

Engrossed Bill (Original Bill with Amendment(s) Incorporated)

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
Fifty-ninth Legislature Second Regular Session -
2008

IN THE SENATE

SENATE BILL NO. 1380, As Amended

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

1 AN ACT
2 RELATING TO PROTECTION OF CREDIT REPORTS; REPEALING SECTION 28-
51-101, IDAHO
3 CODE, RELATING TO DEFINITIONS AND SECTION 28-51-102, IDAHO
CODE, RELATING
4 TO A BLOCK OF INFORMATION APPEARING AS A RESULT OF A
VIOLATION OF A CRIM-
5 INAL CODE PROVISION PROHIBITING MISAPPROPRIATION OF PERSONAL
INFORMATION;
6 AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW
CHAPTER 52, TITLE
7 28, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS,
TO PROVIDE FOR
8 A SECURITY FREEZE ON A CONSUMER'S CREDIT REPORT, TO PROVIDE
FOR REMOVAL OF
9 A SECURITY FREEZE AND FOR REQUIREMENTS AND TIMING, TO
PROVIDE FOR EXCEP-
10 TIONS, TO PROVIDE FOR FEES FOR A SECURITY FREEZE, TO PROVIDE
FOR CHANGES
11 TO INFORMATION IN A CREDIT REPORT SUBJECT TO A SECURITY
FREEZE, TO PROVIDE
12 FOR PROTECTION OF PERSONAL INFORMATION AND TO PROVIDE
ENFORCEMENT.

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Sections 28-51-101 and 28-51-102, Idaho
Code, be, and the
15 same are hereby repealed.

16 SECTION 2. That Title 28, Idaho Code, be, and the same is
hereby amended
17 by the addition thereto of a NEW CHAPTER, to be known and
designated as Chap-
18 ter 52, Title 28, Idaho Code, and to read as follows:

19

CHAPTER 52

21 28-52-101. SHORT TITLE. This chapter shall be known
and cited as the
22 "Credit Report Protection Act."

23 28-52-102. DEFINITIONS. In this chapter:
24 (1) "Consumer" means a natural person.
25 (2) "Consumer reporting agency" means a person who, for
fees, dues or on
26 a cooperative basis, regularly engages in whole or in part in
the practice of
27 assembling or evaluating information concerning a consumer's
credit or other
28 information for the purpose of furnishing a credit report to
another person.
29 (3) "Credit report" means a consumer report, as defined in
15 U.S.C. sec-
30 tion 1681a, that is used or collected, in whole or in part, for
the purpose of
31 serving as a factor in establishing a consumer's eligibility
for credit for
32 personal, family or household purposes.
33 (4) "Personal information" means personally identifiable
financial infor-
34 mation provided by a consumer to another person, resulting from
any transac-
35 tion with the consumer or any service performed for the
consumer or otherwise
36 obtained by another person. Personal information does not
include publicly
37 available information, as that term is defined by regulations
prescribed under
38 15 U.S.C. section 6804, or any list, description or other
grouping of con-
39 sumers, and publicly available information pertaining to
consumers that is
40 derived without using any nonpublic personal information.
Notwithstanding the

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1 foregoing, "personal information" includes any list,
description or other
2 grouping of consumers, and publicly available information
pertaining to the
3 consumers, that is derived using any nonpublic personal
information other than
4 publicly available information.
5 (5) "Proper identification" has the same meaning as in 15
U.S.C. section
6 1681h(a)(1) and includes:
7 (a) The consumer's full name, including first, middle and
last names and
8 any suffix;
9 (b) Any name the consumer previously used;

10 (c) The consumer's current and recent full addresses,
including street
11 address, any apartment number, city, state and zip code;
12 (d) The consumer's social security number; and
13 (e) The consumer's date of birth.
14 (6) "Security freeze" means a prohibition, consistent
with section
15 28-52-103, Idaho Code, on a consumer reporting agency's
furnishing of a
16 consumer's credit report to a third party intending to use the
credit report
17 to determine the consumer's eligibility for credit.

18 28-52-103. SECURITY FREEZE. (1) A consumer may place a
security freeze on
19 the consumer's credit report by:
20 (a) Making a request to a consumer reporting agency in
writing by regular
21 or certified mail at an address designated by the
consumer reporting
22 agency to receive the request;
23 (b) Providing proper identification; and
24 (c) Paying the fee required by the consumer reporting
agency in accor-
25 dance with section 28-52-106, Idaho Code.
26 (2) Upon receiving a request from a consumer under
subsection (1) of this
27 section, the consumer reporting agency shall:
28 (a) Place a security freeze on the consumer's credit
report within three
29 (3) business days after receiving the consumer's request;
and
30 (b) Within five (5) business days after placing the
security freeze, send
31 a written confirmation of the security freeze to the
consumer and provide
32 the consumer with a unique personal identification number
or password to
33 be used by the consumer when providing authorizations for
removal or tem-
34 porary lifts of the security freeze under section 28-52-104,
Idaho Code.
35 (3) If a security freeze is in place, a consumer reporting
agency may not
36 release a consumer's credit report, or information from the
credit report, to
37 a third party that intends to use the information to determine
a consumer's
38 eligibility for credit without prior authorization from the
consumer.
39 (4) Notwithstanding subsection (3) of this section, a
consumer reporting
40 agency may communicate to a third party requesting a consumer's
credit report
41 that a security freeze is in effect on the consumer's
credit report. If a

42 third party requesting a consumer's credit report in
connection with the
43 consumer's application for credit is notified of the existence
of a security
44 freeze under this section, the third party may treat the
consumer's applica-
45 tion as incomplete.
46 (5) A consumer reporting agency shall require proper
identification of
47 the consumer requesting to place, remove or temporarily
remove a security
48 freeze.
49 (6) A consumer reporting agency shall develop a contact
method to receive
50 and process a consumer's request to permanently remove or
temporarily lift a
51 security freeze. The contact method may include: a postal
address; an elec-
52 tronic contact method chosen by the consumer reporting
agency, which may
53 include the use of fax, internet or other electronic means; or
the use of
54 telephone in a manner that is consistent with any federal
requirements placed

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1 on the consumer reporting agency. By no later than September 1,
2008, a con-
2 sumer reporting agency shall develop a secure electronic means
for a consumer
3 to request the temporary lift of a security freeze.

4 (7) A security freeze placed under this section may be
removed only in
5 accordance with section 28-52-104, Idaho Code.

6 28-52-104. REMOVAL OF SECURITY FREEZE -- REQUIREMENTS AND
TIMING. (1) A

7 consumer reporting agency may remove a security freeze from
a consumer's

8 credit report only if the consumer reporting agency receives
the consumer's

9 request through a contact method established and required in
accordance with

10 subsection (6) of section 28-52-103, Idaho Code, and the
consumer reporting

11 agency receives the consumer's proper identification and
other information

12 sufficient to identify the consumer, including the consumer's
personal identi-

13 fication number or password; or the consumer makes a material
misrepresenta-

14 tion of fact in connection with the placement of the security
freeze and the

15 consumer reporting agency notifies the consumer in writing
before removing the

16 security freeze.

17 (2) A consumer reporting agency shall temporarily lift a
security freeze
18 upon receipt of the consumer's request through the contact
method established
19 by the consumer reporting agency in accordance with subsection
(6) of section
20 28-52-103, Idaho Code, along with:
21 (a) The consumer's proper identification and other
information sufficient
22 to identify the consumer;
23 (b) The consumer's personal identification number or
password;
24 (c) The proper information regarding the third party who
is to receive
25 the credit report or the time period for which the credit
report is to be
26 available to users of the credit report; and
27 (d) A fee, if applicable.
28 (3) A consumer reporting agency shall remove or temporarily
lift a secu-
29 rity freeze from a consumer's credit report as follows:
30 (a) Except as provided in paragraph (b) of this subsection
regarding tem-
31 porary lifts, within three (3) business days after the
business day on
32 which the consumer's written request to remove or
temporarily lift the
33 security freeze is received by the consumer reporting
agency using a con-
34 tact method chosen by the consumer reporting agency in
accordance with
35 subsection (6) of section 28-52-103, Idaho Code; and
36 (b) On and after September 1, 2008, within fifteen (15)
minutes after the
37 consumer's request to temporarily lift the security freeze
is received by
38 the consumer reporting agency through the electronic contact
method chosen
39 by the consumer reporting agency in accordance with
subsection (6) of sec-
40 tion 28-52-103, Idaho Code, if such request is received
between 6:00 a.m.
41 and 9:30 p.m. mountain time.
42 (4) A consumer reporting agency need not remove or
temporarily lift a
43 security freeze within the time specified in subsection (3) of
this section if
44 the consumer fails to meet the requirements of subsection (1) or
(2) of this
45 section, as applicable, or the consumer reporting agency's
ability to remove
46 the security freeze within such time is prevented by:
47 (a) An act of God, including fire, earthquake, hurricane,
storm or simi-
48 lar natural disaster or phenomenon;
49 (b) Unauthorized or illegal acts by a third party,
including terrorism,

50 sabotage, riot, vandalism, labor strikes or disputes
disrupting opera-
51 tions, or similar occurrence;
52 (c) Operation interruption, including electrical failure,
unanticipated
53 delay in equipment or replacement part delivery, computer
hardware or
54 software failures inhibiting response time, or similar
disruption;

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1 (d) Governmental action, including emergency order or
regulation, judi-
2 cial or law enforcement action or similar directive;
3 (e) Regularly scheduled maintenance, during other than
normal business
4 hours, of, or updates to, the consumer reporting agency's
systems;
5 (f) Commercially reasonable maintenance of, or repair
to, the consumer
6 reporting agency's systems that is unexpected or
unscheduled; or
7 (g) Receipt of a removal request outside of normal business
hours.

8 28-52-105. EXCEPTIONS. (1) Notwithstanding subsection
(1) of section
9 28-52-103, Idaho Code, a consumer reporting agency may
furnish a consumer's
10 credit report to a third party if the purpose of the credit
report is to:
11 (a) Use the credit report for purposes permitted under 15
U.S.C. section
12 1681b(c);
13 (b) Review the consumer's account with the third party,
including for
14 account maintenance or monitoring credit line increases or
other upgrades
15 or enhancements;
16 (c) Collect on a financial obligation owed by the
consumer to the third
17 party requesting the credit report; or
18 (d) Review the consumer's account with another person, or
collect on a
19 financial obligation owed by the consumer to another person
and the credit
20 report request is for purposes permitted under 15 U.S.C.
section 1681b(c)
21 or the third party requesting the credit report is a
subsidiary, affili-
22 ate, agent, assignee or prospective assignee of the
person holding the
23 consumer's account or to whom the consumer owes a financial
obligation.
24 (2) The consumer's request for a security freeze does not
prohibit the

25 consumer reporting agency from disclosing the consumer's
credit report for
26 other than credit related purposes consistent with the
definition of credit
27 report in section 28-52-102, Idaho Code. The following list
identifies the
28 types of credit report disclosures by consumer reporting
agencies to third
29 parties that are not prohibited by a security freeze:
30 (a) The third party does not use the credit report for
the purpose of
31 serving as a factor in establishing a consumer's eligibility
for credit;
32 (b) The third party is acting under a court order, warrant
or subpoena
33 requiring release of the credit report;
34 (c) The third party is a child support agency, or its
agent or assignee
35 acting under part D, title IV, of the social security act
or a similar
36 state law;
37 (d) The third party is the federal department of health
and human ser-
38 vices or a similar state agency, or its agent or assignee,
investigating
39 medicare or medicaid fraud;
40 (e) The purpose of the credit report is to investigate or
collect delin-
41 quent taxes, assessments or unpaid court orders and the
third party is the
42 federal internal revenue service; a state taxing authority;
the division
43 of motor vehicles of the Idaho transportation department; a
county, munic-
44 ipality or other taxing district; a federal, state or
local law enforce-
45 ment agency; or the agent or assignee listed in subsection
(1) or (2) of
46 this section;
47 (f) The third party is using the information solely for
criminal record
48 information, tenant screening, employment screening, fraud
prevention or
49 detection, or personal loss history information;
50 (g) The third party is a person or entity regulated under
title 41, Idaho
51 Code;
52 (h) The third party is administering a credit file
monitoring service to
53 which the consumer has subscribed; or
54 (i) The third party requests the credit report for the
sole purpose of

1 providing the consumer with a copy of the consumer's
credit report or

2 credit score upon the consumer's request.
3 (3) Section 28-52-103, Idaho Code, does not apply to:
4 (a) A consumer reporting agency, the sole purpose of which
is to resell
5 credit information by assembling and merging information
contained in the
6 database of another consumer reporting agency and that does
not maintain a
7 permanent database of credit information from which a
consumer's credit
8 report is produced;
9 (b) A check services or fraud prevention services
company that issues
10 reports on incidents of fraud or authorizations for the
purpose of approv-
11 ing or processing negotiable instruments, electronic fund
transfers or
12 similar methods of payment; or
13 (c) A deposit account information service company that
issues reports
14 concerning account closures based on fraud, substantial
overdrafts, auto-
15 mated teller machine abuse or similar information concerning
a consumer to
16 a requesting financial institution for the purpose of
evaluating a
17 consumer's request to create a deposit account.
18 (4) Nothing in this chapter prohibits a person from
obtaining, aggregat-
19 ing or using information lawfully obtained from public
records in a manner
20 that does not otherwise violate the provisions of this chapter.

21 28-52-106. FEES FOR SECURITY FREEZE. (1) Except as provided
in subsection
22 (2) of this section, a consumer reporting agency may charge an
administrative
23 fee, not to exceed six dollars (\$6.00), to a consumer for each
placement of a
24 security freeze, and six dollars (\$6.00) for each temporary lift
of a security
25 freeze. A consumer reporting agency may not charge an
administrative fee for a
26 removal of a security freeze.
27 (2) A consumer reporting agency may not charge a fee
under section
28 28-52-103(1)(c), Idaho Code, to a consumer who has been the
victim of identity
29 theft and who has submitted to the consumer reporting agency
a valid police
30 report, an investigative report or complaint that the consumer
has filed with
31 a law enforcement agency.
32 (3) A consumer may be charged a reasonable fee, not to
exceed ten dollars
33 (\$10.00), if the consumer fails to retain the original personal
identification

34 number, password or other device provided by the consumer
reporting agency and
35 if the consumer asks the consumer reporting agency to reissue
the same or a
36 new personal identification number, password or other device.

37 28-52-107. CHANGES TO INFORMATION IN A CREDIT REPORT
SUBJECT TO A SECURITY
38 RITY FREEZE. (1) If a credit report is subject to a security
freeze, a consumer reporting agency shall notify the consumer who is the
39 subject of the
40 credit report within thirty (30) days if the consumer
reporting agency
41 changes the consumer's name, date of birth, social security
number or address.
42 (2) Notwithstanding subsection (1) of this section, a
consumer reporting
43 agency may make technical modifications to information in a
credit report that
44 is subject to a security freeze without providing notification
to the consumer. Technical modifications include the addition or
45 subtraction of abbreviations to names and addresses and transpositions or
46 corrections of incorrect
47 numbering or spelling.
48 (3) When providing notice of a change of address under
subsection (1) of
49 this section, the consumer reporting agency shall provide
notice to the consumer
50 at both the new address and the former address.

51 28-52-108. PROTECTION OF PERSONAL INFORMATION. (1) Except
as otherwise
52 specifically provided by law, a person shall not intentionally
communicate an

6

1 individual's social security number to the general public.
2 (2) The state of Idaho, a department, agency, board,
commission or other
3 political subdivision may not employ or contract for the
employment of an
4 inmate in any facility operated by the department of
correction or private
5 correctional facility contracted with the department of
correction or county
6 jail in any capacity that would allow any inmate access to any
other person's
7 personal information.

8 28-52-109. ENFORCEMENT. (1) Except as otherwise
specified in this section,
9 any credit reporting agency that willfully fails to
comply with any

10 requirement imposed under this chapter with respect to any
consumer is liable
11 to that consumer in an amount equal to the sum of:
12 (a) Any actual damages sustained by the consumer as a
result of the fail-
13 ure or damages of not less than one hundred dollars (\$100)
and not more
14 than one thousand dollars (\$1,000); or
15 (b) Such amount of punitive damages as the court may allow;
and
16 (c) In the case of any successful action to enforce any
liability under
17 this section, the costs of the action together with
reasonable attorney's
18 fees as determined by the court.
19 (2) Any person who obtains a consumer report, requests a
security freeze,
20 requests the temporary lifting of a freeze or requests the
removal of a secu-
21 rity freeze from a consumer reporting agency under false
pretenses or in an
22 attempt to violate federal or state law shall be liable
to the consumer
23 reporting agency for actual damages sustained by the consumer
reporting agency
24 or one thousand dollars (\$1,000), whichever is greater.
25 (3) Any credit reporting agency who is negligent in
failing to comply
26 with any requirement imposed under this chapter with respect
to any consumer
27 is liable to that consumer in an amount equal to the sum of:
28 (a) Any actual damages sustained by the consumer as a
result of the fail-
29 ure; and
30 (b) In the case of any successful action to enforce any
liability under
31 this section, the costs of the action together with
reasonable attorney's
32 fees as determined by the court.
33 (4) Upon a finding by the court that an unsuccessful
pleading, motion or
34 other paper filed in connection with an action under this
chapter was filed in
35 bad faith or for purposes of harassment, the court shall award
to the prevail-
36 ing party attorney's fees reasonable in relation to the
work expended in
37 responding to the pleading, motion, or other paper.
38 (5) The attorney general may enforce this chapter's
provisions and, not-
39 withstanding any other provision of law, the attorney general
has exclusive
40 authority to bring an action against a credit reporting agency
for violation
41 of section 28-52-104(3)(b), Idaho Code, concerning the
requirement that a

42 credit reporting agency temporarily lift a freeze within fifteen
(15) minutes.

43 In an action by the attorney general, a credit reporting agency
that violates

44 this chapter's provisions is subject to a civil penalty not less
than one hun-

45 dred dollars (\$100) or greater than one thousand dollars
(\$1,000) for a viola-

46 tion or series of violations concerning a specific consumer
and no greater

47 than one hundred thousand dollars (\$100,000) in the aggregate
for related

48 violations concerning more than one (1) consumer. In addition to
the penalties

49 provided in this section, the attorney general may seek
injunctive relief to

50 prevent future violations of this chapter in the district court
in Ada county

51 or in the district court for the district in which a consumer
resides who is

52 the subject of a credit report on which a violation occurs.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE

RS 17641

The purpose of this bill is to allow consumers to "freeze" access to their credit reports, as a means to help prevent fraud and identity theft. A "freeze" means that anyone attempting to obtain a credit report on a consumer will be unable to get one, and will simply be told that the credit report is frozen. Because most creditors and merchants won't extend significant credit without reviewing the consumer's credit report first, it will be more difficult for fraudsters to obtain credit using someone else's stolen identity. If, having frozen his credit report, the consumer himself needs to obtain credit, he can temporarily lift, or permanently remove, the freeze on his own account. The bill specifies how a consumer can place a freeze with a credit reporting agency, how the consumer can temporarily lift the freeze so that the consumer may engage in a credit transaction, and how a consumer can permanently remove a freeze. It also sets out a number of exceptions to the freeze, to allow creditors

to use credit reports to monitor, service and collect their existing credit accounts, to allow the credit reporting agency to comply with subpoenas and court orders, to allow screening by potential landlords and employers, and to allow other legitimate non-credit related uses of credit reports. In order to defray the costs associated with placing and lifting a freeze, the bill allows a credit reporting agency to charge a fee of up to \$6 to place a freeze or to temporarily lift a freeze. No fee may be charged for permanently removing a freeze. A consumer who has been a victim of identity theft may not be charged a fee for placing or removing a freeze. Credit reporting agencies who fail to comply with this bill's requirements are subject to suit for damages, punitive damages and injunctive relief by consumers and by the Attorney General.

FISCAL NOTE

This bill will have no impact on the general fund.

Contact

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