

ACT 138

H.B. NO. 1871

A Bill for an Act Relating to Consumer Credit Reporting Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

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

**“CHAPTER
CONSUMER CREDIT REPORTING AGENCIES**

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

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

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

“Credit report” means any written, oral, or other communication of any credit information by a consumer reporting agency, as defined in the federal Fair Credit Reporting Act, which operates or maintains a database of consumer credit information bearing on a consumer’s credit worthiness, credit standing, or credit capacity.

“Identity theft” means the unauthorized use of another person’s identifying information to obtain credit, goods, services, money, or property.

“Security freeze” means a notice placed in a credit report, at the request of the consumer who is a victim of identity theft.

§ **-3 Security freeze by consumer reporting agency.** (a) A consumer who has been the victim of identity theft may place a security freeze on the consumer’s credit report by making a request in writing by certified mail to a consumer credit reporting agency, at an address designated by the agency to receive such requests, with a valid copy of a police report, investigative report, or complaint the consumer has filed with a law enforcement agency about unlawful use of the consumer’s personal information by another person. A consumer credit reporting agency shall not charge a fee for placing or removing a security freeze on a credit report. A security freeze shall prohibit the consumer credit reporting agency from releasing the consumer’s credit report or any information from it without the express authorization of the consumer. This subsection shall not prevent a consumer report-

ing agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

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

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ten business days of placing the security freeze and shall provide the consumer with a unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer's credit report for a specific party, parties, or period of time.

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

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

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

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

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

- (1) Upon consumer request; or
- (2) When the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer.

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

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

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

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

- (1) Clear and proper identification; and

- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c).
- (k) A consumer reporting agency shall require clear and proper identification of the person making a request to place or remove a security freeze.
- (l) The provisions of this section, including the security freeze, do not apply to the use of a consumer's credit report by the following:
- (1) A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt, or extending credit to a consumer with a prior or existing account, contract, or debtor-creditor relationship. For purposes of this subsection, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;
 - (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;
 - (3) Any person acting pursuant to a court order, warrant, or subpoena;
 - (4) A child support enforcement agency when investigating a child support case pursuant to Title IV-D of the Social Security Act (42 U.S.C. Sections 651 to 669b);
 - (5) The department of the attorney general or county prosecuting attorneys or their agents or assignees acting to investigate medicaid fraud;
 - (6) The department of taxation, county taxing authorities, or any of their agents or assignees, acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of their other statutory or charter responsibilities;
 - (7) The use of credit information for the purposes of prescreening as provided by the federal Fair Credit Reporting Act (15 U.S.C. Sections 1681 to 1681x);
 - (8) Any person for the sole purpose of providing a credit file monitoring subscription service to which the consumer has subscribed;
 - (9) A person for the sole purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request; and
 - (10) Any person or entity using a credit report in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

§ -4 Consumer reporting agency duties if security freeze in place. If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation shall not be required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

§ -5 Persons not required to place security freeze. The requirement under this chapter to place a security freeze on a credit report shall not apply to:

- (1) A check services or fraud prevention services company that reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment;

- (2) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;
- (3) A consumer reporting agency that:
 - (A) Acts only to resell credit information by assembling and merging information contained in a database of one or more consumer reporting agencies; and
 - (B) Does not maintain a permanent database of credit information from which new credit reports are produced.

§ -6 **Violation, penalties.** (a) A person who violates any provision of this chapter shall be subject to penalties of not more than \$2,500 for each violation. The attorney general or the executive director of the office of consumer protection may bring an action pursuant to this section.

(b) In addition to any penalty provided for in subsection (a), any person who violates any provision of this chapter shall be liable to the injured party in an amount equal to the sum of any actual damages sustained by the injured party as a result of the violation. The court in any action brought under this section may award reasonable attorneys' fees to the prevailing party.

(c) The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of the State.”

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

(Approved May 25, 2006.)