

1                                    AMENDMENT TO HOUSE BILL 2188

2            AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2188 by replacing  
3 the title with the following:

4            "AN ACT in relation to identity theft."; and

5 by replacing everything after the enacting clause with the  
6 following:

7            "Section 5. The Criminal Code of 1961 is amended by  
8 adding Section 16G-30 as follows:

9            (720 ILCS 5/16G-30 new)

10           Sec. 16G-30. Mandating law enforcement agencies to accept  
11 and provide reports; judicial factual determination.

12           (a) A person who has learned or reasonably suspects that  
13 his or her personal identifying information has been  
14 unlawfully used by another may initiate a law enforcement  
15 investigation by contacting the local law enforcement agency  
16 that has jurisdiction over his or her actual residence, which  
17 shall take a police report of the matter, provide the  
18 complainant with a copy of that report, and begin an  
19 investigation of the facts or, if the suspected crime was  
20 committed in a different jurisdiction, refer the matter to  
21 the law enforcement agency where the suspected crime was

1 committed for an investigation of the facts.

2 (b) A person who reasonably believes that he or she is  
3 the victim of identity theft may petition a court, or the  
4 court, on its own motion or upon application of the  
5 prosecuting attorney, may move for an expedited judicial  
6 determination of his or her factual innocence, where the  
7 perpetrator of the identity theft was arrested for, cited  
8 for, or convicted of a crime under the victim's identity, or  
9 where a criminal complaint has been filed against the  
10 perpetrator in the victim's name, or where the victim's  
11 identity has been mistakenly associated with a criminal  
12 conviction. Venue for such petition shall lie in the court  
13 where the relevant criminal complaint has been or could be  
14 filed. Any judicial determination of factual innocence made  
15 pursuant to this subsection (b) may be heard and determined  
16 upon declarations, affidavits, police reports, or other  
17 material, relevant, and reliable information submitted by the  
18 parties or ordered to be part of the record by the court. If  
19 the court determines that there are reasonable grounds to  
20 believe that the petitioner did not commit the offense for  
21 which the perpetrator of the identity theft was arrested,  
22 cited, convicted, or subject to a criminal complaint in the  
23 victim's name, or that the victim's identity has been  
24 mistakenly associated with a record of criminal conviction,  
25 the court shall find the victim factually innocent of that  
26 offense. If the victim is found factually innocent, the court  
27 shall issue an order certifying this determination.

28 (c) After a court has issued a determination of factual  
29 innocence under this Section, the court shall order the  
30 victim's name and associated personal identifying information  
31 removed from all such records in connection with the arrest  
32 and conviction, if known or ascertainable, in lieu of the  
33 aggrieved's name. The records of the clerk of the circuit  
34 court clerk shall be sealed until further order of the court

1 upon good cause shown and the name of the aggrieved person  
2 obliterated on the official index required to be kept by the  
3 circuit court clerk under Section 16 of the Clerks of Courts  
4 Act, but the order shall not affect any index issued by the  
5 circuit court clerk before the entry of the order. Nothing in  
6 this Section shall limit the Department of State Police or  
7 other criminal justice agencies or prosecutors from listing  
8 under an offender's name the false name he or she has used.

9 (d) A court that has issued a determination of factual  
10 innocence under this Section may at any time vacate that  
11 determination if the petition, or any information submitted  
12 in support of the petition, is found to contain any material  
13 misrepresentation or fraud.

14 Section 10. The Consumer Fraud and Deceptive Business  
15 Practices Act is amended by adding Section 2MM as follows:

16 (815 ILCS 505/2MM new)

17 Sec. 2MM. Verification of accuracy of credit reporting  
18 information used to extend consumers credit.

19 (a) A credit card issuer who mails an offer or  
20 solicitation to apply for a credit card and who receives a  
21 completed application in response to the offer or  
22 solicitation which lists an address that is not substantially  
23 the same as the address on the offer or solicitation may not  
24 issue a credit card based on that application until  
25 reasonable steps have been taken to verify the applicant's  
26 change of address.

27 (b) Any person who uses a consumer credit report in  
28 connection with the approval of credit based on the  
29 application for an extension of credit, and who has received  
30 notification of a police report filed with a consumer  
31 reporting agency that the applicant has been a victim of  
32 financial identity theft, as defined in Section 16G-15 of

1 the Criminal Code of 1961, may not lend money or extend  
2 credit without taking reasonable steps to verify the  
3 consumer's identity and confirm that the application for an  
4 extension of credit is not the result of financial identity  
5 theft.

6 (c) For purposes of this Section, "extension of credit"  
7 does not include an increase in an existing open-end credit  
8 plan, as defined in Regulation Z of the Federal Reserve  
9 System (12 C.F.R. 226.2), or any change to or review of an  
10 existing credit account.

11 (d) Any person who violates subsection (a) or subsection  
12 (b) commits an unlawful practice within the meaning of this  
13 Act."