

ASSEMBLY, No. 2449

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

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District 37 (Bergen)

SYNOPSIS

Prohibits consumer reporting agencies from charging certain fees and including certain provisions in contracts with consumers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/13/2020)

1 AN ACT concerning consumer reporting agencies and amending
2 P.L.2005, c.226 and P.L.1997, c.172.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 5 of P.L.2005, c.226 (C.56:11-46) is amended to
8 read as follows:

9 5. a. A consumer may elect to place a security freeze on his
10 consumer report by:

11 (1) making a request in writing by certified mail or overnight
12 mail to a consumer reporting agency; or

13 (2) making a request directly to the consumer reporting agency
14 through a secure electronic mail connection, if an electronic mail
15 connection is provided by the consumer reporting agency.

16 b. A consumer reporting agency shall place a security freeze on
17 a consumer report no later than five business days after receiving a
18 written request from the consumer. A consumer reporting agency
19 shall not place any condition on placing a security freeze on a
20 consumer report, including, but not limited to, requiring the
21 consumer to waive any rights or indemnify the consumer reporting
22 agency, except as permitted pursuant to this section.

23 c. The consumer reporting agency shall send a written
24 confirmation of the security freeze to the consumer within five
25 business days of placing the freeze and at the same time shall
26 provide the consumer with a unique personal identification number
27 or password to be used by the consumer when providing
28 authorization for the release of his credit for a specific party or
29 period of time.

30 d. If the consumer wishes to allow his consumer report to be
31 accessed for a specific party or period of time while a freeze is in
32 place, he shall contact the consumer reporting agency via certified
33 or overnight mail or secure electronic mail and request that the
34 freeze be temporarily lifted, and provide all of the following:

35 (1) Information generally deemed sufficient to identify a person;

36 (2) The unique personal identification number or password
37 provided by the consumer reporting agency pursuant to subsection
38 c. of this section; and

39 (3) The proper information regarding the third party who is to
40 receive the consumer report or the time period for which the
41 consumer report shall be available to users of the consumer report.

42 e. A consumer reporting agency that receives a request from a
43 consumer to temporarily lift a freeze on a consumer report pursuant
44 to subsection d. of this section shall comply with the request no
45 later than three business days after receiving the request.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 f. A consumer reporting agency shall develop procedures
2 involving the use of telephone, fax, the Internet, or other electronic
3 media to receive and process a request from a consumer to
4 temporarily lift a freeze on a consumer report pursuant to
5 subsection d. of this section in an expedited manner. The director
6 shall promulgate regulations necessary to allow the use of
7 electronic media to receive and process a request from a consumer
8 to temporarily lift a security freeze pursuant to subsection d. of this
9 section as quickly as possible, with the goal of processing a request
10 within 15 minutes of that request.

11 g. A consumer reporting agency shall remove or temporarily
12 lift a freeze placed on a consumer report only in the following
13 cases:

14 (1) Upon consumer request, pursuant to subsection d. or j. of
15 this section; or

16 (2) If the consumer report was frozen due to a material
17 misrepresentation of fact by the consumer. If a consumer reporting
18 agency intends to remove a freeze upon a consumer report pursuant
19 to this paragraph, the consumer reporting agency shall notify the
20 consumer in writing at least five business days prior to removing
21 the freeze on the consumer report.

22 h. If a third party requests access to a consumer report on
23 which a security freeze is in effect, and this request is in connection
24 with an application for credit or any other use, and the consumer
25 does not allow his consumer report to be accessed for that specific
26 party or period of time, the third party may treat the application as
27 incomplete.

28 i. (1) At any time that a consumer is required to receive a
29 summary of rights required under section 609 of the federal "Fair
30 Credit Reporting Act," 15 U.S.C. s.1681g, the following notice
31 shall be included:

32
33 **New Jersey Consumers Have the Right to Obtain a**
34 **Security Freeze**
35

36 You may obtain a security freeze on your credit report
37 to protect your privacy and ensure that credit is not granted
38 in your name without your knowledge. You have a right to
39 place a "security freeze" on your credit report pursuant to
40 New Jersey law.

41 The security freeze will prohibit a consumer reporting
42 agency from releasing any information in your credit report
43 without your express authorization or approval.

44 The security freeze is designed to prevent credit, loans,
45 and services from being approved in your name without
46 your consent. When you place a security freeze on your
47 credit report, within five business days you will be
48 provided a personal identification number or password to
49 use if you choose to remove the freeze on your credit report
50 or to temporarily authorize the release of your credit report
51 for a specific party, parties or period of time after the

freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

- (i) The unique personal identification number or password provided by the consumer reporting agency;
- (ii) Proper identification to verify your identity; and
- (iii) The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days or less, as provided by regulation, after receiving the request.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, a few days before actually applying for new credit.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report

(2) If a consumer requests information about a security freeze, he shall be provided with the notice provided in paragraph (1) of this subsection and with any other information, as prescribed by the director by regulation, about how to place, temporarily lift and permanently lift a security freeze.

j. 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 from the consumer, who provides the following:

- (1) Proper identification; and
- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection c. of this section.

k. A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

l. The provisions of this section do not apply to the use of a consumer report by the following:

- (1) A person, or subsidiary, affiliate, or agent of that person, or an assignee of a financial obligation owing by the consumer to that person, or a prospective assignee of a financial obligation owing by

1 the consumer to that person in conjunction with the proposed
2 purchase of the financial obligation, with which the consumer has
3 or had prior to assignment an account or contract, including a
4 demand deposit account, or to whom the consumer issued a
5 negotiable instrument, for the purposes of reviewing the account or
6 collecting the financial obligation owing for the account, contract,
7 or negotiable instrument. For purposes of this paragraph,
8 "reviewing the account" includes activities related to account
9 maintenance, monitoring, credit line increases, and account
10 upgrades and enhancements;

11 (2) A subsidiary, affiliate, agent, assignee, or prospective
12 assignee of a person to whom access has been granted under
13 subsection d. of this section, for purposes of facilitating the
14 extension of credit or other permissible use;

15 (3) Any State or local agency, law enforcement agency, trial
16 court, or private collection agency acting pursuant to a court order,
17 warrant, or subpoena;

18 (4) The Division of Taxation in the Department of the Treasury
19 for the purpose of enforcing the tax laws of this State;

20 (5) A State or local child support enforcement agency;

21 (6) The use of credit information for the purposes of
22 prescreening as provided for by the federal "Fair Credit Reporting
23 Act," 15 U.S.C. s.1681 et seq.;

24 (7) Any person or entity administering a credit file monitoring
25 subscription service to which the consumer has subscribed; or

26 (8) Any person or entity for the purpose of providing a
27 consumer with a copy of the consumer's credit report upon the
28 consumer's request.

29 m. (1) A consumer reporting agency shall not charge a
30 consumer any fee to place a security freeze on that consumer's
31 consumer report, or to remove or temporarily lift a security freeze
32 on that consumer's consumer report.

33 (2) (Deleted by amendment, P.L.2018, c.153)

34 (3) (Deleted by amendment, P.L.2018, c.153)

35 (cf: P.L.2018, c.153, s.1)

36

37 2. Section 7 of P.L.1997, c.172 (C.56:11-34) is amended to
38 read as follows:

39 7. Every consumer reporting agency shall, upon request and
40 proper identification of any consumer, clearly and accurately
41 disclose to the consumer:

42 a. All information in the consumer's file at the time of the
43 request.

44 b. The sources of the information; except that the sources of
45 information acquired solely for use in preparing an investigative
46 consumer report and actually used for no other purpose need not be
47 disclosed: provided, that if an action is brought under this act or the
48 federal "Fair Credit Reporting Act," such sources shall be available

1 to the plaintiff under appropriate discovery procedures in the court
2 in which the action is brought.

3 c. (1) The identification of each person, including each end-
4 user identified under subsections d. and e. of section 5 of this act,
5 who procured a consumer report:

6 (a) for employment purposes, during the two-year period
7 preceding the date on which the request is made; or

8 (b) for any other purpose, during the one-year period preceding
9 the date on which the request is made.

10 (2) An identification of a person under paragraph (1) shall
11 include:

12 (a) the name of the person, or, if applicable, the trade name
13 written in full under which the person conducts business; and

14 (b) upon request of the consumer, the address and telephone
15 number of the person.

16 d. The dates, original payees, and amounts of any checks upon
17 which is based any adverse characterization of the consumer,
18 included in the file at the time of the disclosure.

19 e. A record of all inquiries received by the agency during the
20 one-year period preceding the request that identified the consumer
21 in connection with a credit or insurance transaction that was not
22 initiated by the consumer.

23 A reporting agency that compiles and maintains files on
24 consumers on a nationwide basis shall make the information subject
25 to disclosure pursuant to this section available to a consumer upon
26 the consumer's request in Spanish or any other language that the
27 Director of the Division of Consumer Affairs determines is the first
28 language of a significant number of consumers in the State. This
29 determination shall be, at the discretion of the director, based on the
30 numerical percentages of all consumers in the State for whom
31 English or Spanish is not a first language or in a manner consistent
32 with any regulations promulgated by the director for this purpose.
33 The director shall require that the information is made available in
34 at least the 10 languages other than English and Spanish that are
35 most frequently spoken as a first language by consumers in this
36 State.

37 A reporting agency that compiles and maintains files on
38 consumers on a nationwide basis shall provide notice, in any
39 language as determined by the director, on its Internet website in a
40 clear and conspicuous location, of the availability of information
41 subject to disclosure pursuant to this section in languages other than
42 English.

43 As used in this section, "reporting agency that compiles and
44 maintains files on consumers on a nationwide basis" means a
45 consumer reporting agency that regularly engages in the practice of
46 assembling or evaluating, and maintaining, for the purpose of
47 furnishing consumer reports to third parties bearing on a consumer's

1 credit worthiness, credit standing, or credit capacity, each of the
2 following regarding consumers residing nationwide:

3 (1) Public record information; and

4 (2) Credit account information from persons who furnish that
5 information regularly and in the ordinary course of business.

6 f. A consumer reporting agency shall not place any condition
7 on providing the information required pursuant to this section, or
8 for providing a free consumer report to a consumer, including, but
9 not limited to, requiring the consumer to waive any rights or
10 indemnify the consumer reporting agency, except as permitted
11 pursuant to the "New Jersey Fair Credit Reporting Act" P.L.1997,
12 c.172 (C.56:11-28 et seq.).

13 (cf: P.L.2019, c.183, s.1)

14
15 3. This act shall take effect immediately.

16 17 18 STATEMENT

19
20 This bill amends the New Jersey "Identity Theft Prevention Act"
21 to prohibit a consumer reporting agency from charging a consumer
22 any fee to remove or temporarily lift a security freeze on that
23 consumer's consumer report. Current law prohibits consumer
24 reporting agencies from charging fees to place a security freeze on
25 that consumer's consumer report, but allows a reasonable fee, not to
26 exceed \$5, to a consumer who elects to remove or temporarily lift a
27 security freeze on that consumer's consumer report or if the
28 consumer fails to retain the original personal identification number
29 provided by the consumer reporting agency and must be reissued
30 the same or a new personal identification number. The bill removes
31 the provisions allowing a fee to be charged.

32 The bill also clarifies that a consumer reporting agency shall not
33 place any condition on placing a security freeze on a consumer
34 report, including, but not limited to, requiring the consumer to
35 waive any rights or indemnify the consumer reporting agency,
36 except as permitted pursuant to the "Identity Theft Prevention Act."

37 The bill also prohibits a consumer reporting agency from placing
38 any condition on providing to a consumer certain information
39 required to be provided pursuant to the "New Jersey Fair Credit
40 Reporting Act" or for providing a free consumer report to a
41 consumer, including, but not limited to, requiring the consumer to
42 waive any rights or indemnify the consumer reporting agency,
43 except as permitted pursuant to the "New Jersey Fair Credit
44 Reporting Act."

45 Reports relating to a 2017 security breach at a major consumer
46 reporting agency, Equifax, indicate that in certain circumstances
47 indemnity provisions were added to offers to consumers by the
48 reporting agency to provide free credit reports or credit freezes.

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- 1 The provisions appear to require the consumer to indemnify the
- 2 agency by accepting the offer of a free report or credit freeze. The
- 3 bill is intended to prohibit such provisions.