

CHAPTER 126

AN ACT concerning certain victims of identity theft, amending R.S.39:5-42 and supplementing Title 2C of the New Jersey Statutes and Title 39 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.2C:52-32.1 Petition for judicial determination of factual innocence for certain victims of identity theft.

1. a. Notwithstanding any other provision of law to the contrary, a person who reasonably believes that he is the victim of identity theft based on the commission of an offense under N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (C.2C:21-2.1), N.J.S.2C:21-17, or section 5 or 6 of P.L.2003, c.184 (C.2C:21-17.2 or C.2C:21-17.3) may petition the court where the charge is pending or where the conviction was entered for a judicial determination of the victim's factual innocence, when:

(1) the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime, offense, or violation of law under the victim's identity;

(2) a complaint for a crime, offense, or violation has been filed against the perpetrator in the victim's name; or

(3) the victim's identity has been mistakenly associated with a record of conviction.

If a charge is pending, the prosecutor may petition the court for a determination of factual innocence on behalf of the victim. Any judicial determination of factual innocence made pursuant to this section may be determined, with or without a hearing, upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition is meritorious and that there is no reasonable cause to believe that the victim committed the crime, offense, or violation for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a complaint for a crime, offense, or violation in the victim's name, or that the victim's identity has been mistakenly associated with a record of conviction, the court shall order that the victim's name and associated personal identifying information contained in the records, files, and indexes of relevant courts, law enforcement agencies, correctional institutions, and administrative agencies which are accessible to the public be deleted, sealed, labeled to show that such data is impersonated and does not reflect the defendant's identity, or corrected by inserting in the records the name of the perpetrator, if known or ascertainable, in lieu of the victim's name.

The court shall distribute such order or other appropriate notice to the prosecutor and administrative agencies to which a record of conviction may have been transmitted. The prosecutor shall distribute the order or notice to the relevant law enforcement agencies and correctional institutions so that they may comply with its provisions. The court shall provide the victim with a copy of the order or other appropriate documentation to aid in the resolution of any disabilities that may result from the arrest, charge, or conviction.

b. A victim seeking relief under this section shall not be required to comply with the requirements of chapter 52 of Title 2C of the New Jersey Statutes, but shall proceed in accordance with the rules and procedures promulgated by the Supreme Court.

c. A court that determines a victim's factual innocence pursuant to this section may at any time vacate that determination if the petition, or information submitted in support of the petition, contains material misrepresentation or fraud. If the court vacates such a determination, it shall issue an order rescinding any orders made pursuant to this section.

d. Any relief granted pursuant to this section shall not affect a victim's eligibility to apply for an expungement for any other offense pursuant to chapter 52 of Title 2C of the New Jersey Statutes.

e. Notwithstanding any other provision of law to the contrary, a petition for relief made pursuant to the provisions of this section shall not require the payment of any fee by the victim.

f. The Supreme Court may adopt rules and the Administrative Director of the Courts may issue directives to effectuate the purposes of this act.

g. The Attorney General may issue guidelines which may be necessary concerning procedures for law enforcement agencies or any other agencies in the criminal justice system to effectuate the purposes of this act.

2. R.S.39:5-42 is amended to read as follows:

Reports by judges to chief administrator on violations, crimes and offenses; removal of certain information.

39:5-42. a. Every judge shall make a report, in such form as the Chief Administrator of the Motor Vehicle Commission may require, to the Chief Administrator: (1) of all cases heard before him for violation of this title, or for any other violation in which a motor vehicle was used in any way, and (2) of the conviction of any person of having committed a crime or offense in the commission of which a motor vehicle was used, within three days after the disposition of the case before him as a judge. The report shall state the nature of the violation, the full facts concerning the use of the motor vehicle in the commission of the crime or offense, the disposition of the case by the judge, and any recommendations which the judge may deem of value to the Chief Administrator in determining whether action should be taken against the driving, registration, or other privilege of the driver or owner of the motor vehicle.

b. Upon receipt of an order issued pursuant to section 1 of P.L.2015, c.126 (C.2C:52-32.1) or other appropriate notice from the court requiring the deletion, sealing, labeling, or correction of a person's name and other personal identifying information from a record, the Chief Administrator shall promptly remove such information that may have been entered into the records of the Motor Vehicle Commission. The Chief Administrator shall, upon request, provide the victim with a certified corrected driver history. Where appropriate, the Chief Administrator shall also reinstate any driver's license that may have been suspended or revoked and shall remove any motor vehicle penalty points from the victim's driving record that may have been assessed as a result of a conviction against the victim which the court has ordered vacated pursuant to section 1 of P.L.2015, c.126 (C.2C:52-32.1). Notwithstanding any other provision of law to the contrary, no fee shall be charged to a victim for services provided by the Chief Administrator pursuant to this section.

C.39:5-42.1 Refund of additional insurance premiums.

3. Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was ordered by the court to be deleted, sealed, labeled, or corrected pursuant to the provisions of P.L.2015, c.126 (C.2C:52-32.1 et al.) shall refund those additional premiums to the policyholder upon receipt of notification of the court's order.

4. This act shall take effect on the first day of the fourth month following enactment.

Approved November 9, 2015.