

AN ACT

ENTITLED, An Act to authorize certain persons to request a security freeze on the credit report of a protected consumer.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That the code be amended by adding a NEW SECTION to read:

Terms used in this Act mean:

- (1) "Protected consumer," a person who is under the age of sixteen years at the time a request for the placement of a security freeze is made or an incapacitated person or a protected person for whom a guardian or conservator has been appointed;
- (2) "Record," a compilation of information that is created by a consumer reporting agency solely for the purpose of complying with this section, identifies a protected consumer, and may not be used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;
- (3) "Representative," a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer;
- (4) "Security freeze," a notice placed on a consumer's credit report that prohibits a consumer reporting agency from releasing the consumer's credit report relating to the extension of credit involving that consumer's report, without the express authorization of the protected person's representative;
- (5) "Sufficient proof of authority," documentation that shows a representative has authority to act on behalf of a protected consumer and includes an order issued by a court of law, a lawfully executed and valid power of attorney, or a notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer;

- (6) "Sufficient proof of identification," information or documentation that identifies a protected consumer or a representative of a protected consumer and includes a social security number or a copy of a social security card issued by the social security administration, a certified or official copy of a birth certificate, or a copy of a driver license, an identification card issued by the motor vehicle administration, or any other government issued identification.

Section 2. That the code be amended by adding a NEW SECTION to read:

A consumer reporting agency shall place a security freeze for a protected consumer if the agency receives a request from the protected consumer's representative for the placement of the security freeze under this section and the protected consumer's representative:

- (1) Submits the request to the agency in the manner specified by the agency;
- (2) Provides to the agency sufficient proof of identification of the protected consumer and the representative;
- (3) Provides to the agency sufficient proof of authority to act on behalf of the protected consumer; and
- (4) Pays to the agency a fee as provided in section 9 of this Act.

If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request under this section, the consumer reporting agency shall create a record for the protected consumer.

Section 3. That the code be amended by adding a NEW SECTION to read:

This Act does not apply to the use of a protected consumer's credit report or record by:

- (1) A person administering a credit file monitoring subscription service to which the protected consumer has subscribed or the representative of the protected consumer has subscribed on behalf of the protected consumer;

- (2) A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's credit report on request of the protected consumer or the protected consumer's representative; or
- (3) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods;
- (4) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer to inquiring financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring financial institution;
- (5) An insurance company for the purpose of conducting its ordinary business;
- (6) A consumer reporting agency that acts only to resell credit information by assembling and merging information contained in a database of one or more consumer reporting agencies and does not maintain a permanent database of credit information from which new credit reports are produced; and
- (7) A consumer reporting agency's database that consists of information used for criminal record information, fraud prevention or detection, personal loss history information, or employment, tenant, or individual background screening, but not for credit granting services.

Section 4. That the code be amended by adding a NEW SECTION to read:

Within thirty days after receiving a request that meets the requirements of this Act, a consumer reporting agency shall place a security freeze for the protected consumer.

Section 5. That the code be amended by adding a NEW SECTION to read:

Unless a security freeze for a protected consumer is removed in accordance with sections 7 or 10 of this Act, a consumer reporting agency may not release the protected consumer's credit report, any information derived from the protected consumer's credit report, or any record created for the protected consumer.

Section 6. That the code be amended by adding a NEW SECTION to read:

A security freeze for a protected consumer placed under section 4 of this Act shall remain in effect until:

- (1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the security freeze in accordance with section 7 of this Act;
or
- (2) The security freeze is removed in accordance with section 10 of this Act.

Section 7. That the code be amended by adding a NEW SECTION to read:

If a protected consumer or a protected consumer's representative wishes to remove a security freeze for the protected consumer, the protected consumer or the protected consumer's representative shall submit a request for the removal of the security freeze to the consumer reporting agency in the manner specified by the agency. If the request is made by the protected consumer, the requestor shall provide to the consumer reporting agency proof that the authority for the protected consumer's representative is no longer valid and sufficient proof of the identification of the protected consumer. If the request is made by the protected consumer's representative, the requestor shall provide to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative, and sufficient proof of authority to act on behalf of the protected consumer.

The requestor shall pay to the consumer reporting agency a fee as provided in section 9 of this Act.

Section 8. That the code be amended by adding a NEW SECTION to read:

Within thirty days after receiving a request that meets the requirements of section 7 of this Act, the consumer reporting agency shall remove the security freeze for the protected consumer.

Section 9. That the code be amended by adding a NEW SECTION to read:

A consumer reporting agency may charge a reasonable fee, not exceeding five dollars, for each placement or removal of a security freeze for a protected consumer. However, no consumer reporting agency may charge a fee under this section if the protected consumer's representative provides a police report or affidavit of alleged identity fraud against the protected consumer to the consumer reporting agency, or a request for the placement or removal of a security freeze is for a protected consumer who is under the age of sixteen years at the time of the request, and the agency has a consumer report pertaining to the protected consumer. No consumer reporting agency may charge a fee for any other service performed under this Act.

Section 10. That the code be amended by adding a NEW SECTION to read:

A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1242

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1242
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State