

JAN 22 2016

A BILL FOR AN ACT

RELATING TO CONSUMER CREDIT REPORTING AGENCIES.

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

1 SECTION 1. The legislature finds that in 2011, researchers
2 at Carnegie Mellon University analyzed more than 800,000 credit
3 records, including 40,000 belonging to minors. The researchers
4 found that ten per cent of children in the study were victims of
5 identity theft, compared to less than one per cent of adults.
6 Identity thieves may be more likely to target minors because of
7 minors' clean credit reports. Furthermore, child identity theft
8 may go undetected for years because children do not use their
9 social security numbers for credit, check credit reports, or
10 review monthly bills as adults do.

11 The legislature further finds that individuals can protect
12 themselves from many kinds of identity theft by placing a
13 security freeze on their credit reports through a consumer
14 credit reporting agency. However, an individual must have a
15 credit report prior to requesting a freeze, which can be
16 problematic for minors or other protected persons who often do
17 not have this type of established consumer record.



1 The legislature additionally finds that according to the
2 National Conference of State Legislatures, nineteen states now
3 require consumer credit reporting agencies to help parents and
4 guardians create a new credit report for a minor child or other
5 protected person for the express purpose of placing a security
6 freeze.

7 Accordingly, the purpose of this Act is to:

8 (1) Require a consumer credit reporting agency to create a
9 protective record for protected consumers, including
10 minors under the age of eighteen and incapacitated
11 persons, who do not have an existing credit report;
12 and

13 (2) Permit a representative of a protected person to place
14 a security freeze on a protected consumer's credit
15 report or protective record.

16 SECTION 2. Chapter 489P, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§489P- Protected consumer; creation of protective
20 record. (a) If a credit report does not exist for a protected
21 consumer on behalf of whom a representative seeks to place a



1 security freeze, a consumer credit reporting agency shall create
2 a protective record after receiving:

3 (1) A written request by the representative of a protected
4 consumer pursuant to section 489P-3(a);

5 (2) Clear and proper identification for the representative
6 and the protected consumer; and

7 (3) Clear and proper information regarding the
8 representative's authority to act on the protected
9 consumer's behalf, including:

10 (A) A court order that identifies or describes the
11 relationship between the representative and the
12 protected consumer;

13 (B) A duly executed power of attorney that permits
14 the representative to act on the protected
15 consumer's behalf; or

16 (C) A notarized affidavit of the representative,
17 stating the relationship between the
18 representative and the protected consumer and the
19 representative's authority to act on the
20 protected consumer's behalf.



1 (b) After a protective record has been created for a
2 protected consumer under this section, a consumer credit
3 reporting agency shall place the security freeze on the
4 protected consumer's protective record, as requested by the
5 protected consumer's representative.

6 (c) A protective record created under subsection (a) need
7 not contain any additional information, other than the protected
8 consumer's personal information, if other information for the
9 protected consumer is not available.

10 (d) Except as provided in section 489P-3(p), a consumer
11 credit reporting agency may not use or release to another person
12 the information in a protective record for the purpose of
13 assessing a protected consumer's eligibility or capacity for an
14 extension of credit, as a basis for evaluating a protected
15 consumer's character, reputation, or personal characteristics,
16 or for other purposes that are not related to protecting the
17 protected consumer from identity theft."

18 SECTION 3. Section 489P-2, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By adding five new definitions to be appropriately
21 inserted and to read:



1 "Consumer" means any individual who is a resident of this
2 State.

3 "Personal information" means an individual's first name or
4 first initial and last name in combination with any one or more
5 of the following data elements, when either the name or the data
6 elements are not encrypted:

7 (1) Social security number;

8 (2) Driver's license number or Hawaii identification card
9 number; or

10 (3) Account number, credit or debit card number, access
11 code, or password that would permit access to an
12 individual's financial account.

13 "Personal information" does not include publicly available
14 information that is lawfully made available to the general
15 public from federal, state, or local government records.

16 "Protected consumer" means an individual who is:

17 (1) Not older than eighteen years old at the time a
18 representative requests a security freeze on the
19 individual's behalf; or

20 (2) Incapacitated or for whom a court or other authority
21 has appointed a guardian or conservator.



1 "Protective record" means information that a consumer
2 credit reporting agency compiles to identify a protected
3 consumer for whom the consumer credit reporting agency has not
4 prepared a credit report.

5 "Representative" means an individual who provides a
6 consumer credit reporting agency with sufficient proof of the
7 individual's authority to act on a protected consumer's behalf."

8 2. By amending the definition of "security freeze" to
9 read:

10 "Security freeze" means a notice placed in a credit
11 report[-] at the request of [the] a consumer or a representative
12 on behalf of a protected consumer who is a victim of identity
13 theft[-] or a notice placed in a protective record at the
14 request of a representative on behalf of a protected consumer."

15 SECTION 4. Section 489P-3, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§489P-3 Security freeze by consumer reporting agency.**

18 (a) Any consumer [~~who is a resident of this State~~] may place a
19 security freeze on the consumer's credit report[-] or, if the
20 consumer is a representative, on a protected consumer's credit
21 report or protective record. A consumer credit reporting agency



1 shall not charge [~~a victim of identity theft~~] a fee to a
2 consumer or a protected consumer who is the victim of identity
3 theft for placing, lifting, or removing a security freeze on a
4 credit report or protective record but may charge any other
5 consumer or representative a fee not to exceed \$5 for each
6 request by the consumer or representative to place, lift, or
7 remove a security freeze from the consumer's or protected
8 consumer's credit report[-] or protective record.

9 [A] If a consumer [~~who is a resident of this State and~~] or
10 protected consumer has been the victim of identity theft, the
11 consumer or representative may place a security freeze on the
12 consumer's credit report or on the protected consumer's credit
13 report or protective record by making a request in writing by
14 certified mail to a consumer credit reporting agency, at an
15 address designated by the agency to receive such requests, with
16 a valid copy of a police report, investigative report, or
17 complaint the consumer or representative has filed with a law
18 enforcement agency about unlawful use of the consumer's or
19 protected consumer's personal information by another person. A
20 consumer who has not been the victim of identity theft may place
21 a security freeze on the consumer's credit report by making a



1 request in writing by certified mail to a consumer credit
2 reporting agency. In the case of a protected consumer who has
3 not been the victim of identity theft, a representative may
4 place a security freeze on the protected consumer's credit
5 report or protective record by making a request in writing by
6 certified mail to a consumer credit reporting agency.

7 A security freeze shall prohibit the consumer credit
8 reporting agency from releasing the consumer's or protected
9 consumer's credit report or any information from it without the
10 express authorization of the consumer[-] or the representative.
11 Information from a protective record shall not be released until
12 the protected consumer or a representative of the protected
13 consumer removes the security freeze. This subsection shall not
14 prevent a consumer credit reporting agency from advising a third
15 party that a security freeze is in effect with respect to the
16 consumer's or protected consumer's credit report[-] or
17 protective record.

18 (b) A consumer reporting agency shall place a security
19 freeze on a consumer's or protected consumer's credit report no
20 later than five business days after receiving a written request
21 from the consumer[-] or the representative.



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

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

18 (1) Clear and proper identification;

19 (2) The unique personal identification number or password
20 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.

A protective record shall not be subject to a temporary lift or removal of a security freeze. Except as provided in subsections (h) and (i), a credit report for a protected consumer shall not be subject to a temporary lift or removal of a security freeze.

(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) A consumer credit reporting agency may temporarily lift or remove a security freeze placed on a protected consumer's credit report if the security freeze was placed because of a protected consumer's or a representative's material misrepresentation of fact.

(i) A consumer credit reporting agency may remove a security freeze from or delete a protective record if the consumer credit reporting agency placed the security freeze or created the protective record as a result of a protected consumer's or a representative's material misrepresentation of fact.

(j) If a consumer reporting agency intends to temporarily lift or remove a security freeze, remove a security freeze, or delete a protective record under subsections (h) and (i), the consumer credit reporting agency shall notify the protected



1 consumer or representative in writing at least five business
2 days before removing the security freeze or deleting the
3 protective record.

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

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

16 ~~[(j)]~~ (m) A security freeze for a credit report shall
17 remain in place until the consumer requests that the security
18 freeze be removed. A consumer reporting agency shall remove a
19 security freeze within three business days of receiving a
20 request for removal at a point of contact designated by the
21 agency using procedures that may be developed by the consumer



1 reporting agency; provided that the consumer shall provide the
2 following:

3 (1) Clear and proper identification; and

4 (2) The unique personal identification number or password
5 provided by the consumer reporting agency pursuant to
6 subsection (c).

7 ~~[(k)]~~ (n) A consumer reporting agency shall require clear
8 and proper identification of the person making a request to
9 place or remove a security freeze~~[+]~~ from a credit report.

10 (o) A security freeze for a protective record shall remain
11 in place until the protected consumer or a representative
12 requests that the security freeze be removed from the protective
13 record or that the protective record be deleted. A consumer
14 reporting agency shall remove a security freeze from a
15 protective record or delete a protective record within thirty
16 business days after receiving a request for removal at a point
17 of contact designated by the agency using procedures that may be
18 developed by the consumer reporting agency; provided that the
19 protected consumer or representative shall provide the
20 following:

21 (1) Clear and proper identification;



(2) Clear and proper information regarding the representative's authority to act on the protected consumer's behalf, as provided in section 489P- (a) (3); or

(3) Proof that the representative's authority to act on the protected consumer's behalf is no longer valid or applicable.

~~[(1)]~~ (p) 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



1 account maintenance, monitoring, credit line
2 increases, and account upgrades and enhancements;

3 (2) A subsidiary, affiliate, agent, assignee, or
4 prospective assignee of a person to whom access has
5 been granted for purposes of facilitating the
6 extension of credit or other permissible use;

7 (3) Any person acting pursuant to a court order, warrant,
8 or subpoena;

9 (4) A child support enforcement agency when investigating
10 a child support case pursuant to Title IV-D of the
11 Social Security Act (42 U.S.C. sections 651 to 669b);

12 (5) The department of the attorney general or county
13 prosecuting attorneys or their agents or assignees
14 acting to investigate medicaid fraud;

15 (6) The department of taxation, county taxing authorities,
16 or any of their agents or assignees, acting to
17 investigate or collect delinquent taxes or
18 assessments, including interest and penalties, unpaid
19 court orders, or to fulfill any of their other
20 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
or a representative with a copy of the consumer's or
protected consumer's credit report upon the
consumer's, protected consumer's, or representative'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."

SECTION 5. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2016.

INTRODUCED BY:

[Handwritten signatures: David Kahala, Michelle, and others]

[Handwritten signatures: Rosalyn H. Baker, Michelle Kidani, D.C. [unclear], and Anne Brando R.]



S.B. NO. 2681

Shanne Chun Oakland

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S.B. NO. 2681

Report Title:

Consumer Credit Reporting Agencies; Identity Theft; Protected Consumer; Security Freeze; Credit Report; Protective Record

Description:

Requires a consumer credit reporting agency to create a protective record for protected consumers, including minors under the age of eighteen and incapacitated persons, who do not have an existing credit report. Permits a representative of a protected person to place a security freeze on a protected consumer's credit report or protective record.

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