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SENATE BILL 165

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

William E. Sharer

AN ACT

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

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

Section 1. DEFINITIONS.--As used in this act:

A. "consumer" means an individual who is a resident  
of this state;

B. "consumer reporting agency" has the meaning  
ascribed to it in 15 U.S.C. Section 1681a(f);

C. "credit report" has the meaning ascribed to the  
term "consumer report" in 15 U.S.C. Section 1681a(d);

D. "proper identification" has the meaning ascribed  
to it in 15 U.S.C. Section 1681h(a)(1); and

E. "security freeze" means a notice placed in a  
consumer's credit report, at the request of the consumer and

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1 subject to certain exceptions, that prohibits a consumer  
2 reporting agency from releasing the consumer's credit report or  
3 score relating to the extension of credit.

4 Section 2. SECURITY FREEZE.--

5 A. A consumer may request that a security freeze be  
6 placed on the consumer's credit report by sending a request in  
7 writing by certified mail to a consumer reporting agency at the  
8 address designated by the consumer reporting agency to receive  
9 such requests. A consumer reporting agency may advise a third  
10 party that a security freeze is in effect with respect to a  
11 consumer's credit report.

12 B. If a consumer requests a security freeze, the  
13 consumer reporting agency shall disclose to the consumer the  
14 process for placing and for temporarily lifting a security  
15 freeze and the process for allowing access to information from  
16 the consumer's credit report for a period of time while the  
17 security freeze is in place.

18 C. A consumer reporting agency shall place a  
19 security freeze on a consumer's credit report no later than  
20 five business days after receiving from a consumer:

21 (1) a written request described in Subsection  
22 A of this section;

23 (2) proper identification; and

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

25 D. A consumer reporting agency shall send a written

1 confirmation of the placement of a security freeze to a  
2 consumer within ten business days after the placement of the  
3 security freeze. Upon placing the security freeze on the  
4 consumer's credit report, the consumer reporting agency shall  
5 provide the consumer with a unique personal identification  
6 number or password or similar device to be used by the consumer  
7 when providing authorization for the release of the consumer's  
8 credit report for a specific period of time.

9 E. If a consumer wishes to allow the consumer's  
10 credit report to be accessed for a specific period of time  
11 while a security freeze is in place, the consumer shall contact  
12 a consumer reporting agency, using a point of contact  
13 designated by the consumer reporting agency and requesting that  
14 the security freeze be temporarily lifted, and the consumer  
15 shall provide the following to the consumer reporting agency:

- 16 (1) proper identification;
- 17 (2) the unique personal identification number  
18 or password provided by the consumer reporting agency pursuant  
19 to Subsection D of this section;
- 20 (3) the time period during which the report  
21 shall be available to users of the credit report; and
- 22 (4) a fee, if applicable.

23 F. A consumer reporting agency receiving a request  
24 from a consumer to temporarily lift a security freeze on a  
25 credit report pursuant to Subsection E of this section shall

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1 comply with the request no later than three business days after  
2 receiving the request.

3 G. A consumer reporting agency may use a telephone,  
4 a fax, the internet or other electronic media to receive and  
5 process a request from a consumer to temporarily lift a  
6 security freeze on a credit report pursuant to Subsection E of  
7 this section in an expedited manner.

8 H. A consumer reporting agency shall remove or  
9 temporarily lift a security freeze placed on a consumer's  
10 credit report only upon the consumer's request pursuant to  
11 Subsection E or J of this section or if a consumer's credit  
12 report was frozen due to a material misrepresentation of fact.  
13 A consumer reporting agency shall notify a consumer in writing  
14 ten business days prior to removing the security freeze on the  
15 consumer's credit report.

16 I. If a third party requests access to a consumer's  
17 credit report on which a security freeze is in effect and the  
18 request is in connection with an application for credit or any  
19 other use and the consumer does not allow the consumer's credit  
20 report to be accessed for that period of time, the third party  
21 may treat the consumer's application as incomplete.

22 J. A security freeze shall remain in place until a  
23 consumer requests, using a point of contact designated by a  
24 consumer reporting agency, that the security freeze be removed.  
25 A consumer reporting agency shall remove a security freeze

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1 within three business days of receiving a request for removal  
2 from a consumer who provides:

- 3 (1) proper identification;  
4 (2) the unique personal identification number  
5 or password or similar device provided by the consumer  
6 reporting agency pursuant to Subsection D of this section; and  
7 (3) a fee, if applicable.

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

11 L. The provisions of this section do not apply to  
12 the use of a credit report by any of the following:

- 13 (1) a person or entity, or a subsidiary,  
14 affiliate or agent of that person or entity, or an assignee of  
15 a financial obligation owing by the consumer to that person or  
16 entity, or a prospective assignee of a financial obligation  
17 owing by the consumer to that person or entity in conjunction  
18 with the proposed purchase of the financial obligation, with  
19 which the consumer has or had prior to assignment an account or  
20 contract, including a demand deposit account, or to whom the  
21 consumer issued a negotiable instrument, for the purposes of  
22 reviewing the account or collecting the financial obligation  
23 owing for the account, contract or negotiable instrument. For  
24 purposes of this paragraph, "reviewing the account" includes  
25 activities related to account maintenance, monitoring, credit

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1 line increases and account upgrades and enhancements;

2 (2) a subsidiary, affiliate, agent, assignee  
3 or prospective assignee of a person to whom access has been  
4 granted by the consumer for purposes of facilitating the  
5 extension of credit or other permissible use;

6 (3) any state or local agency, law enforcement  
7 agency, trial court or private collection agency acting  
8 pursuant to a court order, warrant or subpoena;

9 (4) a child support agency acting pursuant to  
10 Title 4-D of the federal Social Security Act, 42 U.S.C. et  
11 seq.;

12 (5) the state or its agents or assigns acting  
13 to investigate fraud or acting to investigate or collect  
14 delinquent taxes or unpaid court orders or to fulfill any of  
15 its other statutory responsibilities; provided that such  
16 responsibilities are consistent with a permissible purpose  
17 under 15 U.S.C. Section 1681b;

18 (6) the use of credit information for the  
19 purposes of prescreening as provided for by the federal Fair  
20 Credit Reporting Act;

21 (7) any person or entity administering a  
22 credit report monitoring subscription or similar service to  
23 which the consumer has subscribed;

24 (8) any person or entity for the purpose of  
25 providing a consumer with a copy of the consumer's credit

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1 report or score upon the consumer's request; or

2 (9) any person using the information in  
3 connection with the underwriting of insurance.

4 M. This act does not prevent a consumer reporting  
5 agency from charging a fee of no more than ten dollars (\$10.00)  
6 to a consumer for each security freeze, removal of a security  
7 freeze or temporary lift of a security freeze regarding access  
8 to a consumer credit report, except that a consumer reporting  
9 agency may not charge a fee to a victim of identity theft who  
10 has submitted a valid police report to the consumer reporting  
11 agency.

12 N. If a security freeze is in place, a consumer  
13 reporting agency shall not change a consumer's official  
14 information, including the consumer's name, date of birth,  
15 social security number and address in the consumer's credit  
16 report without sending a written confirmation of the change to  
17 the consumer within thirty days of the change being posted to  
18 the consumer's file. Written confirmation is not required for  
19 technical modifications of a consumer's official information,  
20 including name and street abbreviations, complete spellings or  
21 transposition of numbers or letters. In the case of an address  
22 change, the written confirmation shall be sent to both the new  
23 address and to the former address.

24 O. The following entities are not required to place  
25 a security freeze on a credit report:

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

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

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

22 P. At any time a consumer is required to receive a  
23 summary of rights pursuant to 15 U.S.C. Section 1681g(d), the  
24 following notice shall be included:

25 "New Mexico Consumers Have the Right to Obtain a Security

1 Freeze.

2 You have a right to place a "security freeze" on  
3 your credit report, which will prohibit a consumer  
4 reporting agency from releasing the personal and  
5 financial information in your credit report without your  
6 express authorization. A security freeze must be  
7 requested in writing by certified mail. The security  
8 freeze is designed to prevent credit, loans and services  
9 from being approved in your name without your consent.  
10 However, you should be aware that using a security freeze  
11 to take control over who gets access to the personal and  
12 financial information in your credit report may delay,  
13 interfere with or prohibit the timely approval of any  
14 subsequent request or application you make regarding a  
15 new loan, credit, mortgage, government services or  
16 payments, rental housing, employment, investment,  
17 license, cellular phone, utilities, digital signature,  
18 internet credit card transaction or other services,  
19 including an extension of credit at point of sale. When  
20 you place a security freeze on your credit report, you  
21 will be provided a personal identification number or  
22 password to use if you choose to remove the security  
23 freeze on your credit report or authorize the release of  
24 your credit report for a period of time after the  
25 security freeze is in place. To provide that

1 authorization, you must contact the consumer reporting  
2 agency and provide all of the following:

- 3 (1) proper identification to verify your  
4 identity;
- 5 (2) the unique personal identification number  
6 or password;
- 7 (3) the period of time for which the report  
8 shall be available; and
- 9 (4) payment of the appropriate fee.

10 A consumer reporting agency must authorize the  
11 release of your credit report no later than three  
12 business days after receiving the above information.

13 A security freeze does not apply to a person or  
14 entity, or its affiliates, or collection agencies acting  
15 on behalf of the person or entity, with which you have an  
16 existing account, that requests information in your  
17 credit report for the purposes of reviewing or collecting  
18 the account. Reviewing the account includes activities  
19 related to account maintenance, monitoring, credit line  
20 increases and account upgrades and enhancements.  
21 You have a right to bring civil action against anyone,  
22 including a consumer reporting agency, who improperly  
23 obtains access to a file, knowingly or willfully misuses  
24 file data or fails to correct inaccurate file data.

25 Unless you are a victim of identity theft with a

1 police report to verify the crime, a consumer reporting  
2 agency has the right to charge you up to ten dollars  
3 (\$10.00) to place a freeze on your credit report, up to  
4 ten dollars (\$10.00) to temporarily lift a security  
5 freeze on your credit report, depending on the  
6 circumstances, and up to ten dollars (\$10.00) to remove a  
7 security freeze from your credit report."

8 Q. Any person who willfully fails to comply with  
9 any requirement imposed under this section with respect to any  
10 consumer is liable to that consumer in an amount equal to the  
11 sum of:

12 (1) any actual damages sustained by the  
13 consumer as a result of the failure or damages of not less than  
14 one hundred dollars (\$100) and not more than one thousand  
15 dollars (\$1,000);

16 (2) such amount of punitive damages as the  
17 court may allow; and

18 (3) in the case of any successful action to  
19 enforce any liability under this section, the costs of the  
20 action together with reasonable attorney fees as determined by  
21 the court.

22 R. Any person who obtains a consumer report,  
23 requests a security freeze or requests the temporary lift of a  
24 security freeze or the removal of a security freeze from a  
25 consumer reporting agency under false pretenses or in an

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1 attempt to violate federal or state law shall be liable to the  
2 consumer reporting agency for actual damages sustained by the  
3 consumer reporting agency or one thousand dollars (\$1,000),  
4 whichever is greater.

5 S. Any person who is negligent in failing to comply  
6 with any requirement imposed under this section with respect to  
7 any consumer is liable to that consumer in an amount equal to  
8 the sum of any actual damages sustained by the consumer as a  
9 result of the failure and, in the case of any successful action  
10 to enforce any liability under this section, the costs of the  
11 action together with reasonable attorney fees as determined by  
12 the court.

13 T. Upon a finding by the court that an unsuccessful  
14 pleading, motion or other paper filed in connection with an  
15 action under this section was filed in bad faith or for  
16 purposes of harassment, the court shall award to the prevailing  
17 party attorney fees reasonable in relation to the work expended  
18 in responding to the pleading, motion or other paper.

19 Section 3. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is January 1, 2008.