

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 131

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CREDIT REPORTING; REQUIRING A CONSUMER REPORTING AGENCY TO REMOVE INFORMATION CONTESTED BECAUSE OF IDENTITY THEFT OR FALSE REPORTING; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

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

"56-3A-1. SHORT TITLE.--~~[This act]~~ Chapter 56, Article 3A NMSA 1978 may be cited as the "~~[Credit Report]~~ Fair Credit Reporting and Identity Security Act"."

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

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

.180670.1

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

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

3 B. "consumer reporting agency" means any person
4 that, for monetary fees, dues or on a cooperative nonprofit
5 basis, regularly engages in the practice of assembling or
6 evaluating consumer credit information or other information on
7 consumers for the purpose of furnishing credit reports to third
8 parties;

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

19 D. "declaration of removal" means a statement or
20 affidavit that is delivered by regular or certified mail or
21 facsimile or delivered electronically to a consumer reporting
22 agency that operates within New Mexico and that states:

23 (1) that the consumer is entitled to removal
24 of information in the consumer reporting agency's files on
25 grounds that the consumer is the victim of identity theft or

.180670.1

underscored material = new
[bracketed material] = delete

1 inaccurate or false reporting; and

2 (2) the address at which the consumer is
3 available for service of process by the consumer reporting
4 agency and an identifying number such as a social security
5 number by which the consumer can be identified by the consumer
6 reporting agency;

7 ~~[D.]~~ E. "person" means an individual, corporation,
8 firm, association, organization, trust, estate, cooperative,
9 business, partnership, limited liability company, joint
10 venture, governmental agency or subdivision or any legal or
11 commercial entity; ~~[and~~

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

18 G. "operates within New Mexico" means accepting or
19 maintaining a credit report on a person that resides within New
20 Mexico."

21 Section 3. A new section of the Fair Credit Reporting and
22 Identity Security Act is enacted to read:

23 "[NEW MATERIAL] DECLARATION OF REMOVAL--PROCEDURES.--

24 A. A consumer may file a declaration of removal
25 with a consumer reporting agency operating within New Mexico

.180670.1

underscoring material = new
[bracketed material] = delete

1 declaring that the consumer:

2 (1) is the victim of identity theft or
3 inaccurate or false reporting;

4 (2) is eligible for removal of information
5 reported to or by the consumer reporting agency on the basis of
6 identity theft or inaccurate or false reporting;

7 (3) is available for service of process at a
8 conclusively valid designated address for at least thirty days;
9 and

10 (4) discloses an identifying number, such as a
11 social security number, by which the consumer may be identified
12 by the consumer reporting agency.

13 B. The attorney general may publish a sample
14 declaration of removal in compliance with the applicable
15 requirements of Subsection A of this section. The declaration
16 of removal published by the attorney general is not required to
17 be used. A consumer may use other forms that serve the same
18 purpose and that are in compliance with the applicable
19 requirements of Subsection A of this section.

20 C. A consumer reporting agency shall make available
21 on a web site and on all credit reports of the consumer
22 reporting agency the means for contacting the consumer
23 reporting agency through a physical mailing address, by
24 telephone and facsimile, and through use of a web site and an
25 internet electronic mailing address. A consumer reporting

.180670.1

underscored material = new
[bracketed material] = delete

1 agency shall state on a web site and on all credit reports of
2 the consumer the methods for submitting a declaration of
3 removal.

4 D. Within five days of receiving a declaration of
5 removal and, if applicable, receipt of a fee as authorized in
6 Subsection I of Section 56-3A-3 NMSA 1978, a consumer reporting
7 agency shall remove from its files and credit reports of the
8 affected consumer the information that is the subject of the
9 declaration of removal and notify the consumer once the removal
10 is complete. A facsimile or electronic mail confirmation is
11 prima facie evidence that the consumer reporting agency
12 received the declaration of removal. A consumer reporting
13 agency shall not state on a credit report that information was
14 removed at the request of a declaration of removal and shall
15 not use that information to suggest or otherwise state or imply
16 to a third party that the affected consumer has a negative
17 credit score, history, report or rating.

18 E. If a consumer reporting agency fails to remove
19 information that is the subject of a declaration of removal or
20 restores information that is the subject of a declaration of
21 removal in violation of the provisions of the Fair Credit
22 Reporting and Identity Security Act, the affected consumer or
23 the attorney general may bring a civil action against the
24 consumer reporting agency for:

25 (1) injunctive relief to remove the

.180670.1

underscoring material = new
[bracketed material] = delete

1 information or to prevent further violation of the declaration
2 of removal;

3 (2) any actual damages sustained by the
4 consumer as a result of the violation;

5 (3) a civil penalty in an amount not to exceed
6 two thousand dollars (\$2,000) for each violation of the
7 declaration of removal; and

8 (4) costs of the action and reasonable
9 attorney fees.

10 F. Upon request of a consumer, or upon a court's
11 order, after adjudication of the alleged debt in the judicial
12 district in which the consumer resides, a consumer reporting
13 agency may restore the information that was the subject of a
14 declaration of removal."

15 Section 4. Section 56-3A-3 NMSA 1978 (being Laws 2007,
16 Chapter 106, Section 3) is amended to read:

17 "56-3A-3. SECURITY FREEZE.--

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

.180670.1

underscoring material = new
[bracketed material] = delete

1 B. A consumer reporting agency shall place a
2 security freeze on a consumer's credit report no later than
3 three business days after receiving a request from the
4 consumer.

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

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

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

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

24 (1) proper identification;

25 (2) the unique personal identification number,

.180670.1

underscoring material = new
[bracketed material] = delete

1 password or similar device;

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

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

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

25 F. A consumer reporting agency need not release a

.180670.1

underscoring material = new
[bracketed material] = delete

1 credit report within the time periods set forth in Subsection E
2 of this section if:

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

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

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

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

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

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

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

25 (f) commercially reasonable maintenance

.180670.1

underscored material = new
[bracketed material] = delete

1 of, or repair to, the consumer reporting agency's systems that
2 is unexpected or unscheduled.

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

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

17 I. A consumer reporting agency may charge a
18 consumer a fee of no more than ten dollars (\$10.00) for the
19 placement of a security freeze or for processing a declaration
20 of removal. A consumer reporting agency may charge a fee of no
21 more than five dollars (\$5.00) for the release of a credit
22 report, upon which a security freeze has been placed, to a
23 specific person or for a specific period of time. A consumer
24 reporting agency may charge a fee of no more than five dollars
25 (\$5.00) for the removal of a security freeze or to change a

.180670.1

underscoring material = new
[bracketed material] = delete

1 declaration of removal. A fee shall not be charged to a
2 consumer who is sixty-five years of age or older or to a victim
3 of identity theft who provides a valid police or investigative
4 report filed with a law enforcement agency alleging the crime
5 of identity theft. A consumer reporting agency shall accept
6 payment by check sent via regular or certified mail and by
7 debit or credit card via a secure electronic method and
8 telephone and shall accept automatic clearinghouse and
9 electronic fund transfer payments.

10 J. If a consumer's credit report was frozen due to
11 a material misrepresentation of fact by the consumer and a
12 consumer reporting agency intends to remove the freeze, the
13 consumer reporting agency shall notify the consumer in writing
14 five business days prior to removing the security freeze on the
15 consumer's credit report.

16 K. A consumer reporting agency may advise a third
17 party that a security freeze is in effect with respect to a
18 consumer's credit report. A consumer reporting agency shall
19 not suggest or otherwise state or imply to a third party that
20 the security freeze reflects a negative credit score, history,
21 report or rating.

22 L. The provisions of this section do not prevent a
23 consumer reporting agency from releasing a consumer's credit
24 report:

25 (1) to a person or the person's subsidiary,

.180670.1

underscored material = new
[bracketed material] = delete

1 affiliate, agent or assignee with which the consumer has or,
2 prior to assignment, had an account, contract or debtor-
3 creditor relationship for the purpose of reviewing the account
4 or collecting the financial obligation owing for the account,
5 contract or debt, or to a prospective assignee of a financial
6 obligation owing by the consumer in conjunction with the
7 proposed purchase of the financial obligation. As used in this
8 paragraph, "reviewing the account" includes activities related
9 to account maintenance, monitoring, credit line increases and
10 account upgrades and enhancements;

11 (2) to a subsidiary, affiliate, agent,
12 assignee or prospective assignee of a person to whom access has
13 been granted by the consumer pursuant to Subsection D of this
14 section for the purpose of facilitating the extension of credit
15 or other permissible use;

16 (3) to a person or entity administering a
17 credit file monitoring subscription service to which the
18 consumer has subscribed;

19 (4) to a person or entity for the purpose of
20 providing a consumer with a copy of the consumer's credit
21 report upon the consumer's request;

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

24 (6) to the child support enforcement division
25 of the human services department for the purpose of carrying

.180670.1

1 out its statutory duties of establishing and collecting child
2 support obligations;

3 (7) to a governmental agency acting to
4 investigate fraud, to investigate or collect delinquent taxes
5 or unpaid court orders or to fulfill any of its other statutory
6 duties;

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

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

13 (a) criminal record information;

14 (b) tenant screening;

15 (c) employment screening; or

16 (d) fraud prevention or detection; or

17 (10) to a person or entity for use in setting
18 or adjusting an insurance rate, adjusting an insurance claim or
19 underwriting for insurance purposes.

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

22 (1) a consumer reporting agency that acts only
23 as a reseller of credit information by assembling and merging
24 information contained in the database of another consumer
25 reporting agency or multiple consumer credit reporting agencies

.180670.1

underscoring material = new
[bracketed material] = delete

1 and does not maintain a permanent database of credit
2 information from which new consumer credit reports are
3 produced. However, a consumer reporting agency acting as a
4 reseller shall honor any security freeze placed on a consumer
5 credit report by another consumer reporting agency;

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

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

18 Section 5. Section 56-3A-4 NMSA 1978 (being Laws 2007,
19 Chapter 106, Section 4) is amended to read:

20 "56-3A-4. NOTICE OF RIGHTS.--At any time that a consumer
21 reporting agency is required to provide the consumer with a
22 summary of rights pursuant to Section 609 of the federal Fair
23 Credit Reporting Act, the following notice shall be included:

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

.180670.1

1 place. To remove the freeze or to provide
2 authorization for the temporary release of your
3 credit report, you must contact the consumer
4 reporting agency and provide all of the following:

5 (1) the unique personal identification
6 number, password or similar device provided by the
7 consumer reporting agency;

8 (2) proper identification to verify your
9 identity;

10 (3) information regarding the third
11 party or parties who are to receive the credit
12 report or the period of time for which the credit
13 report may be released to users of the credit
14 report; and

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

16 A consumer reporting agency that receives a
17 request from a consumer to lift temporarily a freeze
18 on a credit report shall comply with the request no
19 later than three business days after receiving the
20 request. As of September 1, 2008, a consumer
21 reporting agency shall comply with the request
22 within fifteen minutes of receiving the request by a
23 secure electronic method or by telephone.

24 A security freeze does not apply in all
25 circumstances, such as where you have an existing

1 account relationship and a copy of your credit
2 report is requested by your existing creditor or its
3 agents for certain types of account review,
4 collection, fraud control or similar activities; for
5 use in setting or adjusting an insurance rate or
6 claim or insurance underwriting; for certain
7 governmental purposes; and for purposes of
8 prescreening as defined in the federal Fair Credit
9 Reporting Act.

10 If you are actively seeking a new credit, loan,
11 utility, telephone or insurance account, you should
12 understand that the procedures involved in lifting a
13 security freeze may slow your own applications for
14 credit. You should plan ahead and lift a freeze,
15 either completely if you are shopping around or
16 specifically for a certain creditor, with enough
17 advance notice before you apply for new credit for
18 the lifting to take effect. You should contact a
19 consumer reporting agency and request it to lift the
20 freeze at least three business days before applying.
21 As of September 1, 2008, if you contact a consumer
22 reporting agency by a secure electronic method or by
23 telephone, the consumer reporting agency should lift
24 the freeze within fifteen minutes. You have a right
25 to bring a civil action against a consumer reporting

underscored material = new
[bracketed material] = delete

1 agency that violates your rights under the Fair
2 Credit [~~Report~~] Reporting and Identity Security
3 Act".

4 Section 6. Section 56-3A-5 NMSA 1978 (being Laws 2007,
5 Chapter 106, Section 5) is amended to read:

6 "56-3A-5. [~~VIOLATION OF SECURITY FREEZE~~] VIOLATIONS--
7 CIVIL LIABILITY.--If a consumer reporting agency releases
8 information [~~placed under a security freeze~~] in violation of the
9 provisions of [~~Section 3 of the Credit Report Security Act~~] the
10 Fair Credit Reporting and Identity Security Act, the affected
11 consumer may bring a civil action against the consumer reporting
12 agency for:

13 A. injunctive relief to prevent further violation
14 of the [~~security freeze~~] Fair Credit Reporting and Identity
15 Security Act;

16 B. any actual damages sustained by the consumer as
17 a result of the violation;

18 C. a civil penalty in an amount not to exceed two
19 thousand dollars (\$2,000) for each violation of the security
20 freeze; and

21 D. costs of the action and reasonable attorney
22 fees."

23 Section 7. Section 56-3A-6 NMSA 1978 (being Laws 2007,
24 Chapter 106, Section 6) is amended to read:

25 "56-3A-6. SEVERABILITY.--If any part or application of

.180670.1

underscored material = new
[bracketed material] = delete

1 the Fair Credit [Report] Reporting and Identity Security Act is
2 held invalid, the remainder or its application to other persons
3 or situations shall not be affected."

4 - 19 -
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25