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DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1 FOR
SENATE BILL NO. 109
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NOS. 4,5,7 & 8

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:

Section 1. Amend Title 6, Delaware Code by adding a new Chapter 22 to read as follows:

“Chapter 22. Credit and Identity Theft Protection.

§2201. Short Title.

This Chapter shall be known as the ‘Clean Credit and Identity Theft Prevention Act.’

§2202. Definitions.

For the purposes of this Chapter, the following terms shall have the following meanings:

- (1) The term ‘person’ means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.
- (2) ‘Consumer’ means an individual who is a resident of Delaware.
- (3) ‘Consumer reporting agency’ means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or

evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(4) '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 score, 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, credit scoring or insurance 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.

(5) 'Credit card' has the same meaning as in section 103 of the Truth in Lending Act.

(6) '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.

(7) '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.

§2203. Security Freeze.

(a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) '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.

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

(b) Security Freeze: Timing, Covered Entities, Cost.

(1) A consumer may elect to place a 'security freeze' on his or her credit report by making a request by mail or, through an electronic mail method when such method is made available. By January 31, 2009, consumer reporting agencies shall make available an electronic mail method of requesting a security freeze.

(2) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a consumer's request. Within one year of this Act's effective date, a consumer reporting agency shall place a security freeze on a consumer's credit report no later than 3 business days after receiving a request from a consumer.

(3) 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 period of time, or when permanently lifting the freeze.

(4) If the consumer wishes to allow his or her credit report to be accessed for a specific period of time while a freeze is in place, he or she shall contact the consumer reporting agency, at a point of contact made available by the agency to receive requests such as via telephone, U. S. mail, certified mail, overnight mail, or secure electronic mail, with a request that the freeze be temporarily lifted, and provide the following:

- a. proper identification,
- b. the unique personal identification number or password provided by the consumer reporting agency pursuant to paragraph (3) of subsection (b), and
- c. the time period for which the report shall be available to users of the credit report..

(5) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to paragraph (4) of subsection (b) of this section shall comply with the request no later than three business days after receiving the request. By no later than January 31, 2009, a consumer reporting agency shall honor such a request made by electronic mail or by telephone within fifteen minutes

of receiving the request.

(6) A consumer reporting agency shall develop procedures involving the use of telephone, or upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act [E-Sign] 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 paragraph (4) of subsection (b) in an expedited manner.

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

a. upon consumer request, pursuant to paragraph (4) or paragraph (9) of subsection (b);

b. 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.

(8) 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 period of time, the third party may treat the application as incomplete.

(9) 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:

a. proper identification, and

b. the unique personal identification number or password provided by the consumer reporting agency pursuant to paragraph (3) of subsection (b).

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

(11) 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.

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

- a. 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.
- b. a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under paragraph (4) of subsection (b) for purposes of facilitating the extension of credit or other permissible use.
- c. any person or entity acting pursuant to a court order, warrant, or subpoena.
- d. a State or local agency which administers a program for establishing and enforcing child support obligations.
- e. the Department of Justice, law enforcement agencies, and the Department of Health and Social Services and their agents or assigns acting to investigate fraud.
- f. the State 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.
- g. a person or entity for the purposes of prescreening or postscreening as permitted by the Federal Fair Credit Reporting Act.
- h. any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.
- i. 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.
- j. any property and casualty insurance company for use only in setting or adjusting a rate or underwriting for property and casualty insurance purposes.

(13) A consumer reporting agency may charge a consumer for a security freeze service only in the following discrete circumstances: (i) \$20.00 for the initial application for the consumer's first personal identification number or password and (ii) if the consumer fails to retain the original personal identification number or password provided by the agency, the consumer may not be charged for a one-time reissue of the same or a new personal identification number or password; however, the consumer may be charged no more than \$20.00 for subsequent instances of loss and reissuance of a new personal identification number or password. Notwithstanding the forgoing, no consumer who has been a victim of

identity theft shall be charged any fee for placement of a security freeze on his or her report.

(14) The following persons are not required to place a security freeze on a credit report:

a. A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency.

b. A check services or fraud prevention services company which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments.

c. A deposit account information service company which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(c) 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, the following notice shall be included:

Delaware Consumers Have the Right to Obtain a Security Freeze.

You may obtain a security freeze on your credit report for no more than \$20.00 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 Delaware law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval. You must separately request, by certified mail, that it be frozen by the three consumer reporting agencies and pay each a \$20.00 fee to do so. After January 31, 2009, you will be able to request this freeze from the agencies by e-mail.

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, you will be sent 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 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 period of time for which the report shall be available to users of the credit report.
4. 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. By January 31, 2009, the consumer reporting agency must temporarily lift the freeze within 15 minutes of 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 a new credit, loan, utility, telephone, or insurance account, 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 with enough advance notice before you apply for new credit for the lifting to take effect. Until January 31, 2009, you should lift the freeze at least 3 business days before applying, and after that date you should lift the freeze at least 15 minutes before applying for a new account.

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.”

(d) Violations; Penalties.

If a consumer reporting agency negligently, 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) 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 up to \$1,000 for each violation plus any damages available under other civil laws, and

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

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

§2204. Right to File a Police Report Regarding Identity Theft

(a) A person who knows or reasonably believes that he or she has been the victim of identity theft may contact the police 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 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.”

Section 2. The Bank Commissioner, 24 months after enactment, shall deliver to the Governor, President Pro Tempore of the Senate and the Speaker of the House, a report outlining (1) the feasibility of the requirement for temporarily removing a consumer's request for a credit freeze within 15 minutes, and on the industry's progress and efforts toward progress, on meeting this requirement, and (2) the feasibility of developing a secure electronic mail method of requesting a security freeze, and the industry's progress and effort toward meeting the requirements.

Section 3. Severability Clause. The provisions of this Act are severable. If any phrase, clause, sentence, provision or section is declared to be invalid or preempted, in whole or in part, by federal law or regulation, the validity of the remainder of this Act shall not be affected thereby.

“Section 4. This Act becomes effective 90 days after its enactment into law.”.