

HOUSE BILL 314

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

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AN ACT

RELATING TO CREDIT REPORTS; AMENDING THE FAIR CREDIT REPORTING AND IDENTITY SECURITY ACT TO ALLOW PLACEMENT OF A SECURITY FREEZE ON THE CREDIT REPORT OF A PROTECTED CONSUMER; ADDING DEFINITIONS TO THE FAIR CREDIT REPORTING AND IDENTITY SECURITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 56-3A-2 NMSA 1978 (being Laws 2007, Chapter 106, Section 2, as amended) is amended to read:

"56-3A-2. DEFINITIONS.--As used in the Fair Credit Reporting and Identity Security Act:

A. "consumer" means an individual who is a resident of New Mexico;

B. "consumer reporting agency" means any person that, for monetary fees, dues or on a cooperative nonprofit

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1 basis, regularly engages in the practice of assembling or
2 evaluating consumer credit information or other information on
3 consumers for the purpose of furnishing credit reports to third
4 parties;

5 C. "credit record" means a compilation of
6 information that:

7 (1) identifies a protected consumer; and

8 (2) is created by a consumer reporting agency
9 solely for the purpose of complying with the Fair Credit
10 Reporting and Identity Security Act;

11 [~~G-~~] D. "credit report" means a written, oral or
12 other communication of information by a consumer reporting
13 agency bearing on a consumer's credit worthiness, credit
14 standing, credit capacity, character, general reputation,
15 personal characteristics or mode of living that is used or
16 expected to be used or collected for the purpose of serving as
17 a factor in establishing the consumer's eligibility for credit,
18 insurance, investment, benefit, employment or other purpose as
19 authorized by the federal Fair Credit Reporting Act, 15 U.S.C.
20 Section 1681a;

21 [~~D-~~] E. "declaration of removal" means an identity
22 theft report with a sworn affidavit that is delivered by
23 regular or certified mail or facsimile or delivered
24 electronically to a consumer reporting agency that operates
25 within New Mexico and which affidavit states:

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1 (1) that the consumer is entitled to removal
2 of information in the consumer reporting agency's files on
3 grounds that the consumer is the victim of identity theft; and

4 (2) the address at which the consumer is
5 available for service of process by the consumer reporting
6 agency and proper identifying information by which the consumer
7 can be identified by the consumer reporting agency;

8 F. "operates within New Mexico" means accepting or
9 maintaining a credit report on a person that resides within New
10 Mexico;

11 [~~E-~~] G. "person" means an individual, corporation,
12 firm, association, organization, trust, estate, cooperative,
13 business, partnership, limited liability company, joint
14 venture, governmental agency or subdivision or any legal or
15 commercial entity;

16 H. "protected consumer" means an individual who is:
17 (1) under the age of sixteen years at the time
18 a request for the placement of a security freeze is made; or

19 (2) an incapacitated person or a protected
20 person for whom a guardian or conservator has been appointed;

21 I. "representative" means a person who provides to
22 a consumer reporting agency sufficient proof of authority to
23 act on behalf of a protected consumer;

24 [~~F-~~] J. "security freeze" means a notice placed in
25 a consumer's or protected consumer's credit report, at the

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1 request of the consumer, protected consumer or representative
2 and subject to certain exceptions, that prohibits a consumer
3 reporting agency from releasing the consumer's or protected
4 consumer's credit report or score relating to the extension of
5 credit or the opening of new accounts without the express
6 authorization of the consumer, [~~and~~

7 ~~G. "operates within New Mexico" means accepting or~~
8 ~~maintaining a credit report on a person that resides within New~~
9 ~~Mexico.] protected consumer or representative;~~

10 K. "sufficient proof of authority" means
11 documentation that shows a representative has authority to act
12 on behalf of a protected consumer and includes:

13 (1) an order issued by a court of law;

14 (2) a lawfully executed and valid power of
15 attorney; or

16 (3) a written, notarized statement signed by a
17 representative that expressly describes the authority of the
18 representative to act on behalf of a protected consumer; and

19 L. "sufficient proof of identification" means
20 information or documentation that identifies a protected
21 consumer or a representative of a protected consumer and
22 includes:

23 (1) a social security number or a copy of a
24 social security card issued by the social security
25 administration;

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1 (2) a certified or official copy of a birth
2 certificate issued by the entity authorized to issue the birth
3 certificate; or

4 (3) a copy of a driver's license, an
5 identification card issued by the motor vehicle division of the
6 taxation and revenue department or any other government-issued
7 identification."

8 SECTION 2. Section 56-3A-3 NMSA 1978 (being Laws 2007,
9 Chapter 106, Section 3, as amended) is amended to read:

10 "56-3A-3. SECURITY FREEZE--CONSUMERS--PROTECTED
11 CONSUMERS.--

12 A. A consumer may elect to place a security freeze
13 on the consumer's credit report by making a request to a
14 consumer reporting agency by means of certified or regular mail
15 sent to an address designated by the consumer reporting agency,
16 or by means of a telephone or a secure electronic method if
17 such means are provided by the agency. A consumer shall
18 provide any personal identification required by the consumer
19 reporting agency and pay a fee, if applicable.

20 B. A consumer reporting agency shall place a
21 security freeze on a consumer's credit report no later than
22 three business days after receiving a request from the
23 consumer.

24 C. Within five business days of placing a security
25 freeze on a consumer's credit report, a consumer reporting

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1 agency shall:

2 (1) send a written confirmation of the
3 security freeze to the consumer; and

4 (2) provide the consumer with a unique
5 personal identification number, password or similar device to
6 be used by the consumer when providing authorization for the
7 release of the consumer's credit report to a specific person or
8 for a specific period of time or for permanent removal of the
9 freeze.

10 D. While a security freeze is in effect, a consumer
11 may authorize a consumer reporting agency to release the
12 consumer's credit report to a specific person or to release the
13 credit report for a specific period of time by contacting the
14 consumer reporting agency by regular or certified mail ~~[or by~~
15 ~~telephone, and as of September 1, 2008, by contacting the~~
16 ~~consumer reporting agency by mail]~~, by telephone or by a secure
17 electronic method, and providing:

18 (1) proper identification;

19 (2) the unique personal identification number,
20 password or similar device;

21 (3) information regarding the party that is to
22 have access to the credit report or the time period during
23 which the credit report can be released; and

24 (4) payment of a fee, if applicable.

25 E. A consumer reporting agency that receives a

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1 request pursuant to Subsection D of this section shall release
2 a consumer's credit report as requested by the consumer:
3 ~~[within three business days after the business day on which the~~
4 ~~consumer's request by regular or certified mail or by telephone~~
5 ~~is received by the consumer reporting agency. As of September~~
6 ~~1, 2008, a consumer reporting agency that receives a request~~
7 ~~pursuant to Subsection D of this section shall release a~~
8 ~~consumer's credit report as requested by the consumer within~~
9 ~~fifteen minutes after the consumer's request is received by the~~
10 ~~consumer reporting agency through the use of a telephone or a~~
11 ~~secure electronic method provided by the agency, which may~~
12 ~~include the use of the internet, facsimile or other electronic~~
13 ~~means; provided that the consumer reporting agency is not~~
14 ~~required to release the credit report within fifteen minutes~~
15 ~~unless the consumer's request is received by the consumer~~
16 ~~reporting agency between the hours of 6:00 a.m. and 9:30 p.m.~~
17 ~~mountain standard or mountain daylight time, as applicable,~~
18 ~~Sunday through Saturday]~~

19 (1) within three business days after the
20 business day on which the consumer's request was made by
21 regular or certified mail; or

22 (2) within fifteen minutes if the consumer's
23 request was made by telephone or a secure electronic method
24 between the hours of 6:00 a.m. and 9:30 p.m. mountain standard
25 or mountain daylight time; provided that the consumer reporting

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1 agency is not required to release the credit report within
2 fifteen minutes if the consumer's request is received by the
3 consumer reporting agency between the hours of 9:30 p.m. and
4 6:00 a.m. mountain standard or mountain daylight time.

5 F. A consumer reporting agency need not release a
6 credit report within the time periods set forth in Subsection E
7 of this section if:

8 (1) the consumer fails to meet the
9 requirements of Subsection D of this section; or

10 (2) the consumer reporting agency's ability to
11 remove the security freeze within fifteen minutes is prevented
12 by:

13 (a) an act of God, including fire,
14 earthquake, hurricane, storm or similar natural disaster or
15 phenomenon;

16 (b) unauthorized or illegal acts by a
17 third party, including terrorism, sabotage, riots, vandalism,
18 labor strikes or disputes disrupting operations or similar
19 occurrences;

20 (c) operational interruption, including
21 electrical failure, unanticipated delay in equipment or
22 replacement part delivery, computer hardware or software
23 failure inhibiting response time or similar disruption;

24 (d) governmental action, including
25 emergency orders or regulations, judicial or law enforcement

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1 actions or similar directives;

2 (e) regularly scheduled maintenance of,
3 or updates to, the consumer reporting agency's systems during
4 other than normal business hours; or

5 (f) commercially reasonable maintenance
6 of, or repair to, the consumer reporting agency's systems that
7 is unexpected or unscheduled.

8 G. If a consumer reporting agency erroneously
9 releases information on a credit report while a security freeze
10 is in effect and without a consumer's authorization, it shall
11 notify the consumer of the release of information within five
12 business days of the agency's discovery of the erroneous
13 release of information and inform the consumer of the specific
14 information released and the third party to whom it has been
15 released.

16 H. A security freeze shall remain in place until a
17 consumer requests its removal. A consumer reporting agency
18 shall remove the security freeze within three business days
19 after receiving a request from a consumer who provides the
20 unique personal identification number, password or similar
21 device and proper identification.

22 I. A consumer reporting agency may charge a
23 consumer a fee of:

24 (1) no more than ten dollars (\$10.00) for the
25 placement of a security freeze or for processing a declaration

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1 of removal [~~A consumer reporting agency may charge a fee of~~];

2 (2) no more than five dollars (\$5.00) for the
3 release of a credit report, upon which a security freeze has
4 been placed, to a specific person or for a specific period of
5 time [~~A consumer reporting agency may charge a fee of~~]; and

6 (3) no more than five dollars (\$5.00) for the
7 removal of a security freeze or to change a declaration of
8 removal; provided that a fee shall not be charged to a consumer
9 who is sixty-five years of age or older or to a victim of
10 identity theft who provides a valid police or investigative
11 report filed with a law enforcement agency alleging the crime
12 of identity theft. A consumer reporting agency shall accept
13 payment by check sent via regular or certified mail and by
14 debit or credit card via a secure electronic method and
15 telephone and shall accept automatic clearinghouse and
16 electronic fund transfer payments.

17 J. If a consumer's credit report was frozen due to
18 a material misrepresentation of fact by the consumer and a
19 consumer reporting agency intends to remove the freeze, the
20 consumer reporting agency shall notify the consumer in writing
21 five business days prior to removing the security freeze on the
22 consumer's credit report.

23 K. A consumer reporting agency may advise a third
24 party that a security freeze is in effect with respect to a
25 consumer's credit report. A consumer reporting agency shall

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1 not suggest or otherwise state or imply to a third party that
2 the security freeze reflects a negative credit score, history,
3 report or rating.

4 L. The provisions of this section do not prevent a
5 consumer reporting agency from releasing a consumer's credit
6 report:

7 (1) to a person or the person's subsidiary,
8 affiliate, agent or assignee with which the consumer has or,
9 prior to assignment, had an account, contract or debtor-
10 creditor relationship for the purpose of reviewing the account
11 or collecting the financial obligation owing for the account,
12 contract or debt, or to a prospective assignee of a financial
13 obligation owing by the consumer in conjunction with the
14 proposed purchase of the financial obligation. As used in this
15 paragraph, "reviewing the account" includes activities related
16 to account maintenance, monitoring, credit line increases and
17 account upgrades and enhancements;

18 (2) to a subsidiary, affiliate, agent,
19 assignee or prospective assignee of a person to whom access has
20 been granted by the consumer pursuant to Subsection D of this
21 section for the purpose of facilitating the extension of credit
22 or other permissible use;

23 (3) to a person or entity administering a
24 credit file monitoring subscription service to which the
25 consumer has subscribed;

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1 (4) to a person or entity for the purpose of
2 providing a consumer with a copy of the consumer's credit
3 report upon the consumer's request;

4 (5) to a person acting pursuant to a court
5 order, warrant or subpoena;

6 (6) to the child support enforcement division
7 of the human services department for the purpose of carrying
8 out its statutory duties of establishing and collecting child
9 support obligations;

10 (7) to a governmental agency acting to
11 investigate fraud, to investigate or collect delinquent taxes
12 or unpaid court orders or to fulfill any of its other statutory
13 duties;

14 (8) to a person for the purposes of
15 prescreening as defined by the federal Fair Credit Reporting
16 Act;

17 (9) from a consumer reporting agency's
18 database or file that consists only of and is used solely for
19 one or more of the following:

20 (a) criminal record information;

21 (b) tenant screening;

22 (c) employment screening; or

23 (d) fraud prevention or detection; or

24 (10) to a person or entity for use in setting
25 or adjusting an insurance rate, adjusting an insurance claim or

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1 underwriting for insurance purposes.

2 M. The following entities are not required to place
3 a security freeze on a credit report:

4 (1) a consumer reporting agency that acts only
5 as a reseller of credit information by assembling and merging
6 information contained in the database of another consumer
7 reporting agency or multiple consumer credit reporting agencies
8 and does not maintain a permanent database of credit
9 information from which new consumer credit reports are
10 produced. However, a consumer reporting agency acting as a
11 reseller shall honor any security freeze placed on a consumer
12 credit report by another consumer reporting agency;

13 (2) a check services or fraud prevention
14 services company that issues reports on incidents of fraud or
15 authorizations for the purpose of approving or processing
16 negotiable instruments, electronic funds transfers or similar
17 methods of payment; or

18 (3) a deposit account information service
19 company that issues reports regarding account closures due to
20 fraud, substantial overdrafts, automatic teller machine abuse
21 or similar negative information regarding a consumer to
22 inquiring banks or other financial institutions for use only in
23 reviewing a consumer request for a deposit account at the
24 inquiring bank or financial institution.

25 N. A consumer reporting agency shall place a

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1 security freeze for a protected consumer if:

2 (1) the consumer reporting agency receives a
3 request from the representative for the placement of the
4 security freeze; and

5 (2) the representative:

6 (a) submits the request to the consumer
7 reporting agency at the address or other point of contact and
8 in the manner specified by the consumer reporting agency;

9 (b) provides to the consumer reporting
10 agency sufficient proof of identification of the protected
11 consumer and the representative;

12 (c) provides to the consumer reporting
13 agency sufficient proof of authority to act on behalf of the
14 protected consumer; and

15 (d) pays to the consumer reporting
16 agency a fee as provided in Subsection V of this section.

17 0. If a consumer reporting agency does not have a
18 credit report pertaining to a protected consumer when the
19 consumer reporting agency receives a request under Paragraph
20 (1) of Subsection N of this section, the consumer reporting
21 agency shall create a credit record for the protected consumer;
22 provided that a credit record may not be created or used to
23 consider the protected consumer's credit worthiness, credit
24 standing, credit capacity, character, general reputation,
25 personal characteristics or mode of living.

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1 P. Within thirty days after receiving a request
2 that meets the requirements of Subsection N or O of this
3 section, a consumer reporting agency shall place a security
4 freeze for the protected consumer.

5 Q. Unless a security freeze for a protected
6 consumer is removed in accordance with Subsection S, T, U or W
7 of this section, a consumer reporting agency may not release
8 the protected consumer's credit report or credit record or any
9 information derived from the protected consumer's credit report
10 or credit record.

11 R. A security freeze for a protected consumer shall
12 remain in effect until:

13 (1) the protected consumer or the
14 representative requests the consumer reporting agency to remove
15 the security freeze in accordance with Subsection S or T of
16 this section; or

17 (2) the security freeze is removed in
18 accordance with Subsection W of this section.

19 S. If a protected consumer wishes to remove a
20 security freeze for the protected consumer, the protected
21 consumer shall:

22 (1) submit a request for the removal of the
23 security freeze to the consumer reporting agency at the address
24 or other point of contact and in the manner specified by the
25 consumer reporting agency;

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1 (2) provide to the consumer reporting agency:

2 (a) proof that the sufficient proof of
3 authority for the representative to act on behalf of the
4 protected consumer is no longer valid; and

5 (b) sufficient proof of identification
6 of the protected consumer; and

7 (3) pay to the consumer reporting agency a fee
8 as provided in Subsection V of this section.

9 T. If a representative wishes to remove a security
10 freeze for the protected consumer, the representative shall:

11 (1) submit a request for the removal of the
12 security freeze to the consumer reporting agency at the address
13 or other point of contact and in the manner specified by the
14 consumer reporting agency;

15 (2) provide to the consumer reporting agency:

16 (a) sufficient proof of identification
17 of the protected consumer and the representative; and

18 (b) sufficient proof of authority to act
19 on behalf of the protected consumer; and

20 (3) pay to the consumer reporting agency a fee
21 as provided in Subsection V of this section.

22 U. Within thirty days after receiving a request
23 that meets the requirements of Subsection S or T of this
24 section, the consumer reporting agency shall remove the
25 security freeze for the protected consumer.

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1 V. A consumer reporting agency may charge a
2 reasonable fee, not exceeding five dollars (\$5.00) for each
3 placement or removal of a security freeze for a protected
4 consumer; provided that the consumer reporting agency may not
5 charge any fee under this section if the consumer reporting
6 agency has a consumer report pertaining to the protected
7 consumer and:

8 (1) the representative has obtained a police
9 report or affidavit of alleged identity fraud against the
10 protected consumer and provides a copy of the report to the
11 consumer reporting agency; or

12 (2) a request for the placement or removal of
13 a security freeze is for a protected consumer who is under the
14 age of sixteen years at the time of the request.

15 W. A consumer reporting agency may remove a
16 security freeze for a protected consumer or delete a credit
17 record of a protected consumer if the security freeze was
18 placed or the credit record was created based on a material
19 misrepresentation of fact by the protected consumer or the
20 representative.

21 X. This section shall be enforced solely by the
22 attorney general.

23 Y. This section does not apply to the use of a
24 protected consumer's credit report or credit record by:

25 (1) a person administering a credit report

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1 monitoring subscription service to which the protected consumer
2 has subscribed or the representative has subscribed on behalf
3 of the protected consumer;

4 (2) a person providing the protected consumer
5 or the representative with a copy of the protected consumer's
6 credit report on request of the protected consumer or the
7 representative;

8 (3) a check services or fraud prevention
9 services company that issues reports on incidents of fraud or
10 authorizations for the purpose of approving or processing
11 negotiable instruments, electronic funds transfers or similar
12 payment methods;

13 (4) a deposit account information service
14 company that issues reports regarding account closures due to
15 fraud, substantial overdrafts, automated teller machine abuse
16 or similar negative information regarding a protected consumer
17 to inquiring banks or other financial institutions for use only
18 in reviewing a consumer request for a deposit account at the
19 inquiring bank or financial institution;

20 (5) an insurance company for the purpose of
21 conducting its ordinary business;

22 (6) a consumer reporting agency that acts only
23 to resell credit information by assembling and merging
24 information contained in a database of another consumer
25 reporting agency or multiple consumer reporting agencies and

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1 does not maintain a permanent database of credit information
2 from which new credit reports are produced; or

3 (7) a consumer reporting agency's database or
4 file that consists of information concerning and used for one
5 or more of the following, but not for credit granting purposes:

- 6 (a) criminal record information;
- 7 (b) fraud prevention or detection;
- 8 (c) personal loss history information;

9 and

10 (d) employment, tenant or individual
11 background screening."

