



Consumer Federation of America



epic.org



U.S. Public Interest Research Group

Privacy Rights
CLEARINGHOUSE

January 15, 2004

Re: Request to State Attorneys General to Act to Assist Identity Theft Victims in Using New Federal Rights

Dear Attorney General,

Request for Action

The undersigned national, state and local consumer organizations ask each state and territorial Attorney General to take two steps to help consumers use the new identity theft consumer rights conferred by the federal Fair and Accurate Credit Transactions law. These two steps are:

1. Allow identity theft victims to file with the Attorney General's Office the Federal Trade Commission's ID Theft Affidavit; and
2. Encourage all police departments in your jurisdiction to take police reports from all identity theft victims who live in the jurisdiction.

Groups Joining in this Request

The groups joining in this request are Consumers Union, the nonprofit publisher of *Consumer Reports*; U.S. PIRG; Consumer Federation of America; National Consumer Law Center; International Union, UAW; Electronic Privacy Information Center; National Consumers League; Consumer Action; Privacy Rights Clearinghouse; Identity Theft Resource Center; Privacy Journal; Privacy Times, Privacy Rights Now Coalition; Consumer Task Force for Automotive Issues; CALPIRG; CoPIRG (Colorado); Florida PIRG; Georgia PIRG; Illinois PIRG; MASSPIRG; MARYPIRG; MontPIRG (Montana); NCPiRG (North Carolina); NMPIRG (New Mexico); PIRGIM (Michigan); NJPIRG; PennPIRG; Ohio PIRG; OSPIRG (Oregon); Rhode Island PIRG; TexPIRG; VPIRG (Vermont); WashPIRG (Washington), and WISPIRG (Wisconsin).

A Consumer Must Have a Police Report or a Filed FTC ID Theft Affidavit to Receive the Extended Fraud Alert and to Block Information in a Credit File

ID theft victims may be unable to obtain a police report due to local staff shortages or an unwillingness to take a report about an unknown thief or a thief operating from outside the jurisdiction. Consumers face significant difficulty filing police reports. Only one state, California, requires police departments to take police reports from all local ID theft victims. The San Diego based Identity Theft Resource Center, which serves ID theft victims nationwide, reports that one half of the victims it assists have been unable to secure a police report.

The new Fair and Accurate Credit Transactions Act of 2003, signed into law December 4, 2003, provides important new federal rights to consumers who have been victims of identity theft, but consumers will not be entitled to some of those rights unless local police departments take police reports or state Attorneys General allow victims to file the FTC ID Theft Affidavit with the Attorney General's office. Two of the most important rights for ID theft victims in the new law require either a police report or a filed "identity theft report." These rights are the extended fraud alert and the blocking of information generated by a thief from the consumer's credit file.

The extended fraud alert is good for seven years. It protects consumers from identity theft by prohibiting users of the credit file or a credit score from opening a new credit plan, making an extension of credit, sending new cards on an account, or increasing the credit line after an apparent request from the consumer unless the user of the report or score contacts the consumer using the phone number or another reasonable contact method designated by the consumer. The extended fraud alert also gives the consumer the right to two free credit reports in the first year of the alert and restricts prescreened offers for five years. Fair and Accurate Credit Transactions Act, (FACT) § 112(a); FCRA § 605A(b), (h)(2).

This important package of extended fraud alert rights is triggered by a police report or an identity theft report. Under the statute, an identity theft report must:

Allege an identity theft;

Be a copy of an official valid report filed by a consumer "with an appropriate Federal, State, or local law enforcement agency...or such other government agency deemed appropriate by the Commission;" and

The filing which subjects the person filing the report to criminal penalties relating to the filing of false information if the information in the report is false.

FACT § 111; FCRA § 603(q)(4).

The widely used FTC ID Theft Affidavit will not qualify as an identity theft report unless it can be and is filed with a federal, state, or local law enforcement agency. The FTC ID Theft Affidavit is described at: <http://www.ftc.gov/opa/2002/02/idtheft.htm>. The text of the affidavit is posted at: <http://www.ftc.gov/bcp/online/pubs/credit/affidavit.pdf>.

The right to block information which has been generated by a transaction of an identity thief from a consumer's credit report also requires an identity theft report. FACT § 152(a); FCRA § 605B. Blocking information generated by a thief is a key remedy to allow consumers to begin to repair the damage done by the thief and restore their financial health. A consumer who needs to finance a car, take out a new credit card, or purchase or refinance a house has an immediate need to block information generated by a thief from his or her credit file. A decision to allow victims to file the FTC ID Theft Affidavit with the Attorney General's office will allow consumers in your jurisdiction to take advantage of both of these important consumer rights as soon as they become available under the new federal law. The FTC has proposed that these rights will become effective December 1, 2004.

Businesses May Insist on a Police Report Prior to Cooperating with ID Theft Victims' Requests for Information

The new federal law gives identity theft victims a right to get information from a business about the application and transactions of an identity thief. Because victims find themselves doing detective work to find the person who is ruining their good name, the right to get information from a business where the thief has impersonated the consumer is important. However, the business has the option to insist on a police report. FACT § 151(a); FCRA § 609(e)(2)(B)(i). This section goes into effect 180 days from December 4, 2003.

Conclusion

To assist consumers in your jurisdiction, we ask you to accept the FTC ID Theft Affidavit for filing and that you work to encourage local police departments to take police reports from all identity theft victims who live in the jurisdiction, even if the thief is outside the jurisdiction or the location of the thief is unknown.

For more information about this request please contact: Gail Hillebrand, Senior Attorney, Consumers Union, West Coast Regional Office, 1535 Mission St., San Francisco, CA 94103, 415-431-6747 or hillga@consumer.org. Consumers

Union's analysis of the rights of states under the new federal act to pass additional legislation to prevent or mitigate identity theft is available at http://www.consumersunion.org/pub/core_financial_services/000756.html. A model package of state identity theft protections to augment the FACT Act will be available soon from U.S. PIRG at www.pirg.org/consumer.

Very truly yours,

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