

6682--A

Cal. No. 245

I N S E N A T E

February 26, 2014

Introduced by Sens. ZELDIN, BONACIC, DeFRANCISCO, LARKIN, MARCHIONE, MARTINS, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

1 Section 1. Section 380-a of the general business law is amended by
2 adding six new subdivisions (o), (p), (q), (r), (s) and (t) to read as
3 follows:
4 (O) THE TERM "PROTECTED CONSUMER" MEANS AN INDIVIDUAL WHO IS UNDER THE
5 AGE OF SIXTEEN YEARS AT THE TIME A REQUEST FOR THE PLACEMENT OF A SECU-
6 RITY FREEZE IS MADE.
7 (P) THE TERM "RECORD" MEANS A COMPILATION OF INFORMATION THAT (1)
8 IDENTIFIES A PROTECTED CONSUMER; (2) IS CREATED BY A CONSUMER CREDIT
9 REPORTING AGENCY SOLELY FOR THE PURPOSE OF COMPLYING WITH SECTION THREE
10 HUNDRED EIGHTY-U OF THIS ARTICLE; AND (3) MAY NOT BE CREATED OR USED TO
11 CONSIDER THE PROTECTED CONSUMER'S CREDIT WORTHINESS, CREDIT STANDING,
12 CREDIT CAPACITY, CHARACTER, GENERAL REPUTATION, PERSONAL CHARACTER-
13 ISTICS, OR MODE OF LIVING FOR ANY PURPOSE LISTED IN THIS ARTICLE.
14 (Q) THE TERM "REPRESENTATIVE" MEANS A PERSON WHO PROVIDES TO A CONSUM-
15 ER CREDIT REPORTING AGENCY SUFFICIENT PROOF OF AUTHORITY TO ACT ON
16 BEHALF OF A PROTECTED CONSUMER.
17 (R) THE TERM "SECURITY FREEZE FOR A PROTECTED PERSON" MEANS (1) IF A
18 CONSUMER CREDIT REPORTING AGENCY DOES NOT HAVE A FILE PERTAINING TO A
19 PROTECTED CONSUMER, A RESTRICTION THAT: (I) IS PLACED ON THE PROTECTED
20 CONSUMER'S RECORD IN ACCORDANCE WITH THIS SECTION; AND (II) PROHIBITS
21 THE CONSUMER CREDIT REPORTING AGENCY FROM RELEASING THE PROTECTED
22 CONSUMER'S RECORD EXCEPT AS PROVIDED IN THIS SECTION; OR
23 (2) IF A CONSUMER CREDIT REPORTING AGENCY HAS A FILE PERTAINING TO THE
24 PROTECTED CONSUMER, A RESTRICTION THAT (I) IS PLACED ON THE PROTECTED

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

LBD13240-08-4

1 CONSUMER'S CONSUMER CREDIT REPORT IN ACCORDANCE WITH THIS SECTION; AND
2 (II) PROHIBITS THE CONSUMER CREDIT REPORTING AGENCY FROM RELEASING THE
3 PROTECTED CONSUMER'S CONSUMER CREDIT REPORT OR ANY INFORMATION DERIVED
4 FROM THE PROTECTED CONSUMER'S CONSUMER CREDIT REPORT EXCEPT AS PROVIDED
5 IN THIS SECTION.

6 (S) THE TERM "SUFFICIENT PROOF OF AUTHORITY" MEANS DOCUMENTATION THAT
7 SHOWS A REPRESENTATIVE HAS AUTHORITY TO ACT ON BEHALF OF A PROTECTED
8 CONSUMER. "SUFFICIENT PROOF OF AUTHORITY" SHALL INCLUDE, BUT NOT BE
9 LIMITED TO, (1) AN ORDER ISSUED BY A COURT OF LAW; OR (2) A WRITTEN,
10 NOTARIZED STATEMENT SIGNED BY A REPRESENTATIVE THAT EXPRESSLY DESCRIBES
11 THE AUTHORITY OF THE REPRESENTATIVE TO ACT ON BEHALF OF A PROTECTED
12 CONSUMER.

13 (T) THE TERM "SUFFICIENT PROOF OF IDENTIFICATION" MEANS INFORMATION OR
14 DOCUMENTATION THAT IDENTIFIES A PROTECTED CONSUMER OR A REPRESENTATIVE
15 OF A PROTECTED CONSUMER. "SUFFICIENT PROOF OF IDENTIFICATION" SHALL
16 INCLUDE, BUT NOT BE LIMITED TO, (1) A SOCIAL SECURITY NUMBER OR A COPY
17 OF A SOCIAL SECURITY CARD ISSUED BY THE SOCIAL SECURITY ADMINISTRATION;
18 (2) A CERTIFIED OR OFFICIAL COPY OF A BIRTH CERTIFICATE; OR (3) A COPY
19 OF A DRIVER'S LICENSE, AN IDENTIFICATION CARD ISSUED BY THE DEPARTMENT
20 OF MOTOR VEHICLES, OR ANY OTHER GOVERNMENT-ISSUED PHOTO IDENTIFICATION.

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

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

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

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

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

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

51 (D) UNLESS A SECURITY FREEZE FOR A PROTECTED PERSON IS REMOVED IN
52 ACCORDANCE WITH THIS SECTION, A CONSUMER CREDIT REPORTING AGENCY MAY NOT
53 RELEASE THE PROTECTED CONSUMER'S CONSUMER CREDIT REPORT, ANY INFORMATION
54 DERIVED FROM THE PROTECTED CONSUMER'S CONSUMER REPORT, OR ANY RECORD
55 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, IF ANY, 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) 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. A CONSUMER CREDIT REPORTING AGENCY SHALL NOT CHARGE A FEE FOR ANY OTHER SERVICE PERFORMED UNDER THIS SECTION.

(2) NOTWITHSTANDING PARAGRAPH ONE 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, AS THESE SECTIONS ARE AMENDED FROM TIME TO TIME; 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

1 REPRESENTATIVE OF THE PROTECTED CONSUMER HAS SUBSCRIBED ON BEHALF OF THE
2 PROTECTED CONSUMER;

3 (2) A PERSON PROVIDING THE PROTECTED CONSUMER OR THE PROTECTED CONSUM-
4 ER'S REPRESENTATIVE WITH A COPY OF THE PROTECTED CONSUMER'S CONSUMER
5 CREDIT REPORT UPON THE REQUEST OF THE PROTECTED CONSUMER OR THE
6 PROTECTED CONSUMER'S REPRESENTATIVE;

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

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

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