

By: Giddings

H.B. No. 1032

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prosecution of the offense of fraudulent use or
3 possession of identifying information and to assistance to victims
4 of that offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 42.037, Code of Criminal Procedure, is
7 amended by adding Subsection (p) to read as follows:

8 (p)(1) The court shall order a defendant convicted of an
9 offense under Section 32.51, Penal Code, to make restitution to the
10 victim of the offense in an amount equal to the sum of the victim's
11 lost income and any expenses, including attorney's fees, incurred
12 by the victim to correct inaccuracies in the victim's credit
13 history or credit report as a result of the offense.

14 (2) The court shall, after considering the financial
15 circumstances of the defendant, specify in a restitution order
16 issued under Subsection (a) the manner in which the defendant must
17 make the restitution.

18 SECTION 2. Article 56.01(3), Code of Criminal Procedure, is
19 amended to read as follows:

20 (3) Except as provided by Article 56.15(a), "victim"
21 ["Victim"] means a person who is the victim of sexual assault,
22 kidnapping, or aggravated robbery or who has suffered bodily injury
23 or death as a result of the criminal conduct of another.

24 SECTION 3. Subchapter A, Chapter 56, Code of Criminal

1 Procedure, is amended by adding Article 56.15 to read as follows:

2 Art. 56.15. ASSISTANCE TO VICTIMS OF IDENTITY THEFT. (a)

3 In this article, "victim" means a person who is the victim of an
4 offense under Section 32.51, Penal Code.

5 (b) The attorney general shall establish a program that
6 assists the victim of an offense under Section 32.51, Penal Code,
7 in:

8 (1) obtaining information necessary to correct
9 inaccuracies or errors in the victim's credit history or credit
10 report as a result of the offense; and

11 (2) notifying law enforcement agencies that:

12 (A) the victim has been granted or is entitled to
13 an expunction under Article 55.01(d); and

14 (B) records of the agency that contain
15 information concerning the victim may be incorrect as a result of
16 the offense committed against the victim.

17 (c) In establishing the program under this article, the
18 attorney general shall consult with the Department of Public Safety
19 to coordinate the program with the issuance of an identity theft
20 passport under Section 411.0421, Government Code.

21 SECTION 4. The heading to Section 411.0421, Government
22 Code, is amended to read as follows:

23 Sec. 411.0421. INFORMATION REGARDING FRAUDULENT USE OF
24 IDENTIFICATION; ISSUANCE OF IDENTITY THEFT PASSPORT.

25 SECTION 5. Section 411.0421(c), Government Code, is amended
26 to read as follows:

27 (c) On receipt of a declaration under this section, the

1 department shall:

2 (1) create a record of the individual's identity,
3 including a record of the individual's unique password, in the
4 criminal history record information maintained by the department
5 under Subchapter F and [~~The department shall~~] ensure that this
6 record, including the unique password, is available online to any
7 entity authorized to receive information from the department under
8 Subchapter F; and

9 (2) issue to the individual an identity theft passport
10 that:

11 (A) states that a declaration has been filed
12 under this section; and

13 (B) serves as notice to other persons or agencies
14 that the individual's identity has been used by another person to
15 frustrate proper law enforcement without the individual's consent.

16 SECTION 6. Section 32.51, Penal Code, is amended by
17 amending Subsections (b) and (d) and adding Subsection (f) to read
18 as follows:

19 (b) A person commits an offense if the person, with the
20 intent to harm or defraud another, obtains, possesses, transfers,
21 or uses identifying information of:

22 (1) a deceased person, without legal authorization; or

23 (2) another person without the other person's consent
24 [~~and with intent to harm or defraud another~~].

25 (d) It is an exception to the application of this section
26 that the actor obtained, possessed, transferred, or used
27 identifying information of another person for the sole purpose of

1 misrepresenting the actor's age [~~If a court orders a defendant~~
2 ~~convicted of an offense under this section to make restitution to~~
3 ~~the victim of the offense, the court may order the defendant to~~
4 ~~reimburse the victim for lost income or other expenses, other than~~
5 ~~attorney's fees, incurred as a result of the offense].~~

6 (f) A court convicting a defendant of an offense under this
7 section may enter any order necessary to correct a public record
8 that contains false information resulting from the defendant's
9 commission of the offense.

10 SECTION 7. The changes in law made by Article 42.037, Code of
11 Criminal Procedure, and Section 32.51, Penal Code, as amended by
12 this Act, apply only to an offense committed on or after the
13 effective date of this Act. An offense committed before the
14 effective date of this Act is covered by the law in effect at the
15 time the offense was committed, and the former law is continued in
16 effect for that purpose. For purposes of this section, an offense
17 was committed before the effective date of this Act if any element
18 of the offense was committed before that date.

19 SECTION 8. The Department of Public Safety shall begin
20 issuing identity theft passports under Section 411.0421,
21 Government Code, as amended by this Act, as soon as is practicable
22 after the effective date of this Act, not later than January 1,
23 2006.

24 SECTION 9. The attorney general shall establish the program
25 required by Article 56.15, Code of Criminal Procedure, as added by
26 this Act, as soon as is practicable after the effective date of this
27 Act, not later than September 1, 2006.

1 SECTION 10. This Act takes effect September 1, 2005.