

LEGISLATIVE BILL 674

Approved by the Governor May 24, 2007

Introduced by Lathrop, 12; Rogert, 16; White, 8

FOR AN ACT relating to consumer protection; to adopt the Credit Report Protection Act; to prohibit certain uses of social security numbers; to provide a penalty; and to provide operative dates.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 15 of this act shall be known and may be cited as the Credit Report Protection Act.

Sec. 2. For purposes of the Credit Report Protection Act:

(1) Consumer reporting agency means any person which, for monetary fees, for 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 and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

(2) File, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored;

(3) Security freeze means a notice placed in a consumer's file as provided in section 3 of this act that prohibits the consumer reporting agency from releasing a credit report, or any other information derived from the file, in connection with the extension of credit or the opening of a new account, without the express authorization of the consumer; and

(4) Victim of identity theft means a consumer who has a copy of an official police report evidencing that the consumer has alleged to be a victim of identity theft.

Sec. 3. A consumer, including a minor at the request of a parent or custodial parent or guardian if appointed, may elect to place a security freeze on his or her file by making a request by certified mail to the consumer reporting agency.

Sec. 4. If a security freeze is in place with respect to a consumer's file, the consumer reporting agency shall not release a credit report or any other information derived from the file to a third party without the prior express authorization of the consumer. This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to a consumer's file.

Sec. 5. (1) A consumer reporting agency shall place a security freeze on a file no later than three business days after receiving a request by certified mail.

(2) Until July 1, 2008, a consumer reporting agency shall, within ten business days after receiving a request, send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of a credit report or any other information derived from his or her file for a specified period of time. Beginning July 1, 2008, a consumer reporting agency shall send such confirmation and provide such identification number or password to the consumer within five business days after receiving a request.

(3) The written confirmation required under subsection (2) of this section shall include a warning which shall read as follows: WARNING TO PERSONS SEEKING A CREDIT FREEZE AS PERMITTED BY THE CREDIT REPORT PROTECTION ACT: YOU MAY BE DENIED CREDIT AS A RESULT OF A FREEZE PLACED ON YOUR CREDIT.

Sec. 6. (1) When a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting the security freeze, including the process for allowing access to his or her credit report or any other information derived from his or her file for a specified period of time by temporarily lifting the security freeze.

(2) If a consumer wishes to allow his or her credit report or any other information derived from his or her file to be accessed for a specified period of time by temporarily lifting the security freeze, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Proper identification, which means that information generally deemed sufficient to identify a person. Only if the consumer is unable to provide sufficiently self-identifying information may a consumer reporting agency require additional information concerning the consumer's employment and

personal or family history in order to verify the consumer's identity;

(b) The unique personal identification number or password provided by the consumer reporting agency under section 5 of this act; and

(c) The proper information regarding the specified time period.

(3) (a) Until January 1, 2009, a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on his or her file shall comply with the request no later than three business days after receiving the request.

(b) A consumer reporting agency shall develop procedures involving the use of a telephone, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a security freeze on his or her file in an expedited manner. By January 1, 2009, a consumer reporting agency shall comply with a request to temporarily lift a security freeze within fifteen minutes after receiving such request by telephone or through a secure electronic method.

(4) A consumer reporting agency is not required to temporarily lift a security freeze within the time provided in subsection (3) of this section if:

(a) The consumer fails to meet the requirements of subsection (2) of this section; or

(b) The consumer reporting agency's ability to temporarily lift the security freeze within the time provided in subsection (3) of this section is prevented by:

(i) An act of God, including fire, earthquake, hurricane, storm, or similar natural disaster or phenomena;

(ii) An unauthorized or illegal act by a third party, including terrorism, sabotage, riot, vandalism, labor strike or dispute disrupting operations, or similar occurrence;

(iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time, or similar disruption;

(iv) Governmental action, including an emergency order or regulation, judicial or law enforcement action, or similar directive;

(v) Regularly scheduled maintenance, during other than normal business hours, of the consumer reporting agency's system or updates to such system;

(vi) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's system that is unexpected or unscheduled; or

(vii) Receipt of a removal request outside of normal business hours.

For purposes of this subsection, normal business hours means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m., in the applicable time zone in this state.

Sec. 7. (1) A security freeze shall remain in place, subject to being put on hold or temporarily lifted as otherwise provided in this section, until the earlier of the date that the consumer reporting agency receives a request from the consumer to remove the freeze under section 8 of this act or seven years after the date the security freeze was put in place.

(2) A consumer reporting agency may place a hold on a file due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to release a hold on a file, the consumer reporting agency shall notify the consumer in writing three business days prior to releasing the hold on the file.

(3) A consumer reporting agency shall temporarily lift a security freeze only upon request by the consumer under section 6 of this act.

(4) A consumer reporting agency shall remove a security freeze upon the earlier of the date that the consumer reporting agency receives a request from the consumer to remove the freeze under section 8 of this act or seven years after the date the security freeze was put in place.

Sec. 8. A consumer reporting agency shall remove a security freeze within three business days after receiving a request for removal from the consumer who provides both of the following:

(1) Proper identification as specified in subdivision (2)(a) of section 6 of this act; and

(2) The unique personal identification number or password referred to in subdivision (2)(b) of section 6 of this act.

Sec. 9. (1) A consumer reporting agency may charge a fee of fifteen dollars for placing a security freeze unless:

(a) The consumer is a minor; or

(b)(i) The consumer is a victim of identity theft; and

(ii) The consumer provides the consumer reporting agency with a copy of an official police report documenting the identity theft.

(2) A consumer reporting agency shall reissue the same or a new

personal identification number or password required under section 5 of this act one time without charge and may charge a fee of no more than five dollars for subsequent reissuance of the personal identification number or password.

Sec. 10. If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a file without sending a written confirmation of the change to the consumer within thirty days after the change is made: Name, date of birth, social security number, and address. In the case of an address change, the written confirmation shall be sent to both the new address and the former address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters.

Sec. 11. (1) A consumer reporting agency may not suggest or otherwise state or imply to a third party that a security freeze on a consumer's file reflects a negative credit score, history, report, or rating.

(2) If a third party requests access to a credit report or any other information derived from a file in connection with an application for credit or the opening of an account and the consumer has placed a security freeze on his or her file and does not allow his or her file to be accessed during that specified period of time, the third party may treat the application as incomplete.

Sec. 12. The Credit Report Protection Act does not prohibit a consumer reporting agency from furnishing to a governmental agency a consumer's name, address, former address, place of employment, or former place of employment.

Sec. 13. The Credit Report Protection Act does not apply to the use of a credit report or any information derived from the file by any of the following:

(1) A person or entity, a subsidiary, affiliate, or agent of that person or entity, an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subdivision, reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under section 6 of this act for purposes of facilitating the extension of credit or other permissible use;

(3) Any federal, state, or local governmental entity, including, but not limited to, a law enforcement agency, a court, or an agent or assignee of a law enforcement agency or court;

(4) A private collection agency acting under a court order, warrant, or subpoena;

(5) Any person or entity for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on the operative date of this section;

(6) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;

(7) Any person or entity for the purpose of providing a consumer with a copy of the consumer's credit report or any other information derived from his or her file upon the consumer's request; and

(8) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

Sec. 14. The following entities are not consumer reporting agencies for purposes of the Credit Report Protection Act and are not required to place a security freeze on a file under section 3 of this act:

(1) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;

(2) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine 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; and

(3) 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 credit reports are produced. A consumer reporting agency shall honor any security freeze placed on a file by another consumer reporting agency.

Sec. 15. The Attorney General shall enforce the Credit Report Protection Act. For purposes of the act, the Attorney General may issue subpoenas, adopt and promulgate rules and regulations, and seek injunctive relief and a monetary award for civil penalties, attorney's fees, and costs. Any person who violates the act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General may also seek and recover actual damages for each consumer injured by a violation of the act.

Sec. 16. (1) For purposes of this section:

(a) Employer means a person which employs any individual within this state as an employee;

(b) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (i) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (ii) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (iii) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(c) Person means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof;

(d) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm; and

(e) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(2) Except as otherwise provided in subsection (3) of this section, an employer shall not:

(a) Publicly post or publicly display in any manner more than the last four digits of an employee's social security number, including intentional communication of more than the last four digits of the social security number or otherwise making more than the last four digits of the social security number available to the general public or to an employee's coworkers;

(b) Require an employee to transmit more than the last four digits of his or her social security number over the Internet unless the connection is secure or the information is encrypted;

(c) Require an employee to use more than the last four digits of his or her social security number to access an Internet web site unless a password, unique personal identification number, or other authentication device is also required to access the Internet web site; or

(d) Require an employee to use more than the last four digits of his or her social security number as an employee number for any type of employment-related activity.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, an employer shall be permitted to use more than the last four digits of an employee's social security number only for:

(i) Compliance with state or federal laws, rules, or regulations;

(ii) Internal administrative purposes, including provision of more than the last four digits of social security numbers to third parties for such purposes as administration of personnel benefit provisions for the employer and employment screening and staffing; and

(iii) Commercial transactions freely and voluntarily entered into by the employee with the employer for the purchase of goods or services.

(b) The following uses for internal administrative purposes described in subdivision (a)(ii) of this subsection shall not be permitted:

(i) As an identification number for occupational licensing;

(ii) As an identification number for drug-testing purposes except when required by state or federal law;

(iii) As an identification number for company meetings;

(iv) In files with unrestricted access within the company;

(v) In files accessible by any temporary employee unless the temporary employee is bonded or insured under a blanket corporate surety bond or equivalent commercial insurance; or

(vi) For posting any type of company information.

(4) An employer who violates this section is guilty of a Class V misdemeanor.

(5) Evidence of a conviction under this section is admissible in evidence at a civil trial as evidence of the employer's negligence.

Sec. 17. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 17 of this act become operative on September 1, 2007. Section 16 of this act becomes operative on September 1, 2008.