injured by a violation of this section may
29 bring a civil action for an injunction, actual damages,
30 attorney fees, interest, and court costs.

31 b. The attorney general may bring an action on behalf of
32 an injured person for an injunction, actual damages incurred
33 by the person, attorney fees, interest, and court costs.

34 c. The rights and remedies available under this section
35 are cumulative to each other and to any other rights and

1 remedies available under law.

2 7. As used in this section, "person" means a person as
3 defined in section 4.1 that conducts business in this state
4 and includes a state agency.

5 Sec. 3. NEW SECTION. 715C.3 SECURITY ALERT.

6 1. REQUESTING ALERT. Upon request by a consumer in
7 writing or by telephone, with proper identification provided
8 by the consumer, a consumer reporting agency shall place a
9 security alert on the consumer's file not later than two
10 business days after the agency receives the request. A
11 consumer may include with the security alert request a
12 telephone number to be used by persons to verify the
13 consumer's identity before entering into a transaction with
14 the consumer. The security alert must remain in effect for
15 not less than ninety days after the date the agency places the
16 security alert on the file. There is no limit on the number
17 of security alerts a consumer may request. At the termination
18 of the security alert, upon written request or telephone
19 authorization by the consumer, and with proper identification
20 provided by the consumer, the agency shall provide the
21 consumer with a copy of the consumer's file.

22 2. NOTIFICATION OF ALERT.

23 a. A consumer reporting agency shall send an alert to each
24 person who requests a consumer report if a security alert is
25 in effect for the consumer file involved regardless of whether
26 a full credit report or summary report is requested and shall
27 include a verification telephone number for the consumer if
28 the consumer has provided a telephone number under subsection
29 1.

30 b. A person who receives notification of a security alert
31 in connection with a request for a consumer report for the
32 approval of a credit-based application including an
33 application for a new extension of credit, a purchase, lease,
34 or rental agreement for goods, or for an application for a
35 non-credit-related service, shall not lend money, extend

1 credit, or authorize an application without taking reasonable
2 steps to verify the consumer's identity. For the purposes of
3 this section, "extension of credit" does not include an
4 increase in an existing open-end credit plan or any change to
5 or review of an existing credit account.

6 c. If a consumer has included with a security alert
7 request a specified telephone number to be used for identity
8 verification purposes, a person who receives that telephone
9 number with a security alert shall contact the consumer using
10 that telephone number or take reasonable steps to verify the
11 consumer's identity and confirm that an application for an
12 extension of credit is not the result of identity theft before
13 lending money, extending credit, or completing any purchase,
14 lease, or rental of goods, or approving any non-credit-
15 related services.

16 3. TOLL-FREE ALERT REQUEST NUMBER. A consumer reporting
17 agency that compiles and maintains files on a nationwide basis
18 as defined by 15 U.S.C. § 1681a(p) shall maintain a toll-free
19 telephone number that will accept security alert requests from
20 consumers twenty-four hours a day, seven days a week, subject
21 to reasonable maintenance or service outages beyond the
22 control of the consumer reporting agency.

23 4. VIOLATIONS OF ALERT. A creditor, potential creditor,
24 consumer reporting agency, or other entity that violates any
25 provision of this section shall be liable to the victim of an
26 identity theft for all of the documented out-of-pocket
27 expenses caused by the violation committed by such creditor,
28 potential creditor, consumer reporting agency, or other entity
29 and suffered by the victim as a result of the identity theft,
30 plus reasonable attorney fees and court costs. A violation of
31 this section is an unlawful practice under section 714.16.

32 Sec. 4. NEW SECTION. 715C.4 SECURITY BLOCK.

33 1. REQUESTING BLOCK. On written request by a consumer
34 that includes proper identification and a copy of a valid
35 police report or complaint alleging a violation of section

1 715A.8, a consumer reporting agency shall, within five
2 business days of receipt, place a security block on a
3 consumer's file.

4 2. DECLINING BLOCK. A consumer reporting agency may
5 decline to block or may rescind any block of consumer
6 information in the exercise of good faith and reasonable
7 judgment, if the consumer reporting agency believes any of the
8 following:

9 a. The information was blocked due to a misrepresentation
10 of a material fact by the consumer.

11 b. The information was blocked due to fraud, in which the
12 consumer participated, or of which the consumer had knowledge,
13 and which may for purposes of this section be demonstrated by
14 circumstantial evidence.

15 c. The consumer agrees that portions of the blocked
16 information or all of the information was blocked in error.

17 d. The consumer knowingly obtained or should have known
18 that the consumer obtained possession of goods, services, or
19 money as a result of the blocked transaction or transactions.

20 e. The consumer's report of a violation of section 715A.8
21 was not authentic.

22 3. NOTIFICATION OF BLOCK. A consumer reporting agency
23 shall promptly notify a person who requests a consumer report
24 if a security block is in effect for the consumer file
25 involved in that report and the effective date of the block.

26 4. RELEASE OF BLOCK.

27 a. On written request or by telephone and with proper
28 identification provided by a consumer, a consumer reporting
29 agency shall remove a security block not later than the third
30 business day after the date the agency receives the request.
31 The block may be temporarily lifted for a certain
32 predesignated period of time if requested by the consumer.

33 b. If blocked information is unblocked pursuant to this
34 subsection, the consumer shall be notified in the same manner
35 as consumers are notified of the reinsertion of information

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1 pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. §
2 1681i. The prior presence of the blocked information in the
3 consumer reporting agency's file on the consumer is not
4 evidence of whether the consumer knew or should have known
5 that the consumer obtained possession of any goods, services,
6 or money as described in subsection 2, paragraph "d".

7 5. FALSE INQUIRIES. A consumer reporting agency shall
8 delete from a consumer report inquiries for consumer reports
9 based upon credit requests that the consumer reporting agency
10 verifies were initiated as a result of a violation of section
11 715A.8.

12 6. FEES. A consumer reporting agency may impose a
13 reasonable charge on a consumer for placing a security block
14 on a consumer file.

15 7. EXEMPTIONS FROM BLOCK. The provisions of this section
16 do not apply to any of the following:

17 a. A state or local governmental entity, including a law
18 enforcement agency or private collection agency, if the entity
19 or agency is acting under a court order, warrant, subpoena, or
20 administrative subpoena.

21 b. A consumer reporting agency that acts as a reseller of
22 credit information by assembling and merging information
23 contained in the databases of other consumer reporting
24 agencies, and that does not maintain a permanent database of
25 credit information from which new consumer reports are
26 produced.

27 c. A check services or fraud prevention services company
28 that issues reports on incidents of fraud or authorizations
29 for the purpose of approving or processing negotiable
30 instruments, electronic funds transfers, or similar payment
31 methods.

32 d. A demand deposit account information service company
33 that issues reports regarding account closures due to fraud,
34 substantial overdrafts, automatic teller machine abuse, or
35 similar negative information regarding a consumer to inquiring

1 banks or other financial institutions for use only in
2 reviewing a consumer request for a demand deposit account at
3 the inquiring bank or financial institution.

4 8. VIOLATIONS OF BLOCK. A violation of this section is an
5 unlawful practice under section 714.16.

6 Sec. 5. NEW SECTION. 715C.5 IDENTITY THEFT PASSPORT.

7 1. The attorney general, in cooperation with any law
8 enforcement agency, may issue an identity theft passport to a
9 person who meets both of the following requirements:

10 a. Is a victim of identity theft in this state as
11 described in section 715A.8.

12 b. Has filed a police report with any law enforcement
13 agency citing that the person is a victim of identity theft.

14 2. A victim who has filed a report of identity theft with
15 a law enforcement agency may apply for an identity theft
16 passport through the law enforcement agency. The law
17 enforcement agency shall send a copy of the police report and
18 the application to the attorney general, who shall process the
19 application and supporting report and may issue the victim an
20 identity theft passport in the form of a card or certificate.

21 3. A victim of identity theft issued an identity theft
22 passport may present the passport to any of the following:

23 a. A law enforcement agency, to help prevent the victim's
24 arrest or detention for an offense committed by someone other
25 than the victim who is using the victim's identity.

26 b. A creditor of the victim, to aid in the creditor's
27 investigation and establishment of whether fraudulent charges
28 were made against accounts in the victim's name or whether
29 accounts were opened using the victim's identity.

30 c. A consumer reporting agency, which shall accept the
31 passport as notice of a dispute and shall include notice of
32 the dispute in all future reports that contain disputed
33 information caused by identity theft.

34 4. A law enforcement agency, creditor, or consumer
35 reporting agency may accept an identity theft passport issued

1 pursuant to this section and presented by a victim at the
2 discretion of the law enforcement agency, creditor, or
3 consumer reporting agency. A law enforcement agency,
4 creditor, or consumer reporting agency may consider the
5 surrounding circumstances and available information regarding
6 the offense of identity theft pertaining to the victim.

7 5. An application made with the attorney general under
8 subsection 2, including any supporting documentation, shall be
9 confidential and shall not be a public record subject to
10 disclosure under chapter 22.

11 6. The attorney general shall adopt rules necessary to
12 implement this section, which shall include a procedure by
13 which the attorney general shall ensure that an identity theft
14 passport applicant has an identity theft claim that is
15 legitimate and adequately substantiated.

16 Sec. 6. NEW SECTION. 715C.6 DISHONORED CHECK ELECTRONIC
17 RECORDS -- PENALTY.

18 1. Any person doing business in this state who accepts a
19 check from a consumer in the ordinary course of business shall
20 delete any electronic records containing information relating
21 to a consumer's dishonored check upon which the person bases a
22 refusal to accept a check from the consumer not later than
23 thirty days after the date that any of the following occur:

24 a. The consumer and the person doing business agree that
25 the information in the electronic records is incorrect.

26 b. The consumer presents to the person doing business a
27 report filed by the consumer with a law enforcement agency, or
28 any other written notice by the consumer, stating that the
29 dishonored check was not authorized by the consumer.

30 2. The attorney general may file an action in district
31 court to seek the assessment of a civil penalty of one hundred
32 dollars for each violation of subsection 1 and may recover
33 reasonable expenses incurred, including attorney fees,
34 investigative costs, witness fees, and deposition expenses.

35 3. This section shall not apply to electronic records

1 containing information relating to the checking account number
2 or bank routing transit number of a dishonored check.

3 4. This section shall not apply to a financial institution
4 as defined in section 527.2.

5 Sec. 7. NEW SECTION. 715C.7 DEBT COLLECTION OF
6 UNAUTHORIZED TRANSACTION.

7 1. A debt collector shall not collect or attempt to
8 collect an obligation under a check, debit payment, or credit
9 card payment if all of the following conditions apply:

10 a. The check, debit payment, or credit card payment was
11 dishonored or refused because the obligation was not incurred
12 by a person authorized to use the check, debit, or credit card
13 account.

14 b. The debt collector has received written notice from a
15 person authorized to use the check, debit, or credit card
16 account that the obligation under the check, debit payment, or
17 credit card payment was not authorized.

18 c. A person authorized to use the check, debit, or credit
19 card account has filed a report concerning the unauthorized
20 obligation under a check, debit payment, or credit card
21 payment with a law enforcement agency and has provided a copy
22 of the report to the debt collector.

23 2. This section does not prohibit a debt collector from
24 collecting or attempting to collect an obligation under a
25 check, debit payment, or credit card payment, if the debt
26 collector has credible evidence that the report filed with a
27 law enforcement agency is fraudulent and that the obligation
28 under a check, debit payment, or credit card payment was
29 authorized.

30 Sec. 8. NEW SECTION. 715C.8 PROTECTION OF CUSTOMER
31 INFORMATION.

32 1. Any person doing business in this state shall implement
33 and maintain reasonable procedures, including taking any
34 appropriate corrective action, to protect and safeguard from
35 unlawful use or disclosure any personal information collected

1 or maintained by the person in the regular course of business.

2 2. A person doing business in this state shall destroy or
3 arrange for the destruction of customer records containing
4 personal information within the person's custody or control
5 that are not to be retained by the business by one of the
6 following methods:

7 a. Shredding.

8 b. Erasing.

9 c. Otherwise modifying the personal information in the
10 records to make the information unreadable or undecipherable
11 through any means.

12 3. This section shall not apply to a financial institution
13 as defined in section 527.2.

14 EXPLANATION

15 This bill provides for certain consumer protections against
16 identity theft including notification of a breach in the
17 security of computerized data of personal information,
18 providing for a security alert or block on a consumer report,
19 and for the issuance of an identity theft passport.

20 The bill requires a person that owns or licenses
21 computerized data that includes personal information to
22 provide notice of any breach of the person's security of the
23 data to those residents of this state whose personal
24 information was or may have been acquired by an unauthorized
25 person. The bill requires a person that maintains
26 computerized data that includes personal information that the
27 person does not own to notify the owner of the data of any
28 breach in the security of the data. A "person" is defined by
29 the bill to include persons that conduct business in this
30 state and state agencies. The notice shall be provided
31 immediately unless a law enforcement agency determines that
32 the notification will impede a criminal investigation. The
33 notice may be made in writing, through electronic means, or by
34 substitute notice. as defined by the bill, and must contain
35 information regarding state and federal services available for

1 victims of identity theft.

2 The bill provides that a person who is injured by the
3 failure to notify of a security breach required by the bill
4 may file a civil action for an injunction, actual damages,
5 attorney fees, interest, and court costs. The attorney
6 general may also bring a civil action on behalf of an injured
7 person for an injunction, actual damages, attorney fees, and
8 court costs.

9 The bill permits victims of identity theft to request that
10 a security alert be placed on the victim's consumer report,
11 which is more commonly known as a credit report. Before
12 issuing credit on a consumer report containing a security
13 alert, the creditor must take reasonable steps to verify the
14 identity of the person whose consumer report contains the
15 security alert. Failure to verify the identity of the person
16 before issuing credit may result in liability of the creditor
17 for any damages suffered by the person as a result of the
18 credit being issued. A violation is also a consumer fraud
19 under Code section 714.16. The bill requires consumer
20 reporting agencies to maintain a nationwide toll-free
21 telephone number to accept requests for security alerts.

22 The bill permits victims of identity theft to request that
23 a security block be placed on the victim's consumer report. A
24 security block prohibits a consumer reporting agency from
25 releasing the victim's consumer report relating to the
26 extension of credit without the victim's express
27 authorization. A consumer reporting agency may decline to
28 place the block under specific circumstances. With proper
29 identification, the victim may request that the block be
30 temporarily lifted or permanently released. The consumer
31 reporting agency must notify the consumer when a block is
32 placed and when a block is released. A consumer reporting
33 agency may impose a reasonable fee to place a block on a
34 consumer file. Certain entities are exempt from compliance
35 with a security block. Violations are treated as consumer

1 fraud under Code section 714.16.

2 The bill authorizes the attorney general to issue an
3 identity theft passport to a victim of the criminal offense of
4 identity theft, as defined in Code section 715A.8, who has
5 filed a police report with a law enforcement agency. A victim
6 of identity theft may apply for an identity theft passport
7 with the law enforcement agency, which shall send a copy of
8 the police report and application to the attorney general.

9 The identity theft passport shall be in the form of a card
10 or certificate which the victim may present to a law
11 enforcement agency, creditor, or consumer reporting agency to
12 help protect the victim from false criminal charges and
13 fraudulent credit charges. A law enforcement agency,
14 creditor, or consumer reporting agency may use discretion as
15 to whether to accept the identity theft passport after
16 considering surrounding circumstances and available
17 information concerning the commission of identity theft
18 against the victim presenting the passport.

19 An application for an identity theft passport and all
20 supporting documents shall be confidential and not considered
21 a public record under Code chapter 22. The attorney general
22 shall adopt rules necessary to issue the identity theft
23 passports and to ensure that applications for the identity
24 theft passports are legitimate.

25 The bill requires any person doing business in this state
26 to delete any electronic records which contain information
27 about a consumer's dishonored check which has caused the
28 person doing business to refuse to accept other checks from
29 the consumer if the information in the electronic records is
30 incorrect or if the consumer has provided the person doing
31 business with a report filed with a law enforcement agency or
32 other notice that the dishonored check was not authorized by
33 the consumer. The bill provides that the attorney general may
34 seek a civil penalty of up to \$100 plus reasonable expenses
35 per violation.

1 The bill prohibits a debt collector from collecting or
2 attempting to collect an obligation under a payment by check,
3 debit, or credit card if the debt collector has received
4 written notice that, and payment was dishonored or refused
5 because, the obligation was not made by a person authorized to
6 use the check, debit, or credit card, and a report of the
7 unauthorized use has been filed with a law enforcement agency.
8 A debt collector is not prohibited from collecting or
9 attempting to collect an obligation under the bill if the debt
10 collector has credible evidence that the report filed with a
11 law enforcement agency is fraudulent and the obligation was
12 authorized.

13 The bill requires any person doing business in this state
14 to implement and maintain reasonable procedures to protect
15 from unlawful use or disclosure any personal information
16 collected or maintained by the person in the regular course of
17 business. The bill requires any person doing business in this
18 state to destroy or arrange for the destruction of customer
19 records containing personal information that are within the
20 person's custody or control and not otherwise retained by the
21 business. The destruction is required to be performed by
22 shredding, erasing, or modifying in a way to make the personal
23 information unreadable.

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