

SUBSTITUTE FOR
HOUSE BILL NO. 4103

A bill to require certain consumer reporting agencies to place security freezes on certain consumer credit information; to authorize and limit fees; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "credit security act of 2007".

3 Sec. 3. As used in this act:

4 (a) "Clear and proper identification" means information a
5 consumer reporting agency generally considers sufficient to
6 identify an individual.

7 (b) "Consumer" means an individual who resides in this state.

8 (c) "Consumer report" means that term as defined in 15 USC

House Bill No. 4103 (H-2) as amended March 20, 2007

1681a(d).

(d) "Consumer reporting agency" means that term as defined in 15 USC 1681a(f).

(e) "Security freeze" means a notice placed on a consumer report at the request of the consumer that prohibits a consumer reporting agency from releasing the consumer's consumer report or credit score for an extension of credit without the express authorization of the consumer except in compliance with this act.

Sec. 5. (1) [Beginning on the effective date of this act, a consumer who is a victim of identity theft, and beginning March 1, 2009, any other consumer] may place a security freeze on his or her consumer report by making a written request to a consumer reporting agency, sent by certified mail or by overnight delivery using a nationally recognized carrier, to an address designated by that consumer reporting agency to receive requests under this subsection. The request shall include clear and proper identification of the consumer. A consumer reporting agency shall place a security freeze on a consumer's consumer report within 5 business days after receiving a written request for the security freeze from the consumer under this subsection and payment of any applicable fee described in section 13.

(2) Beginning [March] 1, 2009, in addition to accepting written requests under subsection (1), a consumer may make and a consumer reporting agency must accept a request to place a security freeze on his or her consumer report made by electronic mail, secure internet website, telephone, facsimile, or other similar means of telephonic or electronic communication as selected by the consumer reporting agency, and sent to an electronic mail address, internet website, telephone number, or facsimile number designated

House Bill No. 4103 (H-2) as amended March 20, 2007

1 by that consumer reporting agency to receive requests under this
2 subsection. A consumer reporting agency shall place a security
3 freeze on a consumer's consumer file within 5 business days after
4 receiving a request for the security freeze from the consumer under
5 this subsection and payment of any applicable fee described in
6 section 13.

7 (3) If a security freeze is in place, a consumer reporting
8 agency shall not release information from a consumer report to a
9 third party without prior express authorization from the consumer.
10 This subsection does not prevent a consumer reporting agency from
11 advising a third party that a security freeze is in effect with
12 respect to the consumer's consumer report.

13 Sec. 7. (1) Within 10 business days after a consumer reporting
14 agency receives a request for a security freeze under section 5,
15 the consumer reporting agency shall provide all of the following to
16 the consumer:

17 (a) Written confirmation that the security freeze is in place.

18 (b) A unique personal identification number or password that
19 the consumer may use to provide authorization for access to his or
20 her consumer report for a specific period of time.

21 (c) A written description of the process for placing,
22 removing, and temporarily lifting a security freeze and the process
23 for allowing access to information from the consumer report while
24 the security freeze is in effect. Beginning [February 1, 2009], the
25 written description described in this subdivision shall include a
26 description of the process and contact information for placing a
27 security freeze under section 5(2) and temporarily lifting the

1 security freeze under section 11(4).

2 (2) A consumer may request in writing a replacement personal
3 identification number or password for purposes of subsection (1).
4 The request must comply with the requirements for requesting a
5 security freeze under section 5. Within 7 business days after a
6 consumer reporting agency receives a request for a replacement
7 personal identification number or password and payment of any
8 applicable fee described in section 13, the consumer reporting
9 agency shall provide the consumer with a new, unique personal
10 identification number or password to be used by the consumer
11 instead of the number or password that was provided under
12 subsection (1).

13 Sec. 9. (1) A consumer reporting agency shall notify a person
14 who requests a consumer report if a security freeze is in effect
15 for that consumer report.

16 (2) If a security freeze is in effect, a consumer reporting
17 agency shall not change a consumer's name, address, date of birth,
18 or social security number in a consumer report without sending a
19 written confirmation of the change to the consumer within 30 days
20 after the posting of the change to the consumer report. If the
21 change is an address change, the consumer reporting agency shall
22 send written confirmation to both the new address and the former
23 address. Written confirmation is not required for a technical
24 modification of information in a consumer report, including name
25 and street abbreviations, complete spellings, or transposition of
26 numbers or letters.

27 Sec. 11. (1) A consumer reporting agency shall remove or

House Bill No. 4103 (H-2) as amended March 20, 2007

1 temporarily lift a security freeze placed on a consumer report only
2 if 1 of the following applies:

3 (a) The consumer makes a request under this section and pays
4 any applicable fee under section 13 to the consumer reporting
5 agency at a point of contact designated by that consumer reporting
6 agency.

7 (b) The consumer report is frozen due to a material
8 misrepresentation of fact by the consumer. If a consumer reporting
9 agency intends to remove a security freeze on a consumer report
10 under this subdivision, the consumer reporting agency shall notify
11 the consumer in writing before removing the security freeze.

12 (2) If a consumer wishes to allow access to his or her
13 consumer report for a specific period of time while a security
14 freeze is in place, he or she shall contact the consumer reporting
15 agency under subsection (3) or (4), request that the consumer
16 reporting agency temporarily lift the security freeze, and provide
17 all of the following to the consumer reporting agency:

18 (a) Clear and proper identification of the consumer.

19 (b) The consumer's unique personal identification number or
20 password provided by the consumer reporting agency under section 7.

21 (c) The specific time period that the consumer requests that
22 the consumer reporting agency allow users access to his or her
23 consumer report.

24 (d) Any applicable fee under section 13.

25 (3) [Beginning on the effective date of this act], a consumer
26 reporting agency shall accept a request from a consumer [who was a victim of identity
theft, and beginning March 1, 2009, a consumer reporting agency shall
27 accept a request from any other consumer,] to temporarily lift a
security freeze on his or her consumer report under subsection (2)

House Bill No. 4103 (H-2) as amended March 20, 2007

1 if the request is made in writing and is sent by certified mail or
2 by overnight delivery using a nationally recognized carrier to an
3 address designated by that consumer reporting agency to receive
4 requests under this subsection. A consumer reporting agency shall
5 comply with a request to temporarily lift a security freeze under
6 this subsection within 3 business days after receiving the request
7 and payment of any applicable fee described in section 13.

8 (4) Beginning [March] 1, 2009, in addition to accepting
9 written requests under subsection (3), a consumer may make and a
10 consumer reporting agency must accept a request that a consumer
11 reporting agency temporarily lift a security freeze on his or her
12 consumer report by electronic mail, secure internet website,
13 telephone, facsimile, or other similar means of telephonic or
14 electronic communication as selected by the consumer reporting
15 agency, and sent to an electronic mail address, internet website,
16 telephone number, or facsimile number designated by that consumer
17 reporting agency to receive requests under this subsection. [The request
shall include the consumer's unique personal identification number or
password or shall include the correct answer to a security question
selected by the consumer with the agreement of the consumer reporting
agency before the consumer's request under this subsection.] A
18 consumer reporting agency shall comply with a request to
19 temporarily lift a security freeze under this subsection within 15
20 minutes after receiving the request unless the request is received
21 after 9:30 p.m. and before 6 a.m. eastern standard time or unless
22 the consumer reporting agency's ability to temporarily lift the
23 security freeze within 15 minutes is prevented by any of the
24 following:

25 (a) An act of God, including, but not limited to, fire,
26 earthquake, hurricane, storm, or similar natural disaster or
27 phenomena.

1 (b) An unauthorized or illegal act by a third party,
2 including, but not limited to, terrorism, sabotage, riot,
3 vandalism, labor strikes or disputes disrupting operations, or
4 similar occurrence.

5 (c) An operational interruption, including, but not limited
6 to, electrical failure, unanticipated delay in equipment or
7 replacement part delivery, computer hardware or software failures
8 inhibiting response time, or similar disruption.

9 (d) Governmental action, including, but not limited to, an
10 emergency order or regulation, judicial or law enforcement action,
11 or similar directive.

12 (e) Regularly scheduled maintenance of or updates to the
13 consumer reporting agency's computer systems that occurs outside of
14 normal business hours.

15 (f) Commercially reasonable maintenance of or repair to the
16 consumer reporting agency's computer systems that is unexpected or
17 unscheduled.

18 (5) A security freeze shall remain in place until the consumer
19 requests that the consumer reporting agency remove the security
20 freeze. A consumer reporting agency shall remove a security freeze
21 within 3 business days after receiving a request for removal from
22 the consumer and the all of the following information from the
23 consumer:

24 (a) Clear and proper identification.

25 (b) The unique personal identification number or password
26 provided by the consumer reporting agency under section 7.

27 Sec. 13. (1) Subject to subsection (2), a consumer reporting

House Bill No. 4103 (H-2) as amended March 20, 2007

1 agency may impose a reasonable fee on a consumer for placing a
2 security freeze on a consumer report under section 5. The amount of
3 a fee imposed under this subsection shall not exceed \$20.00.

4 (2) A consumer reporting agency may not charge a fee for
5 placing a security freeze on a consumer report if the consumer is a
6 victim of identity theft and provides the consumer reporting agency
7 upon request with a police report that confirms that the consumer
8 was a victim of identity theft [or if the consumer is 60 years old or
9 older].

10 (3) A consumer reporting agency may impose a reasonable fee on
11 a consumer for replacing a personal identification number or
12 password under section 7(2). The amount of a fee imposed under this
13 subsection shall not exceed \$10.00.

14 (4) A consumer reporting agency shall not charge a consumer a
15 fee for temporarily lifting or removing a security freeze under
16 section 11.

17 Sec. 15. (1) A consumer may bring an action against a person
18 that negligently fails to comply with any requirement imposed under
19 this act with respect to the consumer to recover actual damages
20 sustained by the consumer as a result of the failure, plus
21 reasonable attorney fees and court costs.

22 (2) A consumer may bring an action against a person that
23 willfully fails to comply with any requirement imposed under this
24 act with respect to the consumer to recover actual damages
25 sustained by the consumer as a result of the failure or damages of
26 not less than \$100.00 and not more than \$1,000.00, whichever is
27 greater, plus reasonable attorney fees and court costs if the
consumer is successful in obtaining any award in the action. The

House Bill No. 4103 (H-2) as amended March 20, 2007

1 court may also award the [consumer] any punitive damages that it
2 considers proper.

3 (3) A consumer reporting agency may bring an action against a
4 person that obtains a consumer report or requests a security
5 freeze, the temporary lift of a freeze, or the removal of a freeze
6 from the consumer reporting agency under false pretenses or in an
7 attempt to violate federal or state law to recover actual damages
8 sustained by the consumer reporting agency or \$1,000.00, whichever
9 is greater.

10 (4) If the court in an action described in this section finds
11 that an unsuccessful pleading, motion, or other paper filed in
12 connection with the action was filed in bad faith or for purposes
13 of harassment, the court shall award attorney fees to the
14 prevailing party in an amount the court finds reasonable in
15 relation to the work expended in responding to the pleading,
16 motion, or paper.

17 Sec. 17. (1) This act does not apply to the use of a consumer
18 report by any of the following:

19 (a) If the consumer report is used for the purpose of
20 reviewing the account or collecting the financial obligation owing
21 for the account, contract, or negotiable instrument, a person with
22 which a consumer has or had prior to assignment an account or
23 contract or to which the consumer has issued a negotiable
24 instrument; a subsidiary, affiliate, or agent of that person; an
25 assignee of a financial obligation owed by the consumer to that
26 person; or a prospective assignee of a financial obligation owed by
27 the consumer to that person in conjunction with the proposed

1 purchase of the financial obligation.

2 (b) A subsidiary, affiliate, agent, assignee, or prospective
3 assignee of a person to which access has been granted for purposes
4 of facilitating an extension of credit or other permissible use.

5 (c) A state or local agency, law enforcement agency, trial
6 court, or private collection agency acting pursuant to a court
7 order, warrant, or subpoena.

8 (d) A child support agency acting pursuant to part d of title
9 IV of the social security act, 42 USC 651 to 669b.

10 (e) The state or its agents or assigns acting to investigate
11 fraud, acting to investigate or collect delinquent taxes or unpaid
12 court orders, or acting to fulfill any of its other statutory
13 responsibilities if those responsibilities are consistent with a
14 permissible purpose under 15 USC 1681b.

15 (f) A person setting or adjusting a rate, adjusting a claim,
16 or underwriting for insurance purposes.

17 (g) A person using credit information for the purpose of
18 prescreening as provided for by the fair credit reporting act, 15
19 USC 1681 to 1681v.

20 (h) A person administering a consumer report monitoring
21 subscription service to which the consumer has subscribed.

22 (i) A person providing a consumer with a copy of his or her
23 consumer report in response to the consumer's request.

24 (2) As used in this section:

25 (a) "Account" includes a demand deposit account.

26 (b) "Reviewing the account" includes activities related to
27 account maintenance, monitoring, credit line increases, and account

1 upgrades and enhancements.

2 Sec. 19. The following entities are not required to place a
3 security freeze on a consumer report:

4 (a) A consumer reporting agency that acts only as a reseller
5 of credit information by assembling and merging information
6 contained in the database of another consumer reporting agency or
7 multiple consumer reporting agencies and does not maintain a
8 permanent database of credit information from which new consumer
9 reports are produced. However, a consumer reporting agency acting
10 as a reseller shall honor any security freeze placed on a consumer
11 credit report by another consumer reporting agency.

12 (b) A check services or fraud prevention services company that
13 issues reports on incidents of fraud or authorizations for the
14 purpose of approving or processing negotiable instruments,
15 electronic funds transfers, or similar methods of payments.

16 (c) A deposit account information service company that issues
17 reports regarding account closures due to fraud, substantial
18 overdrafts, automatic teller machine abuse, or similar negative
19 information regarding a consumer to inquiring financial
20 institutions for use only in reviewing a consumer request for a
21 deposit account at the inquiring financial institution.

22 (d) A consumer reporting agency, if its database or file
23 consists only of information concerning and used for criminal
24 record information, fraud prevention or detection, personal loss
25 history information, or employment, tenant, or background
26 screening.

27 Enacting section 1. This act takes effect 60 days after the

1 date it is enacted.