

ASSEMBLY, No. 3525

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

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District 37 (Bergen)

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SYNOPSIS

Requires consumer reporting agencies to increase protection of consumers' personal information.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/25/2020)

1 **AN ACT** concerning consumer reporting agencies and amending and
2 supplementing 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 3 of P.L.1997, c.172 (C.56:11-30) is amended to
8 read as follows:

9 3. As used in this act:

10 "Adverse action" has the same meaning as in subsection (k) of
11 section 603 of the federal "Fair Credit Reporting Act," 15 U.S.C.
12 s.1681a.

13 "Consumer" means an individual.

14 "Consumer report" (1) means any written, oral or other
15 communication of any information by a consumer reporting agency
16 bearing on a consumer's credit worthiness, credit standing, credit
17 capacity, character, general reputation, personal characteristics or
18 mode of living which is used or expected to be used or collected in
19 whole or in part for the purpose of serving as a factor in
20 establishing the consumer's eligibility for:

21 (a) credit or insurance to be used primarily for personal, family
22 or household purposes;

23 (b) employment purposes; or

24 (c) any other purpose authorized under section 4 of this act.

25 (2) The term "consumer report" does not include:

26 (a) any:

27 (i) report containing information solely on transactions or
28 experiences between the consumer and the person making the
29 report;

30 (ii) communication of that information among persons related by
31 common ownership or affiliated by corporate control; or

32 (iii) communication of other information among persons related
33 by common ownership or affiliated by corporate control, if it is
34 clearly and conspicuously disclosed to the consumer that the
35 information may be communicated among those persons and the
36 consumer is given the opportunity, before the time that the
37 information is initially communicated, to direct that the information
38 not be communicated among those persons;

39 (b) any authorization or approval of a specific extension of
40 credit directly or indirectly by the issuer of a credit card or similar
41 device;

42 (c) any report in which a person, who has been requested by a
43 third party to make a specific extension of credit directly or
44 indirectly to a consumer, conveys his decision with respect to that
45 request, if the third party advises the consumer of the name and

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 address of the person to whom the request was made, and the
2 person makes the disclosures to the consumer required under 15
3 U.S.C. s.1681m; or

4 (d) communication excluded from the definition of consumer
5 report pursuant to subsection (o) of section 603 of the federal "Fair
6 Credit Reporting Act," 15 U.S.C. s.1681a.

7 "Consumer reporting agency" means any person which, for
8 monetary fees, dues, or on a cooperative nonprofit basis, regularly
9 engages, in whole or in part, in the practice of assembling or
10 evaluating consumer credit information or other information on
11 consumers for the purpose of furnishing consumer reports to third
12 parties, and which uses any means or facility for the purpose of
13 preparing or furnishing consumer reports.

14 "Director" means the Director of the Division of Consumer
15 Affairs in the Department of Law and Public Safety.

16 "Division" means the Division of Consumer Affairs in the
17 Department of Law and Public Safety.

18 "Employment purposes" means, when used in connection with a
19 consumer report, a report used for the purpose of evaluating a
20 consumer for employment, promotion, reassignment or retention as
21 an employee.

22 "File" means, when used in connection with information on any
23 consumer, all of the information on that consumer recorded and
24 retained by a consumer reporting agency regardless of how the
25 information is stored.

26 "Investigative consumer report" means a consumer report or a
27 portion thereof in which information on a consumer's character,
28 general reputation, personal characteristics or mode of living is
29 obtained through personal interviews with neighbors, friends or
30 associates of the consumer who is the subject of the report or with
31 others with whom the consumer is acquainted or who may have
32 knowledge concerning any of those items of information. However,
33 this information shall not include specific factual information on a
34 consumer's credit record obtained directly from a creditor of the
35 consumer or from a consumer reporting agency when the
36 information was obtained directly from a creditor of the consumer
37 or from the consumer.

38 "Medical information" means information or records obtained,
39 with the consent of the individual to whom it relates, from licensed
40 physicians or medical practitioners, hospitals, clinics, or other
41 medical or medically related facilities.

42 "Personal information" means an individual's first name or first
43 initial and last name linked with any one or more of the following
44 data elements: (1) Social Security number; (2) driver's license
45 number or State identification card number; or (3) account number
46 or credit or debit card number, in combination with any required
47 security code, access code, or password that would permit access to
48 an individual's financial account. Dissociated data that, if linked,

1 would constitute personal information is personal information if the
2 means to link the dissociated data were accessed in connection with
3 access to the dissociated data.

4 Personal information shall not include publicly available
5 information that is lawfully made available to the general public
6 from federal, state or local government records, or widely
7 distributed media.

8 "Security freeze" means a notice placed in a consumer's
9 consumer report, at the request of the consumer and subject to
10 certain exceptions, that prohibits the consumer reporting agency
11 from releasing the report or any information from it without the
12 express authorization of the consumer, but does not prevent a
13 consumer reporting agency from advising a third party that a
14 security freeze is in effect with respect to the consumer report.
15 (cf: P.L.2005, c.226, s.4)

16
17 2. Section 5 of P.L.1997, c.172 (C.56:11-32) is amended to
18 read as follows:

19 5. a. Every consumer reporting agency shall maintain
20 reasonable procedures designed to limit the furnishing of consumer
21 reports to the purposes listed under section 4 of this act. These
22 procedures shall require that prospective users of the information
23 identify themselves, certify each purpose for which the information
24 is sought, and certify that the information will be used for no other
25 purpose. Every consumer reporting agency shall make a reasonable
26 effort to verify the identity of a new prospective user and each use
27 certified by the prospective user prior to furnishing the user a
28 consumer report. No consumer reporting agency may furnish a
29 consumer report to any person if it has reasonable grounds for
30 believing that the consumer report will not be used for a purpose
31 listed in section 4 of this act.

32 b. Whenever a consumer reporting agency prepares a consumer
33 report it shall follow reasonable procedures to assure maximum
34 possible accuracy of the information concerning the individual
35 about whom the report relates.

36 c. A consumer reporting agency may not prohibit the user of a
37 consumer report furnished by the agency from disclosing the
38 contents of the report to the consumer, if adverse action against the
39 consumer has been taken by the user based in whole or in part on
40 the report.

41 d. A person may not procure a consumer report for the purpose
42 of reselling the report unless the person discloses to the consumer
43 reporting agency that originally furnishes the report:

44 (1) the identity of the end-user of the report; and
45 (2) each permissible purpose under section 4 of this act for
46 which the report is furnished to the end-user of the report.

47 e. A person who procures a consumer report for the purposes
48 of reselling the report shall:

1 (1) establish and comply with reasonable procedures designed to
2 ensure that the report is resold by the person only for a purpose for
3 which the report may be furnished under section 4 of this act,
4 including procedures designed to ensure that each person to which
5 the report is resold and that resells or provides the report to any
6 other person:

7 (a) identifies to the person from whom the report was purchased
8 each end-user of the resold report;

9 (b) certifies to the person from whom the report was purchased
10 each purpose for which the report will be used; and

11 (c) certifies to the person from whom the report was purchased
12 that the report will be used for no other purpose; and

13 (2) before reselling the report, make reasonable efforts to verify
14 the identifications and certifications made under paragraph (1) of
15 this subsection.

16 f. For the purposes of subsections d. and e. of this section,
17 "report" means the consumer report as furnished by a consumer
18 reporting agency or any information contained in that consumer
19 report.

20 g. Every consumer reporting agency shall, to the extent it is
21 technologically feasible, encrypt the personal information of
22 consumers held by or transferred by the consumer reporting agency.
23 To the extent it is not technologically feasible to encrypt the
24 information, the consumer reporting agency shall implement and
25 maintain alternative compensating controls consistent with industry
26 standards and the consumer reporting agency's assessment of risk,
27 to protect the security, confidentiality and integrity of the personal
28 information.

29 (cf: P.L.1997, c.172, s.5)

30

31 3. Section 10 of P.L.1997, c.172 (C.56:11-37) is amended to
32 read as follows:

33 10. a. Except as provided in subsections b., c., d. **[and]** , e. and
34 f. of this section, a consumer reporting agency may impose a
35 reasonable charge on a consumer for:

36 (1) making a disclosure to the consumer pursuant to section 7 of
37 this act if the request is the second or subsequent request in a 12-
38 month period of time and is not made pursuant to subsection b. of
39 this section; the charge for this disclosure shall not exceed \$8 and
40 shall be indicated to the consumer before making the disclosure;

41 (2) furnishing to a person designated by the consumer pursuant
42 to subsection k. of section 9 of this act a statement, codification, or
43 summary filed or developed under subsection i. or j. of section 9 of
44 this act, after notification of the consumer under subsection f. of
45 section 9 of this act with respect to the reinvestigation; this charge
46 shall not exceed the charge that the agency would impose on each
47 designated recipient for a consumer report and shall be indicated to
48 the consumer before furnishing this information.

1 b. Each consumer reporting agency that maintains a file on a
2 consumer shall make all disclosures required pursuant to section 7
3 of this act without charge to the consumer if, not later than 60 days
4 after receipt by the consumer of a notification of an adverse action
5 or notification from a debt collection agency affiliated with the
6 consumer reporting agency stating that the consumer's credit rating
7 may be or has been adversely affected, the consumer makes a
8 request under section 7 of this act.

9 c. Upon the request of the consumer, a consumer reporting
10 agency shall make all disclosures required pursuant to section 7 of
11 this act once during any 12-month period without charge to the
12 consumer.

13 d. A consumer reporting agency shall not impose any charge on
14 a consumer for providing any notification required by this act,
15 including but not limited to, the notification required pursuant to
16 subsection k. of section 9 of this act following deletion of
17 information from a consumer's file pursuant to section 9 of this act,
18 or making any disclosure required by this act, except as authorized
19 by subsection a. of this section.

20 e. Upon request of the consumer, a consumer reporting agency
21 shall make all disclosures required pursuant to section 7 of this act
22 once during any 12-month period without charge to that consumer if
23 the consumer certifies in writing that the consumer:

24 (1) is unemployed and intends to apply for employment in the
25 60-day period beginning on the date on which certification is made;

26 (2) is a recipient of assistance under the Work First New Jersey
27 Program;

28 (3) has reason to believe that the file on the consumer at the
29 agency contains inaccurate information due to fraud; or

30 (4) has been a victim of a violation of N.J.S.2C:21-1, section 1
31 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 and the court has
32 ordered the deletion of those items of information that were the
33 result of the unlawful use of the victim's personal identifying
34 information.

35 f. Upon request of the consumer, a consumer reporting agency
36 shall make all disclosures required pursuant to section 7 of
37 P.L.1997, c.172 (C.56:11-34) three times during any 12-month
38 period without charge to that consumer if the consumer certifies in
39 writing that the consumer was informed, pursuant to section 12 of
40 P.L.2005, c.226 (C.56:8-163), of a breach of security concerning
41 the consumer's personal information.

42 (cf: P.L.2003, c.184, s.9)

43

44 4. (New section) If a consumer reporting agency is required to
45 make a disclosure of a breach of security pursuant to section 12 of
46 P.L.2005, c.226 (C.56:8-163), concerning personal information of a
47 consumer held by the consumer reporting agency, the consumer
48 reporting agency shall offer to provide appropriate identity theft

1 prevention and mitigation services at no cost to the consumer for
2 not less than 60 months. The consumer reporting agency shall
3 notify the consumer of this offer along with the disclosure required
4 pursuant to section 12 of P.L.2005, c.226 (C.56:8-163). A consumer
5 reporting agency shall not place any further conditions on the
6 consumer, or otherwise require the consumer to waive any of the
7 consumer's rights, by the consumer accepting the offer.

8
9 5. This act shall take effect on the first day of the seventh
10 month after enactment.

11 12 13 STATEMENT

14
15 This bill places certain requirements on consumer reporting
16 agencies to protect the personal information of consumers, and to
17 provide certain consumer protections in the event of a breach of
18 security of that personal information.

19 The bill requires consumer reporting agencies, to the extent it is
20 technologically feasible, to encrypt the personal information of
21 consumers held by or transferred by the consumer reporting agency.
22 To the extent it is not technologically feasible to encrypt the
23 information, the consumer reporting agency is required to
24 implement and maintain alternative compensating controls
25 consistent with industry standards and the consumer reporting
26 agency's assessment of risk, to protect the security, confidentiality
27 and integrity of the personal information.

28 Additionally, if a consumer is the victim of a breach of security
29 concerning the consumer's personal information, the bill provides
30 that, upon request of the consumer, a consumer reporting agency
31 must provide a free credit report to the consumer three times during
32 any 12-month period. Current law only requires one free credit
33 report during any 12-month period.

34 Finally, if the consumer reporting agency itself is the entity
35 disclosing a breach of a consumer's personal information, the bill
36 requires the consumer reporting agency to offer to provide
37 appropriate identity theft prevention and mitigation services at no
38 cost to the consumer for not less than 60 months. The consumer
39 reporting agency must notify the consumer of this offer and is
40 prohibited from placing any further conditions on the consumer, or
41 otherwise requiring the consumer to waive any of the consumer's
42 rights, by the consumer accepting the offer.