

Notes from Identity Theft Work Group Meeting 8-10-2005

Summary:

The work group decided that the appropriate overview for the Economic Affairs Interim Committee presentation on November 4, 2005, would be:

- 1) Overview of what exists -- Attorney General's office
- 2) Presentation by interest groups regarding concerns about prevention/alleviation of ID theft and "what is missing" from the perspectives of Montana business, government, and consumers.
 - A) Industries include one representative from each of the following:
 - Financial services
 - Insurance
 - Credit reporting bureaus
 - Large retailers
 - Small retailers
 - Health care
 - B) Government IT
 - C) Consumer interests about prevention/alleviation -- AARP

Group decided to have a meeting before Nov. 4 Economic Affairs Committee meeting.
SUGGESTED TIME: October 4, 2005, 1 to 4 p.m.

Among the considerations for inclusion in each group's presentations are the following:

- definition (recognizing that a definition of ID theft already exists in 45-6-332)
- enforcement concerns
- prevention
- education
- assistance to ID theft victims
- mitigation of ID theft (security freeze, tools for education)
- cross-jurisdictional cooperation
- House Bill 732 improvements
- duplication/overlap with existing federal/other state measures

The following notes are from the August 10, 2005, meeting:

On-Site Participants included:

Larry Kibbee	Alicia Pichette	Claudia Clifford
Keith Brown	Jim Kembel	Bonnie Lorang
Phil Maxwell	Riley Johnson	Amy Pfeifer
Rep. Diane Rice	Greg Gould	Jacqueline Lenmark
Vel Koopmans	Steve Turkiewicz	Bruce Spencer
Pam Bucy	Bob Olsen	Keith Colbo
Cort Jensen	Geoff Feiss	Jill Jarman

Phone Participants: Bob Pyfer, Eric Ellman, Brad Griffin, Erin Lutts, Colette G (can't find last name - sorry)

Notes from Participants' Comments (some may be more complete than others -- anyone with additional notes is welcome to add them to mine)

Pam Bucy - AG's Office

CONSUMER ISSUES: The Attorney General's office will be implementing a 1-800 number for consumer protection issues. She noted that the program gets no state funding -- basically surviving by getting money from participating in lawsuit settlements. Participation in these lawsuits helps for funding but takes time away from other pursuits. The AG's office has added two lawyers for antitrust and pharmaceutical issues. Pam and Cort Jensen (whose office moved from the Department of Administration) will be doing more consumer law.

TRAINING: The AG's office will begin training county attorneys regarding the ID Theft passport (46-24-220, MCA).

PREEMPTION -- The National Association of Attorneys General is working to prevent preemption issues.

Cort Jensen -- AG's Office

REVIEW OF ID THEFT -- Credit card theft = 1 in 6 incidents. Without credit card = 1 in 30. Montana slightly below the national average. He estimates 1 in 100 is lowest incident rate in MT.

Remedies vary per definition.

Identity theft itself is a crime.

Issues include:

- Security Breach notice laws -- only at the state level.

Key points: 1) how soon the notice happens and 2) what triggers reporting. Montana uses a "material breach" as the trigger.

- Other remedies to prevent additional damage --

- 1) Fraud alert -- can have an initial 90-day notice. Or extend for 7 years.
- 2) Security Block -- have to have a police report. ID theft passport helps with a block.
- 3) Credit freeze -- some states allow initiation without being an ID theft victim. Questions of how long a freeze can last and how hard it might be to thaw the freeze.
- 4) Credit monitoring
- 5) ID theft insurance.

HOW TO APPLY TO GOVERNMENT - Government balances privacy and record maintenance.

Claudia Clifford -- AARP

Underscored interest in:

- 1) Credit freeze/security freeze -
 - a) the right for any consumer to place a freeze on credit. Six states allow credit freezes regardless of whether a victim of ID theft. The freeze does not apply to an existing credit card account (i.e. - only for new credit requests).
 - b) time limit for unfreezing records
 - c) no cost in freezing/unfreezing credit history. Most states have limited cost; one state no cost.

- 2) Limited use of social security numbers. AARP would support legislation that prohibits SSN on driver's license.
- 3) Security breach law -- more than just computer data of concern. Concern with materiality. Would like a clarification that a consumer is notified whenever a breach occurs.
- 4) Written policy for destruction of data.

Steve Turkeiwicz - Montana Bankers Association

- 1) In Montana - focus on what can be done here -- prevention, education, victim assistance, multi-state coordination of law enforcement officials.
- 2) Banks take issue with who absorbs loss and cost.
- 3) Concern about the countervailing aspects of privacy vs. Homeland Security information gathering and the concern among banks and businesses of duplication or conflicts among laws regarding information.

Barbara Ranf -- Chamber of Commerce

Mentioned need for a balance between protecting individuals and transacting normal activities. Issues: 1) Prevention awareness, education. Need resources for consumers and businesses -- targeting who is having problems. Cited statistics from FTC and Sterling Associates regarding: 76% of victims being under 50. About 11% of ID theft occurs online, 28% tied to stolen wallets. 2) Preemption. Related concerns about new efforts adding unnecessary costs to business and more layers of regulation.

Emphasized: enforcement and assistance resolution for consumers and business.

Pam Bucy pointed out that the FTC statistic for MT was correct but that only 2 law enforcement agencies (sheriff's offices in Yellowstone and Flathead counties) sent data into the FTC.

Eric Ellman -- Consumer Data Industry Association

- 1) Privacy paradox -- the dilemma associated with Homeland Security that the only way to tell the good guys from the bad guys is with more information (but more information can be used by bad guys if info stolen). Information is important for screening employment (Homeland Security)
- 2) Need solutions that work. Said freezes not proven to work.
- 3) Need consistency among states. Recommended following California model.

Bob Pyfer - Montana Credit Unions League

- 1) Financial education important. Feels strongly that no child should graduate without financial information/background. Had urged inclusion in curriculum. Wants more legislative support.
- 2) Mentioned security breach provision of HB 732 (Section 7) -- ways to enhance section and Sections 2 and 3 of HB 732 - need to ensure that overall ID theft prevention uses resources in best way.
- 3) Prevention -- better controls and disclosure
- 4) Concern about 3rd party processors not being regulated with internal controls.
- 5) Preemption -- sympathetic with state's rights. Mentioned dual chartering relation between federal banks/credit unions and state banks/credit unions

Jill Jarman - Montana Credit Unions League

Emphasized importance of education. She said credit unions could make information available for AG regarding prevention and after-the-fact actions.

Mike Boyer - Montana Information Technology Services Division

Noted 1.5 billion (billion with a b is cq) attempts at unauthorized access to government data, including casual "tapping at the door" -- not concerted-- efforts. None successful to date. He noted that sensitive data is available at individual agencies. Provide consistent safeguards and directions to administration.

Noted the conundrum of sunshine on information and privacy rights. He said laws are biased toward disclosure. (cited law that awards attorney fees to prevailing party in public info case) Concerns about record management disposal. State required to provide computer access to counties (36 counties use this), but state has no authority over how counties use computer access. There's the potential for misuse of data.

Discussion ensued about effort to remove social security number on fishing/hunting license.

Amy Pfeifer - Child Support Enforcement Division

Noted federal requirements that states collect SSNs for child support enforcement (Title IVD of the Social Security Act). SSNs collected for professional/recreational/marriage/drivers' licenses. No requirement that SSN be displayed but is on application. If no law requires this, MT could lose operational funds for child support enforcement. Title IV A of TANF (temporary assistance for needy families) linked to above Act because TANF requires approved child support enforcement program. (She noted later that NH, WY and Alaska have exemptions on SSN issue.)

Rep. Diane Rice

Questioned the role of tying funding to use of SSNs. Also noted that the Real ID Act enacted by Congress requires a standardized birth certificate. This information can be shared with Canada. Questioned whether government is creating a Pandora's box with requests for information.

Bob Olsen - MHA - Montana Healthcare Providers Association

Discussed implementation of the Health Insurance Portability and Accountability Act (HIPAA). Intended to standardize health information through electronics and protect it. Cited 4 areas important to identity theft:

- 1) Health and demographic information
- 2) business (billing) information
- 3) major employer information
- 4) preemption of federal standards (higher standards rule whether state or federal)

Standardization attempts to strengthen information gathering for purposes of communicating and reducing costs of sharing data.

Healthcare providers looking at security plans that protect transmission of information - particularly when PCs or handheld devices are wireless. Security rules went into effect in April 2005.

Mentioned as issues or possible concerns:

- A) the idea of a personal health card containing all medical records and other info.
- B) a National Health ID number for all Americans. Insurance companies also getting ID.
- C) system security
- D) what is not controlled
- E) who releases information -- e.g. misbehaving employees, inadvertent distribution of unscrubbed computers, what the consumer may release personally that relates to confidential health information.
- F) enforcement -- how to punish thief and not the employer
- G) education.

Bruce Spencer - Montana Automobile Dealers' Association and Independent Business

Concerns about businesses having to figure out which laws they have to comply with.

Also concerned about privacy vis-a-vis identity theft.

Asked: What portions of ID theft are we trying to solve? He suggested focusing more on the creation of new IDs or theft of IDs for new credit and less attention to stolen credit cards or inappropriate credit card use.

Suggested for enforcement - new avenues necessary.

Questioned what gaps exist among state reporting requirements and suggested the possibility of victim assistance funds and business assistance funds for education. He noted businesses have limited capital for complying with various responsibilities under ID theft proposals.

Larry Kibbee - Property Casualty Insurers Association of America

Insurers collect lots of information regarding consumers' health, workers' compensation. Need accuracy and security. Noted that Gramm, Leach, Bliley Act and HIPAA control some of insurers activities.

His main concern is determining the nexus between protection of information and its use for legal purposes. Are we talking privacy protection or the protection of personal information? Urged consistency and uniformity "whatever is done".

Greg Van Horssen -- Representing State Farm Insurance

Questioned whether more laws are needed or more education or more assistance?

Noted that businesses are not bad guys and insurance industry is highly regulated.

Encouraged focus on protections and urged no more tiers of regulation.

Jacqueline Lenmark - American Insurance Association/American Council of Life Insurers

Underscored question of defining which ID theft is of concern, and the relation of privacy and ID theft. She also warned against the temptation to regulate or restrict information that is public.

Greg Gould - Blue Cross Blue Shield

Noted health insurance is highly regulated. Suggested looking at mitigation issues. Noted that costs are not just to company but affect consumers through higher premiums.

Alicia Pichette -- State Auditor's Office

Both insurance and securities concerns in the State Auditor's Office regarding ID theft but there

have been few complaints. Suggested more assistance for consumers to prevent ID theft and mitigate if it occurs.

Brad Griffin - Montana Retail Association

Urged caution, particularly in relation to federal existing law and potential Congressional action. Provided a handout regarding congressional actions on security breaches/freezes. Noted that businesses are victims of breaches. Warned about eliminating "reasonableness standard" regarding materiality.

Geoff Feiss - Montana Telecommunications Association

Reiterated importance of education of consumers, business, and government. Also noted privacy paradox examples in communications -- wiretap law. Noted that Internet Service Providers do not want to be enforcers of the law.

Vel Koopmans - Montana contact (in Bozeman) for the Identity Theft Resource Center
(<http://www.idtheftcenter.org/index.shtml>)

Noted that she and her husband ended up working for a person whom they didn't know was a 3-time felon. Employer stole their ID information and reproduced their checks. Tried unsuccessfully to get criminal prosecution. Urged education, cross-jurisdictional discussions.

Keith Brown - Merlin Information Services (<https://www.merlindata.com/consumerprivacy/>)
Said his firm is a data provider, similar to Choice Point or Lexis Nexis, and had information accessed illegally regarding 9000 individuals in its files. The cost to Merlin was \$240,000 to help set the situation right. He emphasized that businesses also are victims and that data alone is not bad. He urged more education and more coordination by law enforcement.