

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 294**

Introduced by Flood, 19; Redfield, 12; Thompson, 14

Read first time January 10, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to identity theft; to amend section 28-608,  
2 Revised Statutes Supplement, 2004; to create the identity  
3 theft passport program; to change the offense of criminal  
4 impersonation; to provide duties for the Attorney  
5 General; and to repeal the original section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1.    (1) For purposes of protecting persons who  
2 are the victims of identity theft, the identity theft passport  
3 program is created. The Attorney General shall administer the  
4 program, prescribe procedures and policies for issuing the identity  
5 theft passport consistent with this section, and provide  
6 information to law enforcement agencies explaining the program.

7           (2) A person shall be eligible for an identity theft  
8 passport if:

9           (a) The person has obtained a court order for expungement  
10 and sealing of records on grounds that the person has been charged  
11 or arrested or is the subject of an arrest warrant for a crime that  
12 was committed by another person who has appropriated or used the  
13 person's name or other identification without the person's consent  
14 or authorization or a court order for expungement and sealing of  
15 records from a court that dismissed a charge against the person on  
16 such grounds; or

17           (b) The person has filed an identity theft report with a  
18 federal, state, or local law enforcement agency and has submitted a  
19 copy of the identity theft report and an identity theft affidavit  
20 with supporting documentation to one or more consumer reporting  
21 agencies. For purposes of this section, identity theft report,  
22 identity theft affidavit, and consumer reporting agency have the  
23 same meaning as provided in the federal Fair Credit Report Act, 15  
24 U.S.C. 1681 et seq. If the person is unable to file an identity  
25 theft report for reasons beyond his or her control, he or she shall  
26 note that on the identity theft affidavit and that notation shall  
27 satisfy the requirement for an identity theft report under this  
28 section.

1           (3) To apply for an identity theft passport the person  
2 shall submit to the Attorney General a certified copy of a court  
3 order for expungement and sealing of records or copies of an  
4 identity theft report and identity theft affidavit that have been  
5 filed and submitted to a consumer reporting agency. The Attorney  
6 General may prescribe other application requirements as deemed  
7 necessary. The Attorney General shall issue the identity theft  
8 passport unless the Attorney General finds reasonable cause not to  
9 issue the identity theft passport. The identity theft passport  
10 shall state whether the identity theft passport is issued on the  
11 basis of an order for expungement or an identity theft report.

12           (4) Upon issuance of an identity theft passport, the  
13 Attorney General shall notify the Nebraska State Patrol. The  
14 identity theft passport shall be attached to any records maintained  
15 by the Nebraska State Patrol, including criminal history records  
16 for purposes of criminal background checks and law enforcement  
17 telecommunications checks. The record of an identity theft  
18 passport shall be sealed except to law enforcement authorities.

19           (5) The Attorney General shall maintain records of  
20 identity theft passport requests and issuances and may provide such  
21 information to law enforcement agencies upon request of an agency  
22 or officer. Such records in the possession of the Attorney General  
23 or other law enforcement agencies and officers shall not be public  
24 records.

25           (6) The Attorney General may prescribe a reasonable fee  
26 for processing applications for identity theft passports to recover  
27 administrative costs.

28           (7) An identity theft passport shall be used only for law

1 enforcement purposes, including criminal background checks and  
 2 similar public safety purposes. Financial institutions and other  
 3 private entities are not required to honor an identity theft  
 4 passport as proof of identity or proof of identity theft.

5 (8) The Attorney General shall establish and maintain a  
 6 data base of victims of identity theft. The Attorney General shall  
 7 provide a victim of identity theft or his or her authorized  
 8 representative access to the data base in order to establish that  
 9 the individual has been a victim of identity theft. Access to the  
 10 data base shall be limited to criminal justice agencies, victims of  
 11 identity theft, and individuals and agencies authorized by the  
 12 victims.

13 Sec. 2. Section 28-608, Revised Statutes Supplement,  
 14 2004, is amended to read:

15 28-608. (1) A person commits the crime of ~~criminal~~  
 16 ~~impersonation~~ identity theft if he or she:

17 (a) Assumes a false identity and does an act in his or  
 18 her assumed character with intent to gain a pecuniary benefit for  
 19 himself, herself, or another or to deceive or harm another;

20 (b) Pretends to be a representative of some person or  
 21 organization and does an act in his or her pretended capacity with  
 22 the intent to gain a pecuniary benefit for himself, herself, or  
 23 another and to deceive or harm another; or

24 (c) ~~Carries on any profession, business, or any other~~  
 25 ~~occupation without a license, certificate, or other authorization~~  
 26 ~~required by law, or~~

27 ~~(d) Without the authorization or permission of another~~  
 28 and with the intent to deceive or harm another:

1           (i) Obtains or records personal identification documents  
2 or personal identifying information; and

3           (ii) Accesses or attempts to access the financial  
4 resources of another through the use of a personal identification  
5 document or personal identifying information for the purpose of  
6 obtaining credit, money, goods, services, or any other thing of  
7 value.

8           (2) (a) ~~Criminal impersonation~~ Identity theft is a Class  
9 III felony if the credit, money, goods, services, or other thing of  
10 value that was gained or was attempted to be gained was one  
11 thousand five hundred dollars or more.

12           (b) ~~Criminal impersonation~~ Identity theft is a Class IV  
13 felony if the credit, money, goods, services, or other thing of  
14 value that was gained or was attempted to be gained was five  
15 hundred dollars or more but less than one thousand five hundred  
16 dollars.

17           (c) ~~Criminal impersonation~~ Identity theft is a Class I  
18 misdemeanor if the credit, money, goods, services, or other thing  
19 of value that was gained or was attempted to be gained was two  
20 hundred dollars or more but less than five hundred dollars. Any  
21 second or subsequent conviction under this subdivision is a Class  
22 IV felony.

23           (d) ~~Criminal impersonation~~ Identity theft is a Class II  
24 misdemeanor if no credit, money, goods, services, or other thing of  
25 value was gained or was attempted to be gained, or if the credit,  
26 money, goods, services, or other thing of value that was gained or  
27 was attempted to be gained was less than two hundred dollars. Any  
28 second conviction under this subdivision is a Class I misdemeanor,

1 and any third or subsequent conviction under this subdivision is a  
2 Class IV felony.

3 (e) A person found guilty of violating this section may,  
4 in addition to the penalties under this subsection, be ordered to  
5 make restitution pursuant to sections 29-2280 to 29-2289.

6 (3) ~~Criminal impersonation~~ Identity theft does not mean:

7 (a) The lawful obtaining of credit information in the  
8 course of a bona fide consumer or commercial transaction;

9 (b) The lawful, good faith exercise of a security  
10 interest or a right of setoff by a creditor or a financial  
11 institution; or

12 (c) The lawful, good faith compliance by any person when  
13 required by any warrant, levy, garnishment, attachment, court  
14 order, or other judicial or administrative order, decree, or  
15 directive.

16 (4) For purposes of this section:

17 (a) Personal identification document means a birth  
18 certificate, photograph, education record, health care record,  
19 financial record, credit record, employment record, motor vehicle  
20 operator's license, state identification card, public, government,  
21 or private employment identification card, social security card,  
22 visa work permit, firearm owner's identification card, certificate  
23 issued under section 69-2404, or passport or any document made or  
24 altered in a manner that it purports to have been made on behalf of  
25 or issued to another person or by the authority of a person who did  
26 not give that authority. Personal identification document does not  
27 include a financial transaction device as defined in section  
28 28-618;

1           (b) Personal identifying information means any name or  
2 number that may be used, alone or in conjunction with any other  
3 information, to identify a specific person including a person's:  
4 (i) Name; (ii) date of birth; (iii) address; (iv) motor vehicle  
5 operator's license number or state identification card number as  
6 assigned by the State of Nebraska or another state; (v) social  
7 security number or visa work permit number; (vi) public, private,  
8 or government employer, place of employment, or employment  
9 identification number; (vii) maiden name of a person's mother;  
10 (viii) number assigned to a person's credit card, charge card, or  
11 debit card, whether issued by a financial institution, corporation,  
12 or other business entity; (ix) number assigned to a person's  
13 depository account, savings account, financial services account, or  
14 brokerage account; (x) personal identification number as defined in  
15 section 8-157.01; (xi) electronic identification number, address,  
16 or routing code used to access financial information; (xii) digital  
17 signature; (xiii) telecommunications identifying information or  
18 access device; (xiv) unique biometric data, such as fingerprint,  
19 voice print, retina or iris image, or other unique physical  
20 representation; (xv) telephone number; (xvi) email address; (xvii)  
21 computer system password; and ~~(xv)~~ (xviii) other number or  
22 information which can be used to access a person's financial  
23 resources; and

24           (c) Telecommunications identifying information or access  
25 device means a card, plate, code, account number, mobile  
26 identification number, or other telecommunications service,  
27 equipment, or instrument identifier or means of account access that  
28 alone or in conjunction with other telecommunications identifying

1 information or another telecommunications access device may be used  
2 to: (i) Obtain money, goods, services, or any other thing of  
3 value; or (ii) initiate a transfer of funds other than a transfer  
4 originated solely by a paper instrument.

5 Sec. 3. Original section 28-608, Revised Statutes  
6 Supplement, 2004, is repealed.