

Hawaii Law Description:

Allows victims of identity theft to place a "security freeze" on their consumer reports, thereby prohibiting a consumer reporting agency from releasing information about the individual without the individual's express consent.
(HB1871 HD1)

RELATING TO CONSUMER CREDIT REPORTING AGENCIES.

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

SECTION 1. The purpose of this Act is to protect Hawaii consumers who are victims of identity theft by allowing them to place a security freeze on their consumer credit reports. This security freeze will prohibit a consumer reporting agency from releasing any information without the consumer's express authorization and therefore aims to afford consumers more control over who has access to their consumer report. This Act aims to effectively prevent identity thieves from continuing to secure credit in a victim's name.

SECTION 2. 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 Definitions. When used in this chapter, unless the context otherwise requires:

"Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit.

"Consumer reporting agency" means any person who, for monetary fees, 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 consumer credit reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"Identity theft" means a violation of section 708-839.6, 708-839.7, or 708-839.8.

"Security freeze" means a notice placed in a consumer report, at the request of a consumer who is a victim of identity theft, that prohibits a consumer reporting agency from releasing the consumer report or score relating to an extension of credit.

§ -2 Security freeze by consumer reporting agency. (a) A consumer who has been the victim of identity theft may place a security freeze on a consumer report by making a request in writing by certified mail to a consumer reporting agency, accompanied by 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 reporting agency shall not charge a fee for placing or removing a security freeze on a consumer report. A security freeze shall prohibit the consumer reporting agency from releasing the consumer report or any information from the report without the express authorization of the consumer. When a security freeze is in place, information from a consumer report shall not be released to a third party without prior express authorization from the consumer. This subsection shall not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.

(b) A consumer reporting agency shall place a security freeze on a consumer 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 report for a specific party, parties, or period of time.

(d) If the consumer wishes to allow access to the consumer report for a specific period of time while a security freeze is in place, the consumer shall contact the consumer reporting agency at a point of contact designated by the agency using procedures that may be developed by the consumer reporting agency pursuant to subsection (e), requesting that the security freeze be temporarily lifted, and the consumer shall provide the following:

(1) Clear and proper identification;

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c); and

(3) Clear and proper information regarding the time period for which the report shall be available to users of the consumer report.

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

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

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

(1) Upon consumer request; or

(2) When the consumer report was frozen due to a material misrepresentation of fact by the consumer.

If a consumer reporting agency intends to remove a security freeze from a consumer report pursuant to this subsection, the consumer reporting agency shall notify the consumer in writing prior to removing the security freeze on the consumer report.

(h) If a third party requests access to a consumer report on which a security freeze is in effect in connection with an application for credit or any other use and the consumer does not allow the consumer report to be accessed for that specific party or 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 of allowing access to information from the consumer report for a specific period of time while the security freeze is in place.

(j) Except as provided for in subsection (d), 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 pursuant to subsection (e); 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 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 paragraph, "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. 651 et seq);

(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. 1681 et seq.);

(8) Any person for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;

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

(10) A person for the sole purpose of providing a consumer with a copy of the consumer's report upon the consumer's request.

§ -3 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 consumer 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.

§ -4 Persons not required to place security freeze. The requirement under this chapter to place a security freeze on a consumer 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; and

(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 consumer reports are produced;

and

(4) Any person for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

§ -5 Violation, penalties. (a) Exclusive of any other remedies that may be permitted by law, any person that wilfully fails to comply with any requirement imposed under this chapter with respect to any consumer is liable to the consumer in an amount equal to the sum of the following:

(1) (A) Any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1000; or

(B) In the case of liability of a natural person for requesting a freeze, a temporary lift of a security freeze, or the removal of a

security freeze under false pretenses or in an attempt to violate federal or state law, actual damages sustained by the consumer as a result of the failure, or \$1,000, whichever is greater;

(2) Such amount of punitive damages as the court may allow; and

(3) In the case of any successful action to enforce any liability under this section, the costs of the action, together with reasonable attorney's fees as determined by the court.

(b) Exclusive of any other remedies that may be permitted by law, any person who is negligent in failing to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of the following:

(1) Any actual damages sustained by the consumer as a result of the failure; and

(2) In the case of any successful action to enforce any liability under this section, the costs of the action, together with reasonable attorney's fees as determined by the court."

SECTION 3. This Act shall take effect on January 1, 2096.