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# 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 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 reporting agency" means any person who, for  
10 monetary fees or dues or on a cooperative nonprofit basis,  
11 regularly engages in whole or in part in the practice of  
12 assembling or evaluating consumer credit information or other  
13 information on consumers for the purpose of furnishing consumer  
14 credit reports to third parties, but does not include any  
15 governmental agency whose records are maintained primarily for  
16 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 with a valid copy of a police report, investigative  
6 report, or complaint the consumer has filed with a law  
7 enforcement agency about unlawful use of the consumer's personal  
8 information by another person. A consumer reporting agency  
9 shall not charge a fee for placing or removing a security freeze  
10 on a credit report. A security freeze shall prohibit the  
11 consumer reporting agency from releasing the consumer's credit  
12 report or any information from it without the express  
13 authorization of the consumer. This subsection does not prevent  
14 a consumer reporting agency from advising a third party that a  
15 security freeze is in effect with respect to the consumer's  
16 credit report.

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

20           (c) The consumer reporting agency shall send a written  
21 confirmation of the security freeze to the consumer within ten  
22 business days of placing the security freeze and shall provide



1 the consumer with a unique personal identification number or  
2 password, other than the consumer's social security number, to  
3 be used by the consumer when providing authorization for the  
4 release of the consumer's credit for a specific period of time.

5 (d) If the consumer wishes to allow access to the  
6 consumer's credit report for a specific period of time while a  
7 freeze is in place, the consumer shall contact the consumer  
8 reporting agency, request that the freeze be temporarily lifted,  
9 and provide the following:

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

16 (e) A consumer reporting agency may develop procedures  
17 involving the use of telephone, fax, the internet, or other  
18 electronic media to receive and process a request from a  
19 consumer to temporarily lift a freeze on a credit report in an  
20 expedited manner.

21 (f) A consumer reporting agency that receives a request  
22 from a consumer to temporarily lift a freeze on a credit report



**PROPOSED****S.B. NO. 2289  
S.D. 2**

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

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

6 (1) Upon consumer request; or

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

9 If a consumer reporting agency intends to remove a freeze upon a  
10 consumer's credit report pursuant to this subsection, the  
11 consumer reporting agency shall notify the consumer in writing  
12 prior to removing the freeze on the consumer's credit report.

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

19 (i) If a consumer requests a security freeze, the consumer  
20 reporting agency shall disclose to the consumer the process of  
21 placing and temporarily lifting a security freeze and the  
22 process for allowing access to information from the consumer's

1 credit report for a specific period of time while the security  
2 freeze is in place.

3 (j) A security freeze shall remain in place until the  
4 consumer requests that the security freeze be removed. A  
5 consumer reporting agency shall remove a security freeze within  
6 three business days of receiving a request for removal from the  
7 consumer who provides both of the following:

8 (1) Clear and proper identification; and

9 (2) The unique personal identification number or password  
10 provided by the consumer reporting agency pursuant to  
11 subsection (c).

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

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

18 (1) A person, or the person's subsidiary, affiliate,  
19 agent, or assignee with which the consumer has or,  
20 prior to assignment, had an account, contract, or  
21 debtor-creditor relationship for the purposes of  
22 reviewing the account or collecting the financial



1 obligation owing for the account, contract, or debt,  
2 or extending credit to a consumer with a prior or  
3 existing account, contract, or debtor-creditor  
4 relationship. For purposes of this subsection,  
5 "reviewing the account" includes activities related to  
6 account maintenance, monitoring, credit line  
7 increases, and account upgrades and enhancements;

8 (2) A subsidiary, affiliate, agent, assignee, or  
9 prospective assignee of a person to whom access has  
10 been granted for purposes of facilitating the  
11 extension of credit or other permissible use;

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

14 (4) A child support enforcement agency when investigating  
15 a child support case pursuant to Title IV-D of the  
16 Social Security Act (42 U.S.C. sections 651 to 669b);

17 (5) The department of the attorney general or county  
18 prosecuting attorneys or their agents or assignees  
19 acting to investigate medicaid fraud;

20 (6) The department of taxation, county taxing authorities,  
21 or any of their agents or assignees, acting to  
22 investigate or collect delinquent taxes or



1 assessments, including interest and penalties, unpaid  
2 court orders, or to fulfill any of their other  
3 statutory or charter responsibilities;

4 (7) The use of credit information for the purposes of  
5 prescreening as provided by the federal Fair Credit  
6 Reporting Act (15 U.S.C. sections 1681 to 1681v);

7 (8) Any person for the sole purpose of providing a credit  
8 file monitoring subscription service to which the  
9 consumer has subscribed;

10 (9) A consumer reporting agency for the sole purpose of  
11 providing a consumer with a copy of the consumer's  
12 credit report upon the consumer's request; and

13 (10) Any person or entity using a credit report in setting  
14 or adjusting a rate, adjusting a claim, or  
15 underwriting for insurance purposes.

16 § -4 **Consumer reporting agency duties if security freeze**  
17 **in place.** If a security freeze is in place, a consumer  
18 reporting agency shall not change any of the following official  
19 information in a credit report without sending a written  
20 confirmation of the change to the consumer within thirty days of  
21 the change being posted to the consumer's file: name, date of  
22 birth, social security number, and address. Written



1 confirmation is not required for technical modifications of a  
2 consumer's official information, including name and street  
3 abbreviations, complete spellings, or transposition of numbers  
4 or letters. In the case of an address change, the written  
5 confirmation shall be sent to both the new address and the  
6 former address.

7       § -5 **Persons not required to place security freeze.** The  
8 requirement under this chapter to place a security freeze on a  
9 credit report does not apply to:

- 10       (1) A check services or fraud prevention services company  
11           that reports on incidents of fraud or issues  
12           authorizations for the purpose of approving or  
13           processing negotiable instruments, electronic fund  
14           transfers, or similar methods of payment;
- 15       (2) A deposit account information service company that  
16           issues reports regarding account closures due to  
17           fraud, substantial overdrafts, ATM abuse, or similar  
18           negative information regarding a consumer to inquiring  
19           banks or other financial institutions for use only in  
20           reviewing a consumer request for a deposit account at  
21           the inquiring bank or financial institution;
- 22       (3) A consumer reporting agency that:

1 (A) Acts only to resell credit information by  
 2 assembling and merging information contained in a  
 3 database of one or more consumer reporting  
 4 agencies; and

5 (B) Does not maintain a permanent database of credit  
 6 information from which new credit reports are  
 7 produced.

8 § -6 Violation, penalties. (a) Any person who violates  
 9 any provision of this chapter shall be deemed to have engaged in  
 10 an unfair or deceptive act or practice in the conduct of trade  
 11 or commerce within the meaning of section 480-2. The attorney  
 12 general or the director of the office of consumer protection may  
 13 bring an action based upon unfair or deceptive acts or practices  
 14 declared unlawful by this section.

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

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

**PROPOSED**

**Report Title:**

Identity Theft; Credit Reports

**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)

