

PROPOSED

HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 1871
H.D.1
S.D. 2

A BILL FOR AN ACT

RELATING TO CONSUMER CREDIT REPORTING AGENCIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding to title 26 a new chapter to be appropriately designated
3 and to read as follows:

4 **"CHAPTER**

5 **CONSUMER CREDIT REPORTING AGENCIES**

6 § -1 **Purpose.** The Federal Trade Commission recently
7 determined that between October 1998 and September 2003, more
8 than twenty-seven million three hundred Americans have been
9 victims of identity theft, resulting in billions of dollars of
10 losses to consumers. The purpose of this chapter is to protect
11 Hawaii consumers who are victims of identity theft by allowing
12 them to place a security freeze on their consumer credit
13 reports. This security freeze will prohibit a consumer
14 reporting agency from releasing any information to unauthorized
15 parties without the consumer's express authorization and provide
16 consumers more control over who has access to their consumer
17 report. This chapter will effectively prevent identity thieves
18 from continuing to secure credit in a victim's name.



1 § -2 **Definitions.** When used in this chapter, unless the
2 context otherwise requires:

3 "Credit report" means any written, oral, or other
4 communication of any credit information by a consumer reporting
5 agency, as defined in the federal Fair Credit Reporting Act,
6 which operates or maintains a database of consumer credit
7 information bearing on a consumer's credit worthiness, credit
8 standing, or credit capacity.

9 "Consumer credit reporting agency" or "consumer reporting
10 agency" means any person who, for monetary fees or dues or on a
11 cooperative nonprofit basis, regularly engages in whole or in
12 part in the practice of assembling or evaluating consumer credit
13 information or other information on consumers for the purpose of
14 furnishing consumer credit reports to third parties, but does
15 not include any governmental agency whose records are maintained
16 primarily for law enforcement or licensing purposes.

17 "Identity theft" means the unauthorized use of another
18 person's identifying information to obtain credit, goods,
19 services, money, or property.

20 "Security freeze" means a notice placed in a credit report,
21 at the request of the consumer who is a victim of identity
22 theft.

1 § -3 **Security freeze by consumer reporting agency.** (a)

2 A consumer who has been the victim of identity theft may place a
3 security freeze on the consumer's credit report by making a
4 request in writing by certified mail to a consumer reporting
5 agency, at an address designated by the agency to receive such
6 requests, with a valid copy of a police report, investigative
7 report, or complaint the consumer has filed with a law
8 enforcement agency about unlawful use of the consumer's personal
9 information by another person. A consumer reporting agency
10 shall not charge a fee for placing or removing a security freeze
11 on a credit report. A security freeze shall prohibit the
12 consumer reporting agency from releasing the consumer's credit
13 report or any information from it without the express
14 authorization of the consumer. This subsection does not prevent
15 a consumer reporting agency from advising a third party that a
16 security freeze is in effect with respect to the consumer's
17 credit report.

18 (b) A consumer reporting agency shall place a security
19 freeze on a consumer's credit report no later than five business
20 days after receiving a written request from the consumer.

21 (c) The consumer reporting agency shall send a written
22 confirmation of the security freeze to the consumer within ten



1 business days of placing the security freeze and shall provide
 2 the consumer with a unique personal identification number or
 3 password, other than the consumer's social security number, to
 4 be used by the consumer when providing authorization for the
 5 release of the consumer's credit for a specific party, parties,
 6 or period of time.

7 (d) If the consumer wishes to allow access to the
 8 consumer's credit report for a specific party, parties, or
 9 period of time while a freeze is in place, the consumer shall
 10 contact the consumer reporting agency at a point of contact
 11 designated by the agency using the procedures that may be
 12 developed by the consumer reporting agency, request that the
 13 freeze be temporarily lifted, and provide the following:

- 14 (1) Clear and proper identification;
- 15 (2) The unique personal identification number or password
 16 provided by the consumer reporting agency; and
- 17 (3) Clear and proper information regarding the third
 18 party, parties, or time period for which the report
 19 shall be available to users of the credit report.

20 (e) A consumer reporting agency may develop procedures
 21 involving the use of telephone, fax, the internet, or other
 22 electronic media to receive and process a request from a

1 consumer to temporarily lift a freeze on a credit report in an
2 expedited manner.

3 (f) A consumer reporting agency that receives a request
4 from a consumer to temporarily lift a freeze on a credit report
5 shall comply with the request no later than three business days
6 after receiving the request.

7 (g) A consumer reporting agency shall remove or
8 temporarily lift a freeze placed on a consumer's credit report
9 only in the following cases:

10 (1) Upon consumer request; or

11 (2) When the consumer's credit report was frozen due to a
12 material misrepresentation of fact by the consumer.

13 If a consumer reporting agency intends to remove a freeze upon a
14 consumer's credit report pursuant to this subsection, the
15 consumer reporting agency shall notify the consumer in writing
16 prior to removing the freeze on the consumer's credit report.

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



1 (i) If a consumer requests a security freeze, the consumer
2 reporting agency shall disclose to the consumer the process of
3 placing and temporarily lifting a security freeze and the
4 process for allowing access to information from the consumer's
5 credit report for a specific party, parties, or period of time
6 while the security freeze is in place.

7 (j) A security freeze shall remain in place until the
8 consumer requests that the security freeze be removed. A
9 consumer reporting agency shall remove a security freeze within
10 three business days of receiving a request for removal at a
11 point of contact designated by the agency using procedures that
12 may be developed by the consumer reporting agency; provided that
13 the consumer shall provide the following:

- 14 (1) Clear and proper identification; and
15 (2) The unique personal identification number or password
16 provided by the consumer reporting agency pursuant to
17 subsection (c).

18 (k) A consumer reporting agency shall require clear and
19 proper identification of the person making a request to place or
20 remove a security freeze.



1 (1) The provisions of this section, including the security
2 freeze, do not apply to the use of a consumer report by the
3 following:

4 (1) A person, or the person's subsidiary, affiliate,
5 agent, or assignee with which the consumer has or,
6 prior to assignment, had an account, contract, or
7 debtor-creditor relationship for the purposes of
8 reviewing the account or collecting the financial
9 obligation owing for the account, contract, or debt,
10 or extending credit to a consumer with a prior or
11 existing account, contract, or debtor-creditor
12 relationship. For purposes of this subsection,
13 "reviewing the account" includes activities related to
14 account maintenance, monitoring, credit line
15 increases, and account upgrades and enhancements;

16 (2) A subsidiary, affiliate, agent, assignee, or
17 prospective assignee of a person to whom access has
18 been granted for purposes of facilitating the
19 extension of credit or other permissible use;

20 (3) Any person acting pursuant to a court order, warrant,
21 or subpoena;



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- 1 (4) A child support enforcement agency when investigating
- 2 a child support case pursuant to Title IV-D of the
- 3 Social Security Act (42 U.S.C. sections 651 to 669b);
- 4 (5) The department of the attorney general or county
- 5 prosecuting attorneys or their agents or assignees
- 6 acting to investigate medicaid fraud;
- 7 (6) The department of taxation, county taxing authorities,
- 8 or any of their agents or assignees, acting to
- 9 investigate or collect delinquent taxes or
- 10 assessments, including interest and penalties, unpaid
- 11 court orders, or to fulfill any of their other
- 12 statutory or charter responsibilities;
- 13 (7) The use of credit information for the purposes of
- 14 prescreening as provided by the federal Fair Credit
- 15 Reporting Act (15 U.S.C. sections 1681 to 1681v);
- 16 (8) Any person for the sole purpose of providing a credit
- 17 file monitoring subscription service to which the
- 18 consumer has subscribed;
- 19 (9) A consumer reporting agency for the sole purpose of
- 20 providing a consumer with a copy of the consumer's
- 21 credit report upon the consumer's request; and



1 (10) Any person or entity using a credit report in setting
2 or adjusting a rate, adjusting a claim, or
3 underwriting for insurance purposes.

4 § -4 **Consumer reporting agency duties if security freeze**

5 **in place.** If a security freeze is in place, a consumer
6 reporting agency shall not change any of the following official
7 information in a credit report without sending a written
8 confirmation of the change to the consumer within thirty days of
9 the change being posted to the consumer's file: name, date of
10 birth, social security number, and address. Written
11 confirmation is not required for technical modifications of a
12 consumer's official information, including name and street
13 abbreviations, complete spellings, or transposition of numbers
14 or letters. In the case of an address change, the written
15 confirmation shall be sent to both the new address and the
16 former address.

17 § -5 **Persons not required to place security freeze.** The
18 requirement under this chapter to place a security freeze on a
19 credit report does not apply to:

- 20 (1) A check services or fraud prevention services company
21 that reports on incidents of fraud or issues
22 authorizations for the purpose of approving or

1 processing negotiable instruments, electronic fund
2 transfers, or similar methods of payment;

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

10 (3) A consumer reporting agency that:

11 (A) Acts only to resell credit information by
12 assembling and merging information contained in a
13 database of one or more consumer reporting
14 agencies; and

15 (B) Does not maintain a permanent database of credit
16 information from which new credit reports are
17 produced.

18 § -6 Violation, penalties. (a) Any person who violates
19 any provision of this chapter shall be deemed to have engaged in
20 an unfair or deceptive act or practice in the conduct of trade
21 or commerce within the meaning of section 480-2. The attorney
22 general or the director of the office of consumer protection may

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1 bring an action based upon unfair or deceptive acts or practices
2 declared unlawful by this section.

3 (b) In addition to any penalty provided for in subsection
4 (a), any person who violates any provision of this chapter is
5 liable to the injured party in an amount equal to the sum of any
6 actual damages sustained by the injured part as a result of the
7 violation, or damages not less than \$500, whichever is greater.
8 The court, in any action brought under this section, may award
9 reasonable attorneys' fees to the prevailing party."

10 SECTION 2. This Act shall take effect on January 1, 2007.

PROPOSED

Report Title:

Consumer Credit Reporting Agencies; Identity Theft

Description:

Allows consumers who are victims of identity theft to place a security freeze on their credit reports which will prohibit a consumer reporting agency from releasing any information to unauthorized parties without the consumer's express authorization and will provide consumers more control over who has access to their credit report. (SD2)

