

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 131

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

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:

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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 an identity
20 theft report with a sworn affidavit that is delivered by
21 regular or certified mail or facsimile or delivered
22 electronically to a consumer reporting agency that operates
23 within New Mexico and which affidavit states:

24 (1) that the consumer is entitled to removal
25 of information in the consumer reporting agency's files on

1 grounds that the consumer is the victim of identity theft; and
 2 (2) the address at which the consumer is
 3 available for service of process by the consumer reporting
 4 agency and proper identifying information by which the consumer
 5 can be identified by the consumer reporting agency;

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

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

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

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

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

23 A. A consumer may file a declaration of removal
 24 with a consumer reporting agency operating within New Mexico
 25 declaring that the consumer:

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 bracketed material = delete

- 1 (1) is the victim of identity theft;
- 2 (2) is eligible for removal of information
- 3 reported to or by the consumer reporting agency on the basis of
- 4 identity theft;
- 5 (3) is available for service of process at a
- 6 conclusively valid designated address for at least thirty days;
- 7 and
- 8 (4) discloses proper identifying information
- 9 by which the consumer may be identified by the consumer
- 10 reporting agency.

11 B. The attorney general may publish a sample

12 declaration of removal in compliance with the applicable

13 requirements of Subsection A of this section. The declaration

14 of removal published by the attorney general is not required to

15 be used. A consumer may use other forms that serve the same

16 purpose and that are in compliance with the applicable

17 requirements of Subsection A of this section.

18 C. A consumer reporting agency shall make available

19 on a web site and on all credit reports of the consumer

20 reporting agency the means for contacting the consumer

21 reporting agency through a physical mailing address, by

22 telephone and facsimile, and through use of a web site and an

23 internet electronic mailing address. A consumer reporting

24 agency shall state on a web site and on all credit reports of

25 the consumer the methods for submitting a declaration of

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1 removal.

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

14 E. A consumer reporting agency may restore the
15 information that was the subject of a declaration of removal
16 upon:

17 (1) request of the affected consumer; or
18 (2) a court order after the adjudication of
19 the alleged debt in the judicial district in which the consumer
20 resides."

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

23 "56-3A-3. SECURITY FREEZE.--

24 A. A consumer may elect to place a security freeze
25 on the consumer's credit report by making a request to a

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1 consumer reporting agency by means of certified or regular mail
2 sent to an address designated by the consumer reporting agency,
3 or by means of a telephone or a secure electronic method if
4 such means are provided by the agency. A consumer shall
5 provide any personal identification required by the consumer
6 reporting agency and pay a fee, if applicable.

7 B. A consumer reporting agency shall place a
8 security freeze on a consumer's credit report no later than
9 three business days after receiving a request from the
10 consumer.

11 C. Within five business days of placing a security
12 freeze on a consumer's credit report, a consumer reporting
13 agency shall:

14 (1) send a written confirmation of the
15 security freeze to the consumer; and

16 (2) provide the consumer with a unique
17 personal identification number, password or similar device to
18 be used by the consumer when providing authorization for the
19 release of the consumer's credit report to a specific person or
20 for a specific period of time or for permanent removal of the
21 freeze.

22 D. While a security freeze is in effect, a consumer
23 may authorize a consumer reporting agency to release the
24 consumer's credit report to a specific person or to release the
25 credit report for a specific period of time by contacting the

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1 consumer reporting agency by regular or certified mail or by
2 telephone, and as of September 1, 2008, by contacting the
3 consumer reporting agency by mail, by telephone or by a secure
4 electronic method, and providing:

5 (1) proper identification;

6 (2) the unique personal identification number,
7 password or similar device;

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

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

12 E. A consumer reporting agency that receives a
13 request pursuant to Subsection D of this section shall release
14 a consumer's credit report as requested by the consumer within
15 three business days after the business day on which the
16 consumer's request by regular or certified mail or by telephone
17 is received by the consumer reporting agency. As of September
18 1, 2008, a consumer reporting agency that receives a request
19 pursuant to Subsection D of this section shall release a
20 consumer's credit report as requested by the consumer within
21 fifteen minutes after the consumer's request is received by the
22 consumer reporting agency through the use of a telephone or a
23 secure electronic method provided by the agency, which may
24 include the use of the internet, facsimile or other electronic
25 means; provided that the consumer reporting agency is not

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1 required to release the credit report within fifteen minutes
2 unless the consumer's request is received by the consumer
3 reporting agency between the hours of 6:00 a.m. and 9:30 p.m.
4 mountain standard or mountain daylight time, as applicable,
5 Sunday through Saturday.

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

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

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

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

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

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

25 (d) governmental action, including

1 emergency orders or regulations, judicial or law enforcement
2 actions or similar directives;

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

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

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

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

23 I. A consumer reporting agency may charge a
24 consumer a fee of 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 no
2 more than five dollars (\$5.00) for the release of a credit
3 report, upon which a security freeze has been placed, to a
4 specific person or for a specific period of time. A consumer
5 reporting agency may charge a fee of no more than five dollars
6 (\$5.00) for the removal of a security freeze or to change a
7 declaration of removal. A fee shall not be charged to a
8 consumer who is sixty-five years of age or older or to a victim
9 of identity theft who provides a valid police or investigative
10 report filed with a law enforcement agency alleging the crime
11 of identity theft. A consumer reporting agency shall accept
12 payment by check sent via regular or certified mail and by
13 debit or credit card via a secure electronic method and
14 telephone and shall accept automatic clearinghouse and
15 electronic fund transfer payments.

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

22 K. A consumer reporting agency may advise a third
23 party that a security freeze is in effect with respect to a
24 consumer's credit report. A consumer reporting agency shall
25 not suggest or otherwise state or imply to a third party that

1 the security freeze reflects a negative credit score, history,
2 report or rating.

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

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

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

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

25 (4) to a person or entity for the purpose of

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1 providing a consumer with a copy of the consumer's credit
2 report upon the consumer's request;

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

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

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

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

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

- 19 (a) criminal record information;
- 20 (b) tenant screening;
- 21 (c) employment screening; or
- 22 (d) fraud prevention or detection; or

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

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

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

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

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

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

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1 "56-3A-4. NOTICE OF RIGHTS.--At any time that a consumer
2 reporting agency is required to provide the consumer with a
3 summary of rights pursuant to Section 609 of the federal Fair
4 Credit Reporting Act, the following notice shall be included:

5 "New Mexico Consumers Have the
6 Right to Obtain a Security Freeze or
7 Submit a Declaration of Removal

8 You may obtain a security freeze on your credit
9 report to protect your privacy and ensure that
10 credit is not granted in your name without your
11 knowledge. You may submit a declaration of removal
12 to remove information placed in your credit report
13 as a result of being a victim of identity theft.
14 You have a right to place a security freeze on your
15 credit report or submit a declaration of removal
16 pursuant to the Fair Credit [Report] Reporting and
17 Identity Security Act.

18 The security freeze will prohibit a consumer
19 reporting agency from releasing any information in
20 your credit report without your express
21 authorization or approval.

22 The security freeze is designed to prevent
23 credit, loans and services from being approved in
24 your name without your consent. When you place a
25 security freeze on your credit report, you will be

1 provided with a personal identification number,
2 password or similar device to use if you choose to
3 remove the freeze on your credit report or to
4 temporarily authorize the release of your credit
5 report to a specific party or parties or for a
6 specific period of time after the freeze is in
7 place. To remove the freeze or to provide
8 authorization for the temporary release of your
9 credit report, you must contact the consumer
10 reporting agency and provide all of the following:

11 (1) the unique personal identification
12 number, password or similar device provided by the
13 consumer reporting agency;

14 (2) proper identification to verify your
15 identity;

16 (3) information regarding the third
17 party or parties who are to receive the credit
18 report or the period of time for which the credit
19 report may be released to users of the credit
20 report; and

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

22 A consumer reporting agency that receives a
23 request from a consumer to lift temporarily a freeze
24 on a credit report shall comply with the request no
25 later than three business days after receiving the

1 request. As of September 1, 2008, a consumer
2 reporting agency shall comply with the request
3 within fifteen minutes of receiving the request by a
4 secure electronic method or by telephone.

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

16 If you are actively seeking a new credit, loan,
17 utility, telephone or insurance account, you should
18 understand that the procedures involved in lifting a
19 security freeze may slow your own applications for
20 credit. You should plan ahead and lift a freeze,
21 either completely if you are shopping around or
22 specifically for a certain creditor, with enough
23 advance notice before you apply for new credit for
24 the lifting to take effect. You should contact a
25 consumer reporting agency and request it to lift the

1 freeze at least three business days before applying.
 2 As of September 1, 2008, if you contact a consumer
 3 reporting agency by a secure electronic method or by
 4 telephone, the consumer reporting agency should lift
 5 the freeze within fifteen minutes. You have a right
 6 to bring a civil action against a consumer reporting
 7 agency that violates your rights under the Fair
 8 Credit [Report] Reporting and Identity Security
 9 Act."

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

12 "56-3A-5. [~~VIOLATION OF SECURITY FREEZE~~] VIOLATIONS--
 13 CIVIL LIABILITY.--If a consumer reporting agency [~~releases~~
 14 ~~information placed under a security freeze in violation of~~]
 15 violates the provisions of [~~Section 3 of the Credit Report~~
 16 ~~Security Act~~] the Fair Credit Reporting and Identity Security
 17 Act, the affected consumer or the attorney general may bring a
 18 civil action against the consumer reporting agency for:

19 A. injunctive relief to prevent further violation
 20 of the [~~security freeze~~] Fair Credit Reporting and Identity
 21 Security Act;

22 B. any actual damages sustained by the consumer as
 23 a result of [~~the~~] a violation of the Fair Credit Reporting and
 24 Identity Security Act;

25 C. a civil penalty in an amount not to exceed two

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1 thousand dollars (\$2,000) for each violation of the security
2 freeze or each violation of the provisions of Subsection D of
3 Section 3 of this 2010 act; and

4 D. costs of the action and reasonable attorney
5 fees."

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

8 "56-3A-6. SEVERABILITY.--If any part or application of
9 the Fair Credit [Report] Reporting and Identity Security Act is
10 held invalid, the remainder or its application to other persons
11 or situations shall not be affected."