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AN ACT

RELATING TO CONSUMER CREDIT; PROVIDING FOR A SECURITY FREEZE
ON THE RELEASE OF CONSUMER CREDIT INFORMATION; ENACTING THE
CREDIT REPORT SECURITY ACT; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Credit Report Security Act".

Section 2. DEFINITIONS.--As used in the Credit Report
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
basis, regularly engages in the practice of assembling or
evaluating consumer credit information or other information
on consumers for the purpose of furnishing credit reports to
third parties;

C. "credit report" means a written, oral or other
communication of 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 that is used or expected to
be used or collected for the purpose of serving as a factor
in establishing the consumer's eligibility for credit,

1 insurance, investment, benefit, employment or other purpose
2 as authorized by the federal Fair Credit Reporting Act, 15
3 U.S.C. Section 1681a;

4 D. "person" means an individual, corporation,
5 firm, association, organization, trust, estate, cooperative,
6 business, partnership, limited liability company, joint
7 venture, governmental agency or subdivision or any legal or
8 commercial entity; and

9 E. "security freeze" means a notice placed in a
10 consumer's credit report, at the request of the consumer and
11 subject to certain exceptions, that prohibits a consumer
12 reporting agency from releasing the consumer's credit report
13 or score relating to the extension of credit or the opening
14 of new accounts without the express authorization of the
15 consumer.

16 Section 3. SECURITY FREEZE.--

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

25 B. A consumer reporting agency shall place a

1 security freeze on a consumer's credit report no later than
2 three business days after receiving a request from the
3 consumer.

4 C. Within five business days of placing a security
5 freeze on a consumer's credit report, a consumer reporting
6 agency shall:

7 (1) send a written confirmation of the
8 security freeze to the consumer; and

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

15 D. While a security freeze is in effect, a
16 consumer may authorize a consumer reporting agency to release
17 the consumer's credit report to a specific person or to
18 release the credit report for a specific period of time by
19 contacting the consumer reporting agency by regular or
20 certified mail or by telephone, and as of September 1, 2008,
21 by contacting the consumer reporting agency by mail, by
22 telephone or by a secure electronic method, and providing:

23 (1) proper identification;

24 (2) the unique personal identification
25 number, password or similar device;

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

4 (4) payment of a fee, if applicable

5 E. A consumer reporting agency that receives a
6 request pursuant to Subsection D of this section shall
7 release a consumer's credit report as requested by the
8 consumer within three business days after the business day on
9 which the consumer's request by regular or certified mail or
10 by telephone is received by the consumer reporting agency.

11 As of September 1, 2008, a consumer reporting agency that
12 receives a request pursuant to Subsection D of this section
13 shall release a consumer's credit report as requested by the
14 consumer within fifteen minutes after the consumer's request
15 is received by the consumer reporting agency through the use
16 of a telephone or a secure electronic method provided by the
17 agency, which may include the use of the internet, facsimile
18 or other electronic means; provided that the consumer
19 reporting agency is not required to release the credit report
20 within fifteen minutes unless the consumer's request is
21 received by the consumer reporting agency between the hours
22 of 6:00 a.m. and 9:30 p.m. mountain standard or mountain
23 daylight time, as applicable, Sunday through Saturday.

24 F. A consumer reporting agency need not release a
25 credit report within the time periods set forth in Subsection

1 E of this section if:

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

4 (2) the consumer reporting agency's ability
5 to remove the security freeze within fifteen minutes is
6 prevented by:

7 (a) an act of God, including fire,
8 earthquake, hurricane, storm or similar natural disaster or
9 phenomenon;

10 (b) unauthorized or illegal acts by a
11 third party, including terrorism, sabotage, riots, vandalism,
12 labor strikes or disputes disrupting operations or similar
13 occurrences;

14 (c) operational interruption, including
15 electrical failure, unanticipated delay in equipment or
16 replacement part delivery, computer hardware or software
17 failure inhibiting response time or similar disruption;

18 (d) governmental action, including
19 emergency orders or regulations, judicial or law enforcement
20 actions or similar directives;

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

24 (f) commercially reasonable maintenance
25 of, or repair to, the consumer reporting agency's systems

1 that is unexpected or unscheduled.

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

10 H. A security freeze shall remain in place until a
11 consumer requests its removal. A consumer reporting agency
12 shall remove the security freeze within three business days
13 after receiving a request from a consumer who provides the
14 unique personal identification number, password or similar
15 device and proper identification.

16 I. A consumer reporting agency may charge a
17 consumer a fee of no more than ten dollars (\$10.00) for the
18 placement of a security freeze. A consumer reporting agency
19 may charge a fee of no more than five dollars (\$5.00) for the
20 release of a credit report, upon which a security freeze has
21 been placed, to a specific person or for a specific period of
22 time. A consumer reporting agency may charge a fee of no
23 more than five dollars (\$5.00) for the removal of a security
24 freeze. A fee shall not be charged to a consumer who is
25 sixty-five years of age or older or to a victim of identity

1 theft who provides a valid police or investigative report
2 filed with a law enforcement agency alleging the crime of
3 identity theft.

4 J. If a consumer's credit report was frozen due to
5 a material misrepresentation of fact by the consumer and a
6 consumer reporting agency intends to remove the freeze, the
7 consumer reporting agency shall notify the consumer in
8 writing five business days prior to removing the security
9 freeze on the consumer's credit report.

10 K. A consumer reporting agency may advise a third
11 party that a security freeze is in effect with respect to a
12 consumer's credit report. A consumer reporting agency shall
13 not suggest or otherwise state or imply to a third party that
14 the security freeze reflects a negative credit score,
15 history, report or rating.

16 L. The provisions of this section do not prevent a
17 consumer reporting agency from releasing a consumer's credit
18 report:

19 (1) to a person or the person's subsidiary,
20 affiliate, agent or assignee with which the consumer has or,
21 prior to assignment, had an account, contract or
22 debtor-creditor relationship for the purpose of reviewing the
23 account or collecting the financial obligation owing for the
24 account, contract or debt, or to a prospective assignee of a
25 financial obligation owing by the consumer in conjunction

1 with the proposed purchase of the financial obligation. As
2 used in this paragraph, "reviewing the account" includes
3 activities related to account maintenance, monitoring, credit
4 line increases and account upgrades and enhancements;

5 (2) to a subsidiary, affiliate, agent,
6 assignee or prospective assignee of a person to whom access
7 has been granted by the consumer pursuant to Subsection D of
8 this section for the purpose of facilitating the extension of
9 credit or other permissible use;

10 (3) to a person or entity administering a
11 credit file monitoring subscription service to which the
12 consumer has subscribed;

13 (4) to a person or entity for the purpose of
14 providing a consumer with a copy of the consumer's credit
15 report upon the consumer's request;

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

18 (6) to the child support enforcement
19 division of the human services department for the purpose of
20 carrying out its statutory duties of establishing and
21 collecting child support obligations;

22 (7) to a governmental agency acting to
23 investigate fraud, to investigate or collect delinquent taxes
24 or unpaid court orders or to fulfill any of its other
25 statutory duties;

1 (8) to a person for the purposes of
2 prescreening as defined by the federal Fair Credit Reporting
3 Act;

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

7 (a) criminal record information;

8 (b) tenant screening;

9 (c) employment screening; or

10 (d) fraud prevention or detection; or

11 (10) to a person or entity for use in
12 setting or adjusting an insurance rate, adjusting an
13 insurance claim or underwriting for insurance purposes.

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

16 (1) a consumer reporting agency that acts
17 only as a reseller of credit information by assembling and
18 merging information contained in the database of another
19 consumer reporting agency or multiple consumer credit
20 reporting agencies and does not maintain a permanent database
21 of credit information from which new consumer credit reports
22 are produced. However, a consumer reporting agency acting as
23 a reseller shall honor any security freeze placed on a
24 consumer credit report by another consumer reporting agency;

25 (2) a check services or fraud prevention

1 services company that issues reports on incidents of fraud or
2 authorizations for the purpose of approving or processing
3 negotiable instruments, electronic funds transfers or similar
4 methods of payment; or

5 (3) a deposit account information service
6 company that issues reports regarding account closures due to
7 fraud, substantial overdrafts, automatic teller machine abuse
8 or similar negative information regarding a consumer to
9 inquiring banks or other financial institutions for use only
10 in reviewing a consumer request for a deposit account at the
11 inquiring bank or financial institution.

12 Section 4. NOTICE OF RIGHTS.--At any time that a
13 consumer reporting agency is required to provide the consumer
14 with a summary of rights pursuant to Section 609 of the
15 federal Fair Credit Reporting Act, the following notice shall
16 be included:

17 "New Mexico Consumers Have the
18 Right to Obtain a Security Freeze

19 You may obtain a security freeze on your
20 credit report to protect your privacy and ensure
21 that credit is not granted in your name without
22 your knowledge. You have a right to place a
23 security freeze on your credit report pursuant to
24 the Credit Report Security Act.

25 The security freeze will prohibit a consumer

1 reporting agency from releasing any information in
2 your credit report without your express
3 authorization or approval.

4 The security freeze is designed to prevent
5 credit, loans and services from being approved in
6 your name without your consent. When you place a
7 security freeze on your credit report, you will be
8 provided with a personal identification number,
9 password or similar device to use if you choose to
10 remove the freeze on your credit report or to
11 temporarily authorize the release of your credit
12 report to a specific party or parties or for a
13 specific period of time after the freeze is in
14 place. To remove the freeze or to provide
15 authorization for the temporary release of your
16 credit report, you must contact the consumer
17 reporting agency and provide all of the following:

18 (1) the unique personal identification
19 number, password or similar device provided by the
20 consumer reporting agency;

21 (2) proper identification to verify
22 your identity;

23 (3) information regarding the third
24 party or parties who are to receive the credit
25 report or the period of time for which the credit

1 report may be released to users of the credit
2 report; and

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

4 A consumer reporting agency that receives a
5 request from a consumer to lift temporarily a
6 freeze on a credit report shall comply with the
7 request no later than three business days after
8 receiving the request. As of September 1, 2008, a
9 consumer reporting agency shall comply with the
10 request within fifteen minutes of receiving the
11 request by a secure electronic method or by
12 telephone.

13 A security freeze does not apply in all
14 circumstances, such as where you have an existing
15 account relationship and a copy of your credit
16 report is requested by your existing creditor or
17 its agents for certain types of account review,
18 collection, fraud control or similar activities;
19 for use in setting or adjusting an insurance rate
20 or claim or insurance underwriting; for certain
21 governmental purposes; and for purposes of
22 prescreening as defined in the federal Fair Credit
23 Reporting Act.

24 If you are actively seeking a new credit,
25 loan, utility, telephone or insurance account, you

1 should understand that the procedures involved in
2 lifting a security freeze may slow your own
3 applications for credit. You should plan ahead and
4 lift a freeze, either completely if you are
5 shopping around or specifically for a certain
6 creditor, with enough advance notice before you
7 apply for new credit for the lifting to take
8 effect. You should contact a consumer reporting
9 agency and request it to lift the freeze at least
10 three business days before applying. As of
11 September 1, 2008, if you contact a consumer
12 reporting agency by a secure electronic method or
13 by telephone, the consumer reporting agency should
14 lift the freeze within fifteen minutes. You have a
15 right to bring a civil action against a consumer
16 reporting agency that violates your rights under
17 the Credit Report Security Act."

18 Section 5. VIOLATION OF SECURITY FREEZE--CIVIL
19 LIABILITY.--If a consumer reporting agency releases
20 information placed under a security freeze in violation of
21 the provisions of Section 3 of the Credit Report Security
22 Act, the affected consumer may bring a civil action against
23 the consumer reporting agency for:

24 A. injunctive relief to prevent further violation
25 of the security freeze;

