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Introduced by Sens. ZELDIN, DeFRANCISCO, MARTINS, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to credit record freezes and protected minors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 380-a of the general business law is amended by adding six new subdivisions (o), (p), (q), (r), (s) and (t) to read as follows:

(O) THE TERM "PROTECTED CONSUMER" SHALL MEAN AN INDIVIDUAL WHO IS UNDER THE AGE OF SIXTEEN YEARS AT THE TIME A REQUEST FOR THE PLACEMENT OF A SECURITY FREEZE IS MADE.

(P) THE TERM "RECORD" SHALL MEAN A COMPILATION OF INFORMATION THAT (1) IDENTIFIES A PROTECTED CONSUMER; (2) IS CREATED BY A CONSUMER CREDIT REPORTING AGENCY SOLELY FOR THE PURPOSE OF COMPLYING WITH SECTION THREE HUNDRED EIGHTY-U OF THIS ARTICLE; AND (3) MAY NOT BE CREATED OR USED TO CONSIDER THE PROTECTED CONSUMER'S CREDIT WORTHINESS, CREDIT STANDING, CREDIT CAPACITY, CHARACTER, GENERAL REPUTATION, PERSONAL CHARACTERISTICS, OR MODE OF LIVING FOR ANY PURPOSE LISTED IN THIS ARTICLE.

(Q) THE TERM "REPRESENTATIVE" MEANS A PERSON WHO PROVIDES TO A CONSUMER CREDIT REPORTING AGENCY SUFFICIENT PROOF OF AUTHORITY TO ACT ON BEHALF OF A PROTECTED CONSUMER.

(R) THE TERM "SECURITY FREEZE FOR A PROTECTED PERSON" MEANS (1) IF A CONSUMER CREDIT REPORTING AGENCY DOES NOT HAVE A FILE PERTAINING TO A PROTECTED CONSUMER, A RESTRICTION THAT: (I) IS PLACED ON THE PROTECTED CONSUMER'S RECORD IN ACCORDANCE WITH THIS SECTION; AND (II) PROHIBITS THE CONSUMER CREDIT REPORTING AGENCY FROM RELEASING THE PROTECTED CONSUMER'S RECORD EXCEPT AS PROVIDED IN THIS SECTION; OR

(2) IF A CONSUMER CREDIT REPORTING AGENCY HAS A FILE PERTAINING TO THE PROTECTED CONSUMER, A RESTRICTION THAT (I) IS PLACED ON THE PROTECTED CONSUMER'S CONSUMER CREDIT REPORT IN ACCORDANCE WITH THIS SECTION; AND (II) PROHIBITS THE CONSUMER CREDIT REPORTING AGENCY FROM RELEASING THE PROTECTED CONSUMER'S CONSUMER CREDIT REPORT OR ANY INFORMATION DERIVED

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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FROM THE PROTECTED CONSUMER'S CONSUMER CREDIT REPORT EXCEPT AS PROVIDED IN THIS SECTION.

(S)(1) THE TERM "SUFFICIENT PROOF OF AUTHORITY" MEANS DOCUMENTATION THAT SHOWS A REPRESENTATIVE HAS AUTHORITY TO ACT ON BEHALF OF A PROTECTED CONSUMER.

(2) THE TERM "SUFFICIENT PROOF OF AUTHORITY" MAY INCLUDE (I) AN ORDER ISSUED BY A COURT OF LAW; OR (II) A WRITTEN, NOTARIZED STATEMENT SIGNED BY A REPRESENTATIVE THAT EXPRESSLY DESCRIBES THE AUTHORITY OF THE REPRESENTATIVE TO ACT ON BEHALF OF A PROTECTED CONSUMER.

(T)(1) THE TERM "SUFFICIENT PROOF OF IDENTIFICATION" MEANS INFORMATION OR DOCUMENTATION THAT IDENTIFIES A PROTECTED CONSUMER OR A REPRESENTATIVE OF A PROTECTED CONSUMER.

(2) THE TERM "SUFFICIENT PROOF OF IDENTIFICATION" MAY INCLUDE (I) A SOCIAL SECURITY NUMBER OR A COPY OF A SOCIAL SECURITY CARD ISSUED BY THE SOCIAL SECURITY ADMINISTRATION; (II) A CERTIFIED OR OFFICIAL COPY OF A BIRTH CERTIFICATE ISSUED BY THE ENTITY AUTHORIZED TO ISSUE THE BIRTH CERTIFICATE; OR (III) A COPY OF A DRIVER'S LICENSE, AN IDENTIFICATION CARD ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES, OR ANY OTHER GOVERNMENT-ISSUED PHOTO IDENTIFICATION.

S 2. Section 380-u of the general business law, as relettered by chapter 63 of the laws of 2006, is relettered section 380-v and a new section 380-u is added to read as follows:

S 380-U. SECURITY RECORD FREEZE FOR PROTECTED MINORS. (A) A CONSUMER CREDIT REPORTING AGENCY SHALL PLACE A SECURITY FREEZE FOR A PROTECTED CONSUMER IF:

(1) THE CONSUMER CREDIT REPORTING AGENCY RECEIVES A REQUEST FROM THE PROTECTED CONSUMER'S REPRESENTATIVE FOR THE PLACEMENT OF THE SECURITY FREEZE UNDER THIS SECTION; AND

(2) THE PROTECTED CONSUMER'S REPRESENTATIVE (I) SUBMITS THE REQUEST TO THE CONSUMER CREDIT REPORTING AGENCY AT THE ADDRESS OR OTHER POINT OF CONTACT AND IN THE MANNER SPECIFIED BY THE CONSUMER CREDIT REPORTING AGENCY; (II) PROVIDES TO THE CONSUMER CREDIT REPORTING AGENCY SUFFICIENT PROOF OF IDENTIFICATION OF THE PROTECTED CONSUMER AND THE REPRESENTATIVE; (III) PROVIDES TO THE CONSUMER CREDIT REPORTING AGENCY SUFFICIENT PROOF OF AUTHORITY TO ACT ON BEHALF OF THE PROTECTED CONSUMER; AND (IV) PAYS TO THE CONSUMER CREDIT REPORTING AGENCY A FEE AS PROVIDED IN THIS SECTION.

(B) IF A CONSUMER CREDIT REPORTING AGENCY DOES NOT HAVE A FILE PERTAINING TO A PROTECTED CONSUMER WHEN THE CONSUMER CREDIT REPORTING AGENCY RECEIVES A REQUEST UNDER SUBDIVISION (A) OF THIS SECTION, THE CONSUMER CREDIT REPORTING AGENCY SHALL CREATE A RECORD FOR THE PROTECTED CONSUMER.

(C) WITHIN THIRTY DAYS AFTER RECEIVING A REQUEST THAT MEETS THE REQUIREMENTS OF PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION, A CONSUMER CREDIT REPORTING AGENCY SHALL PLACE A SECURITY FREEZE FOR THE PROTECTED CONSUMER ON THE RECORD CREATED FOR THE PROTECTED CONSUMER OR ON THE FILE PERTAINING TO THE PROTECTED CONSUMER IN THE EVENT THAT THE CONSUMER REPORTING AGENCY ALREADY HAS A FILE PERTAINING TO THE PROTECTED CONSUMER.

(D) UNLESS A SECURITY FREEZE FOR A PROTECTED PERSON IS REMOVED IN ACCORDANCE WITH THIS SECTION, A CONSUMER CREDIT REPORTING AGENCY MAY NOT RELEASE THE PROTECTED CONSUMER'S CONSUMER CREDIT REPORT, ANY INFORMATION DERIVED FROM THE PROTECTED CONSUMER'S CONSUMER REPORT, OR ANY RECORD CREATED FOR THE PROTECTED CONSUMER.

(E) A SECURITY FREEZE FOR A PROTECTED CONSUMER PLACED UNDER THIS SECTION SHALL REMAIN IN EFFECT UNTIL:

(1) THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE REQUESTS THE CONSUMER CREDIT REPORTING AGENCY TO REMOVE THE SECURITY FREEZE FOR A PROTECTED PERSON IN ACCORDANCE WITH SUBDIVISION (F) OF THIS SECTION; OR

(2) THE SECURITY FREEZE IS REMOVED IN ACCORDANCE WITH SUBDIVISION (I) OF THIS SECTION.

(F) IF A PROTECTED CONSUMER OR A PROTECTED CONSUMER'S REPRESENTATIVE WISHES TO REMOVE A SECURITY FREEZE FOR THE PROTECTED CONSUMER, THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE SHALL:

(1) SUBMIT A REQUEST FOR THE REMOVAL OF THE SECURITY FREEZE TO THE CONSUMER CREDIT REPORTING AGENCY AT THE ADDRESS OR OTHER POINT OF CONTACT AND IN THE MANNER SPECIFIED BY THE CONSUMER CREDIT REPORTING AGENCY;

(2) PROVIDE TO THE CONSUMER CREDIT REPORTING AGENCY: (I) IN THE CASE OF A REQUEST BY THE PROTECTED CONSUMER: (A) PROOF THAT THE SUFFICIENT PROOF OF AUTHORITY FOR THE PROTECTED CONSUMER'S REPRESENTATIVE TO ACT ON BEHALF OF THE PROTECTED CONSUMER IS NO LONGER VALID OR THAT THE PROTECTED CONSUMER HAS ATTAINED THE AGE OF SIXTEEN; AND (B) SUFFICIENT PROOF OF IDENTIFICATION OF THE PROTECTED CONSUMER; OR (II) IN THE CASE OF A REQUEST BY THE REPRESENTATIVE OF A PROTECTED CONSUMER: (A) SUFFICIENT PROOF OF IDENTIFICATION OF THE PROTECTED CONSUMER AND THE REPRESENTATIVE; AND (B) SUFFICIENT PROOF OF AUTHORITY TO ACT ON BEHALF OF THE PROTECTED CONSUMER; AND (C) PAY TO THE CONSUMER CREDIT REPORTING AGENCY A FEE AS PROVIDED IN SUBDIVISION (H) OF THIS SECTION.

(G) WITHIN THIRTY DAYS AFTER RECEIVING A REQUEST THAT MEETS THE REQUIREMENTS OF SUBDIVISION (F) OF THIS SECTION, THE CONSUMER CREDIT REPORTING AGENCY SHALL REMOVE THE SECURITY FREEZE FOR THE PROTECTED CONSUMER.

(H)(1) EXCEPT AS PROVIDED IN PARAGRAPH THREE OF THIS SUBDIVISION, A CONSUMER CREDIT REPORTING AGENCY MAY NOT CHARGE A FEE FOR ANY SERVICE PERFORMED UNDER THIS SECTION.

(2) A CONSUMER CREDIT REPORTING AGENCY MAY CHARGE A REASONABLE FEE, NOT EXCEEDING FIFTEEN DOLLARS, FOR EACH PLACEMENT OR REMOVAL OF A SECURITY FREEZE FOR A PROTECTED CONSUMER AS PROVIDED FOR IN SUBPARAGRAPH (IV) OF PARAGRAPH TWO OF SUBDIVISION (A) OR CLAUSE (C) OF SUBPARAGRAPH (II) OF PARAGRAPH TWO OF SUBDIVISION (F) OF THIS SECTION.

(3) NOTWITHSTANDING PARAGRAPH TWO OF THIS SUBDIVISION, A CONSUMER CREDIT REPORTING AGENCY MAY NOT CHARGE ANY FEE UNDER THIS SECTION IF; (I) THE PROTECTED CONSUMER'S REPRESENTATIVE: (A) HAS OBTAINED A REPORT OF ALLEGED IDENTITY FRAUD AGAINST THE PROTECTED CONSUMER UNDER SECTIONS 190.77 THROUGH 190.80 OF THE PENAL LAW; AND (B) PROVIDES A COPY OF THE REPORT TO THE CONSUMER CREDIT REPORTING AGENCY; OR (II) (A) A REQUEST FOR THE PLACEMENT OR REMOVAL OF A SECURITY FREEZE IS FOR A PROTECTED CONSUMER WHO IS UNDER THE AGE OF SIXTEEN YEARS AT THE TIME OF THE REQUEST; AND (B) THE CONSUMER CREDIT REPORTING AGENCY HAS A CONSUMER CREDIT REPORT PERTAINING TO THE PROTECTED CONSUMER.

(I) A CONSUMER CREDIT REPORTING AGENCY SHALL REMOVE A SECURITY FREEZE FOR A PROTECTED CONSUMER OR DELETE A RECORD OF A PROTECTED CONSUMER IF THE SECURITY FREEZE WAS PLACED OR THE RECORD WAS CREATED BASED ON A MATERIAL MISREPRESENTATION OF FACT BY THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE.

(J) THIS SECTION DOES NOT APPLY TO:

(1) A PERSON ADMINISTERING A CREDIT FILE MONITORING SUBSCRIPTION SERVICE TO WHICH: (I) THE PROTECTED CONSUMER HAS SUBSCRIBED; OR (II) THE REPRESENTATIVE OF THE PROTECTED CONSUMER HAS SUBSCRIBED ON BEHALF OF THE PROTECTED CONSUMER;

(2) A PERSON PROVIDING THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE WITH A COPY OF THE PROTECTED CONSUMER'S CONSUMER CREDIT REPORT UPON THE REQUEST OF THE PROTECTED CONSUMER OR THE PROTECTED CONSUMER'S REPRESENTATIVE;

(3)(I) AN ENTITY LISTED IN PARAGRAPHS THREE THROUGH EIGHT OF SUBDIVISION (M) OF SECTION THREE HUNDRED EIGHTY-T OF THIS ARTICLE; (II) AN ENTITY LISTED IN SUBDIVISION (P) OF SECTION THREE HUNDRED EIGHTY-T OF THIS ARTICLE; OR (III) A CONSUMER CREDIT REPORTING AGENCY'S DATABASE OR FILE THAT CONSISTS OF INFORMATION CONCERNING, AND USED FOR, ONE OR MORE OF THE FOLLOWING: CRIMINAL RECORD INFORMATION, FRAUD PREVENTION OR DETECTION, PERSONAL LOSS HISTORY INFORMATION, AND EMPLOYMENT, TENANT, OR BACKGROUND SCREENING.

(K) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE EXCLUSIVE REMEDY FOR A VIOLATION OF THIS SECTION SHALL BE IN AN ACTION COMMENCED BY THE ATTORNEY GENERAL.

S 3. This act shall take effect January 1, 2015.