SPONSOR: Sen. Venables
& Sens. Sokola, Connor, Still

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 109

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CLEAN CREDIT AND IDENTITY THEFT PROTECTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Title 6 of the Delaware Code by inserting therein a new Chapter as follows:

"CHAPTER 22. CONSUMER CREDIT AND IDENTITY THEFT PROTECTION.

§ 2201. Short title.

This Chapter shall be known and may be cited as the "Clean Credit and Identity Theft Protection Act."

§ 2202. Definitions.

As used in this Chapter, and unless the context clearly indicates a different meaning, the following words, terms and phrases shall have the meanings ascribed to them in this section:

(1) ''Breach of the security of the data'' means unauthorized acquisition of computerized or non-computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the data collector. Good faith acquisition of personal information by an employee or agent of the data collector for a legitimate purpose of the data collector is not a breach of the security of the data, provided that the personal information is not used for a purpose unrelated to the data collector or subject to further unauthorized disclosure. Breach of the security of non-computerized data may include but is not limited to unauthorized photocopying, facsimiles, or other paper-based transmittal of documents.

(2) "Consumer" means an individual whose personal information appears in a consumer report.

(3) "Consumer report" or "credit report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

a. Credit or insurance to be used primarily for personal, family, or household purposes, except that nothing in this Chapter authorizes the use of credit evaluations or credit scoring in the underwriting of personal lines of property or casualty insurance;

b. employment purposes; or

c. any other purpose authorized under section 15 U.S.C. § 1681b.

(4) "Consumer reporting agency" has the meaning assigned by § 603(f), Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).

(5) "Credit card" has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. § 1601 *et. seq.*).

(6) "Credit header information" means written, oral, or other communication of any information by a consumer reporting agency regarding the social security number of the consumer, or any derivative thereof, and any other personally identifiable information of the consumer that is derived using any nonpublic personal information, except the name, address, and telephone number of the consumer if all are listed in a residential telephone directory available in the locality of the consumer.

(7) "Credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of determining personal lines insurance premiums or eligibility for coverage.

(8) "Data Collector" may include but is not limited to government agencies, public and private universities, privately and publicly held corporations, financial institutions, retail operators, and any other entity which, for any purpose, whether by automated collection or otherwise, handles, collects, disseminates, or otherwise deals with personal information.

(9) "Debit card" means any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(10) "Dispose" includes:

a. The discarding or abandonment of records containing personal information, and

b. The sale, donation, discarding or transfer of any medium, including computer equipment, or computer media, containing records of personal information, or other non-paper media upon which records of personal information is stored, or other equipment for non-paper storage of information.

(11) "Person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(12)(a) "Personal Information" means any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including, but not limited to, a name, signature, social security number, fingerprint, photograph or computerized image, physical characteristics or description, address, telephone number, passport number, driver's license or state identification care number, date of birth, medical information, bank account number, credit card number, debit card number, or any other financial information.

(b) "Personal information'' includes an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted:

1. Social Security number.
2. Driver's license number or state identification card number.
3. Account number, credit or debit card number, if circumstances exist wherein such a number could be used without additional identifying information, access codes, or passwords.
4. Account passwords or personal identification numbers (PINs) or other access codes.
5. Any data item listed in this paragraph, when not in connection with the individual's first name or first initial and last name, if the information compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised.

(c) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records, provided that such publicly available information has not been aggregated or consolidated into an electronic database or similar system by the governmental agency or by another person.

(13) "Records" means any material on which written, drawn, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. "Records" does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address or telephone number.

(14) "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(15) "Security freeze" means a notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer. If a security freeze is in place, such a report or information

may not be released to a third party without prior express authorization from the consumer. This Chapter does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(16) "Business" means sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this state, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. The term also includes an entity that destroys records.

§ 2203. Security freeze; timing; covered entities; cost.

(a) A consumer may elect to place a "security freeze" on his or her credit report by:

(1) Making a request by certified mail;

(2) Making a request by telephone by providing certain personal identification; or

(3) Making a request directly to the consumer reporting agency through a secure electronic mail connection if such connection is made available by the agency.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written or telephone request from the consumer or three business days after receiving a secure electronic mail request.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer reporting agency via telephone, certified mail, or secure electronic mail, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification;

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to this section; and

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(e) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to this section shall comply with the request no later than three business days after receiving the request.

(f) A consumer reporting agency may develop procedures involving the use of telephone, fax, or, upon the consent of the consumer for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to this section in an expedited manner.

(g) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) upon consumer request, made pursuant to the terms of this section; or

(2) if the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing five business days prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a third party requests access to a consumer credit report on which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole purpose of account review, the consumer credit report agency must notify the consumer that an attempt has been made to access the credit report.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(1) proper identification; and

(2) the unique personal identification number or password provided by the consumer reporting agency.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report or rating.

(m) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) a person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt.

(2) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under this section for purposes of facilitating the extension of credit or other permissible use.

(3) any person acting pursuant to a court order, warrant, or subpoena.

(4) a State or local agency which administers a program for establishing and enforcing child support obligations.

(5) the State Attorney General or his or her agents or assigns acting to investigate fraud.

(6) the Division of Revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(7) a person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act.

(8) any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(9) any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(n) A consumer may not be charged for any security freeze services, including but not limited to the placement or lifting of a security freeze. A consumer, however, can be charged no more than $5 only if the consumer fails to retain the original personal identification number provided by the agency, the consumer may not be charged for a one-time reissue of the same or a new personal identification number; however, the consumer may be charged no more than $5 for subsequent instances of loss of the personal identification number.

§ 2204. Notice of Rights.

At any time that a consumer is required to receive a summary of rights required under Section 609 of the federal Fair Credit Reporting Act or under [state law], the following notice shall be included:

"NOTICE

Delaware Consumers Have the Right to Obtain a Security Freeze You may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your credit report pursuant to the Clean Credit and Identity Theft Protection Act.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval. The security freeze is

designed to prevent credit, loans, and services from being approved in your name without your consent.

When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer reporting agency.

(2) Proper identification to verify your identity.

(3) The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze – either completely if you are shopping around, or specifically for a certain creditor – a few days before actually applying for new credit.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

§ 2205. Violations; Penalties.

If a consumer reporting agency erroneously, whether by accident or design, violates the security freeze by releasing credit information that has been placed under a security freeze, the affected consumer is entitled to:

(1) Notification within five business days of the release of the information, including specificity as to the information released and the third party recipient of the information.

(2) File a complaint with the Federal Trade Commission.

(3) File a complaint with the Delaware Department of Justice.

(4) In a civil action against the consumer reporting agency recover:

a. injunctive relief to prevent or restrain further violation of the security freeze, and/or

b. a civil penalty in an amount not to exceed $10,000 for each violation plus any damages available under other civil laws, and

c. reasonable expenses, court costs, investigative costs, and attorney's fees.

(5) Each violation of the security freeze shall be counted as a separate incident for purposes of imposing penalties under this section.

§ 2206. Protection for credit header information

A consumer reporting agency may furnish a consumer's credit header information only to those who have a permissible purpose to obtain the consumer's consumer report under Section 604 of the federal Fair Credit Reporting Act, as codified at 15 U.S.C. § 1681(b).

§ 2207. Right to file a police report regarding identity theft

(a) A person who has learned or reasonably suspects that he or she has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of the matter, and provide the complainant with a copy of that report. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and may refer the complaint to a law enforcement agency in that different jurisdiction.

(b) Nothing in this section interferes with the discretion of a local police department to allocate resources for investigations of crimes. A complaint filed under this section is not required to be counted as an open case for purposes such as compiling open case statistics.

§ 2208. Factual declaration of innocence after identity theft

(a) A person who reasonably believes that he or she is the victim of identity theft may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the

victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined 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 or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(b) After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(c) Upon making a determination of factual innocence, the court must provide the consumer written documentation of such order.

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

(e) The Delaware Department of Justice shall establish and maintain a data base of individuals who have been victims of identity theft and that have received determinations of factual innocence. The Delaware Department of Justice shall provide a victim of identity theft or his or her authorized representative access to the data base in order to establish that the individual has been a victim of identity theft. Access to the data base shall be limited to criminal justice agencies, victims of identity theft, and individuals and agencies authorized by the victims.

(f) The Delaware Department of Justice shall establish and maintain a toll free number to provide access to information under this section.

(g) In order for a victim of identity theft to be included in the data base established pursuant to this section, he or she shall submit to the Delaware Department of Justice a court order obtained pursuant to any provision of law, a full set of fingerprints, and any other information prescribed by the department.

(h) Upon receiving information pursuant to this section, the Delaware Department of Justice shall verify the identity of the victim against any driver's license or other identification record maintained by the Department of Motor Vehicles.

§ 2209. Consumer-driven credit monitoring

(a) Every consumer credit reporting agency shall, upon request from a consumer that is not covered by the free disclosures provided in 15 U.S.C. § 1681j subsections (a) through (d), clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or other risk scores or predictors that are governed by 15 U.S.C. § 1681g (f).

(2) The sources of the information.

(3) Identification of each person (including each end-user identified under 15 U.S.C. § 1681e) that procured a consumer report:

a. for employment purposes, during the 2-year period preceding the date on which the request is made; or

b. for any other purpose, during the 1-year period preceding the date on which the request is made.

(4) An identification of a person under paragraph (3) of this subsection shall include

a. the name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and

b. upon request of the consumer, the address and telephone number of the person.

(5) Paragraph (3) of this subsection does not apply if:

a. the end user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information (as defined in section 15 U.S.C. § 1681b (b)(4)(E)(i)); and

b. the head of the agency or department makes a written finding as prescribed under section 15 U.S.C. § 1681b (b)(4)(A).

(6) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure or which can be inferred from the file.

(7) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

(8) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.

(b) In the case of a request under subsection (a) of this section, a consumer reporting agency may impose a reasonable charge on a consumer for making a disclosure pursuant to this section, which charge:

(1) shall not exceed $2 for each of the first twelve requests from the consumer in a calendar year; and

(2) shall not exceed $8 for any additional request beyond the initial twelve requests from the consumer in a calendar year; and

(3) shall be indicated to the consumer before making the disclosure.

(c) In the case of a request under subsection (a) of this section, a consumer reporting agency must provide the consumer with an opportunity to access his or her report through the following means:

(1) in writing;

(2) in person, upon the appearance of the consumer at the place of business of the consumer reporting agency where disclosures are regularly provided, during normal business hours, and on reasonable notice;

(3) by telephone, if the consumer has made a written request for disclosure;

(4) by electronic means, if the agency offers electronic access for any other purpose;

(5) by any other reasonable means that is available from the agency.

(d) A consumer reporting agency shall provide a consumer report pursuant to this section no later than:

(1) twenty-four hours after the date on which the request is made, if the disclosure is made by electronic means; and

(2) five days after the date on which the request is made, if the disclosure is made in writing, in person, by telephone or by any other reasonable means that is available from the agency.

§ 2210. Prevention of and protection from security breaches; notice of breach.

(a) (1) Except as provided in subsection (b)(2) of this section, any data collector that owns or uses personal information in any form (whether computerized, paper, or otherwise) that includes personal information concerning a Delaware resident shall notify the resident that there has been a breach of the security of the data following discovery or notification of the breach, without regard for whether the data has or has not been accessed by an unauthorized third party for legal or illegal purposes. The disclosure notification shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in paragraph (2) of subsection (b) of this section, or with any measures necessary to determine the scope of the breach and restore the reasonable integrity, security and confidentiality of the data system.

(2) The notification required by this section may be delayed if a law enforcement agency determines that the notification may impede a criminal investigation.

(3) For purposes of this section, ‘‘notice’’ to consumers may be provided by one of the following methods:

a. Written notice.

b. Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures, for notices legally required to be in writing, set forth in Section 7001 of Title 15 of the United States Code.

c. Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

1. E-mail notice when the agency has an e-mail address for the subject persons.

2. Notification to major statewide media.

(b) Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

(c) (1) Any individual injured by a violation of this section may institute a civil action to recover damages.

(2) Any business that violates, proposes to violate, or has violated this section may be enjoined.

(3) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

§ 2211. Social security number protection

(a) A person or entity, including a state or local agency, may not do any of the following:

(1) Intentionally communicate or otherwise make available to the general public an individual's Social Security number.

(2) Print an individual's Social Security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her Social Security number over the Internet, unless the connection is secure or the Social Security number is encrypted.

(4) Require an individual to use his or her Social Security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's Social Security number on any materials that are mailed to the individual, unless state or federal law requires the Social Security number to be on the document to be mailed.

(6) Sell, lease, loan, trade, rent, or otherwise disclose an individual's Social Security number to a third party for any purpose without written consent to the disclosure from the individual.

(7) Refuse to do business with an individual because the individual will not consent to the receipt by such person of the social security account number of such individual, unless such person is expressly required under Federal law, in

connection with doing business with an individual, to submit to the Federal Government such individual's social security account number.

(b) This section does not apply to documents that are recorded or required to be open to the public pursuant to Chapter 100 of Title 29. This section does not apply to non-public records that are required by state or federal statute or case law to be made available to the public.

(c) Any entity covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

(d) Penalties for violations of this section.

(1) A person who violates this section is responsible for the payment of a civil fine of not more than $3,000.

(2) A person who knowingly violates this section is guilty of a Class B Misdemeanor punishable by imprisonment for not more than 60 days or a fine of not more than $5,000 or both.

(3) An individual may bring a civil action against a person who violates this section and may recover actual damages or $5,000, whichever is greater, plus reasonable court costs and attorney's fees.

§ 2212. Banning credit scoring for use in insurance decisions

With respect to private passenger automobile, residential property and other personal lines insurance, an insurer may not:

(1) refuse to underwrite, cancel, or refuse to renew a risk based, in whole or in part, on the credit history of an applicant or insured; or

(2) rate a risk based, in whole or in part, on the credit history of an applicant or insured in any manner, including:

a. The provision or removal of a discount;

b. Assigning the insured or applicant to a rating tier; or

c. Placing an insured or applicant with an affiliated company; or

(3) require a particular payment plan based, in whole or in part, on the credit history of the insured or applicant.

§ 2213. Adequate destruction of personal records

(a) Any business that conducts business in this state and any business that maintains or otherwise possesses personal information of residents of this state must take all reasonable measures to protect against unauthorized access to or use of the information in connection with, or after its disposal. Such reasonable measures must include, but may not be limited to:

(1) Implementing and monitoring compliance with polices and procedures that require the burning, pulverizing or shredding of papers containing personal information so that the information cannot practicably by read or reconstructed;

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other non-paper media containing personal information so that the information cannot practicably by read or reconstructed;

(3) After due diligence, entering into and monitoring compliance with a written contract with another party engaged in the business of record destruction to dispose of personal information in a manner consistent with this statute. Due diligence should ordinarily include, but may not be limited to, one or more of the following: reviewing an independent audit of the disposal company's operations and/or its compliance with this statute or its equivalent; obtaining information about the disposal company from several references or other reliable sources and requiring that the disposal company be certified by a recognized trade association or similar third party with a reputation for high standards of quality review; reviewing and evaluating the disposal company's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the disposal company;

(4) For disposal companies explicitly hired to dispose of records containing personal information: implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information in accordance with paragraphs (1) and (2) of this subsection.

(b) Procedures relating to the adequate destruction or proper disposal of personal records must be comprehensively described and classified as official policy in the writings of the business entity, including corporate and employee handbooks and similar corporate documents.

(c) (1) Any person or business that violates this section may be subject to a civil penalty of not more than $3,000.

(2) Any individual aggrieved by a violation of this section may bring a civil action in Superior Court to enjoin further violations and to recover actual damages, costs, and reasonable attorney's fees.

SYNOPSIS

This Act creates a series of consumer protections for credit consumers in Delaware. This Act is based upon the Model Clean Credit and Identity Theft Protection Act published by the State Public Interest Research Groups and Consumers Union (PIRGs).

The terms of this Act compliment the terms of the federal Fair Credit Reporting Act. Pursuant to this Act, whenever a consumer receives a summary of rights pursuant to the federal Act, the consumer must also receive written notice of his or her rights under this Act. One of the rights created by this Act is the right to have a "security freeze" put in place with each of the major credit reporting agencies in the Country through which the consumer's credit information may only be disclosed to a third party with the consumer's prior consent. Under the terms of this Act, if a person wishes to receive a information about a consumer that has been frozen at the consumer's request, the agency may tell the person that a security freeze is in place, but may only release the information after it receives written authorization from the consumer.

This Act also establishes a method to address potential identity thefts. Pursuant to the terms of this Act, if a person learns or reasonably suspects they have been the victim of identity theft, s/he is entitled to have a police report that describes the details of the theft and to have a court of competent jurisdiction make expedited factual findings of his or her innocence in criminal matters where the person who stole his or her identity is being charged under his or her name. In the event of such an expedited factual finding, the court must provide the person with written documentation of the finding and the Delaware Department of Justice must keep the information on file for future reference.

In order to encourage self-monitoring of consumer credit information by the consumer, this Act mandates the release of certain information to the consumer by credit reporting agencies. The agencies may charge up to $2.00 per request for the first 12 requests in a calendar year and up to $8.00 for each subsequent request during a calendar year. These charges may only be levied where the federal law does not prohibit them.

General violations of this Act constitute a class B misdemeanor and are criminally punishable by a fine of up to $5,000 or up to 60 days imprisonment, or both. These violations may also be pursued in civil court and relief available under this Act include fines of up to $3,000 plus an award of damages equal to actual damages or $5,000 whichever is greater, plus reasonable court costs and attorney's fees. In the event a credit reporting agency violates a security freeze put in place pursuant to this Act by releasing frozen information without the prior consent of the affected consumer, the affected consumer is entitled to all of the following:

1. Notification within five business days of the release of the information, including specificity as to the information released and the third party recipient of the information.
2. File a complaint with the Federal Trade Commission.
3. File a complaint with the Delaware Department of Justice.
4. In a civil action against the consumer reporting agency recover:
    a. injunctive relief to prevent or restrain further violation of the security freeze, and/or
    b. a civil penalty in an amount not to exceed $10,000 for each violation plus any damages available under other civil laws, and
    c. reasonable expenses, court costs, investigative costs, and attorney's fees.

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