STATE OF NEW YORK

135

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. CARLUCCI -- 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 the timeliness of disclosure of a breach of the security of a system that contains private information

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "Credit Empowerment Act".

§ 2. Section 380-t of the general business law, as amended by chapter 279 of the laws of 2008, subdivisions (b) and (n) as separately amended by chapter 406 of the laws of 2008, and subdivision (g) as amended by section 36 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

§ 380-t. Security freeze. (a) A consumer may request that a security freeze be placed on his or her consumer credit report by sending a request in writing with confirmation of delivery requested or via telephone, secure electronic means, or other methods developed by the consumer credit reporting agency to a consumer credit reporting agency at an address, telephone number or secure website designated by such agency to receive such requests. Consumer credit reporting agencies shall have a secure website and a separately dedicated toll-free number to offer information, to process requests and deliver the services provided for under this section.

(b) A consumer credit reporting agency that receives from a consumer a request in accordance with subdivision (a) of this section shall, provided such request is accompanied by proper identification and payment of any applicable fee, place a security freeze on the consumer credit report of or relating to such consumer no later than four business days after receiving such request, provided further, however, that

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

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for requests received on or after January first, two thousand nine, such consumer credit reporting agency shall place a security freeze on the consumer credit report of or relating to such consumer no later than three business days after receiving such request and for requests received on or after January first, two thousand ten, such consumer credit reporting agency shall place a security freeze on the consumer credit report of or relating to such consumer no later than one business day after receiving such request. Nothing in this subdivision shall be construed to prevent a consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer credit report of or relating to such consumer. No consumer credit reporting agency shall advise in any manner a third party, of the fact that the consumer requesting the freeze is alleging to be the victim of domestic violence or identity theft, without the written authorization of the consumer.

(c) The consumer credit reporting agency shall send a written confirmation of the placement of a security freeze to the consumer within five business days of placing such freeze. Upon placing the security freeze on the consumer credit report of or relating to such consumer, the consumer credit reporting agency shall provide the consumer with a unique personal identification number or password, or other device which shall only be used by the consumer when providing authorization for the release of his or her consumer credit report for a specific party or specific period of time. The unique personal identification number or password, or other device to be used by the consumer shall not be a social security number or a sequential portion thereof. Any use of the unique personal identification number or password or other device other than provided for in this section is prohibited.

(d) If the consumer wishes to allow his or her consumer credit report to be accessed for a specific party or a specific period of time while a freeze is in place, he or she shall contact the consumer credit reporting agency via mail with confirmation of delivery, telephone, secure electronic means or other method developed by such consumer credit reporting agency pursuant to subdivision (f) of this section using a point of contact designated by such consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) proper identification;

(2) the unique personal identification number or password provided by the consumer credit reporting agency pursuant to subdivision (c) of this section; **and**

(3) the proper information regarding the party to which the consumer credit report should be available or the time period for which the consumer credit report shall be available to users of such report[~~; and~~

~~(4) payment of any applicable fee~~].

(e) (1) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer credit report pursuant to subdivision (d) of this section, shall comply with the request: (i) no later than [~~three~~] **one** business [~~days~~] **day** after receiving such request; (ii) as of September first, two thousand nine, a consumer credit reporting agency that receives a request via the use of a telephone or secure electronic method provided by the agency, pursuant to subdivision (d) of this section, shall release a consumer's credit report as requested by the consumer within fifteen minutes after the request is received by the consumer credit reporting agency.

(2) A consumer credit reporting agency is not required to temporarily lift a security freeze within the time provided in subparagraph (ii) of paragraph one of this subdivision if:

(i) the consumer fails to meet the requirements of subdivision (b) of this section; or

(ii) the consumer credit reporting agency's ability to temporarily lift the security freeze within fifteen minutes is prevented by:

(A) an act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena;

(B) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;

(C) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;

(D) governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

(E) regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems; or

(F) commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.

(f) A consumer credit reporting agency may develop procedures involving other secure methods of communication, including the use of the internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer credit report pursuant to subdivision (d) of this section in an expedited manner.

(g) The department of state shall monitor the state of technology relating to the means available to process requests for the lifting or removal of a security freeze, and shall report to the legislature when it is determined that the technology to process requests for the lifting or removal of a security freeze in a shorter period of time than that set forth in subdivision (e) of this section is available.

(h) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on the consumer credit report of or relating to a consumer only in the following cases:

(1) upon consumer request, pursuant to subdivision (d) or (k) of this section; or

(2) if the consumer credit report of or relating to such consumer was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer credit report pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing, by first class mail, within three business days prior to removing the freeze on such consumer credit report.

(i) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her consumer credit report to be accessed for that period of time, the third party may treat the application as incomplete.

(j) If a consumer requests a security freeze, the consumer credit reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from such consumer credit report for a specific party or a period of time while the freeze is in place.

(k) (1) A security freeze shall remain in place until the consumer requests, using a point of contact designated by the consumer credit reporting agency, that the security freeze be removed and provides the following:

(i) proper identification; **and**

(ii) the unique personal identification number or password or similar device provided by the consumer credit reporting agency pursuant to subdivision (c) of this section[~~; and~~

~~(iii) a fee, if applicable~~].

(2) A consumer credit reporting agency shall remove a security freeze within [~~three~~] **one** business [~~days~~] **day** of receiving a request for removal from the consumer pursuant to paragraph one of this subdivision.

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

(m) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) a person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

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

(3) any state or local agency, law enforcement agency, court, private collection agency, or person acting pursuant to a court order, warrant, or subpoena;

(4) a child support agency acting pursuant to title iv-d of the social security act (42 U.S.C. et seq.);

(5) the state or its political subdivisions or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities provided such responsibilities are consistent with a permissible purpose under 15 U.S.C. section 1681b;

(6) the use of credit information for the purposes of prescreening as provided for by the federal fair credit reporting act;

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

(8) any person or entity for the purpose of providing a consumer with a copy of his or her consumer credit report or score upon the request of such consumer.

(n) [~~(1) (i) No consumer credit reporting agency shall charge a fee to a victim of identity theft who submits a copy of a signed federal trade commission ID theft victim's affidavit, or a report of ID theft from a law enforcement agency to such consumer credit reporting agency.~~

~~(ii) No consumer credit reporting agency shall charge a fee to a domestic violence victim who has submitted to such consumer credit reporting agency:~~

~~(A) a valid domestic violence incident report form as such term is defined in subdivision fifteen of section eight hundred thirty-seven of the executive law;~~

~~(B) a valid police report;~~

~~(C) a valid order of protection; or~~

~~(D) a signed affidavit from a licensed medical or mental health care provider, employee of a court acting within the scope of his or her employment, social worker, a rape crisis counselor as defined in section forty-five hundred ten of the civil practice law and rules, or advocate acting on behalf of an agency that assists domestic violence victims.~~

~~For the purposes of this subdivision, the term "domestic violence victim" means an individual who is a victim of a family offense, as described in subdivision one of section 530.11 of the criminal procedure law, or an offense committed by a member of such individual's immediate family, as defined in subdivision four of section 120.40 of the penal law.~~

~~(2)~~] No consumer credit reporting agency shall charge a fee to a consumer requesting the placement of a security freeze [~~when such consumer has not previously requested the placement of a security freeze from such consumer credit reporting agency. Except as provided for in paragraph one of this subdivision, a~~]. **A** consumer credit reporting agency may **not** charge a consumer a fee [~~not to exceed five dollars~~] for the placement of a second or subsequent freeze or for the removal of a freeze or the temporary lift of a freeze for a specific party or period of time or for the issuance of a replacement personal identification number or password when the consumer fails to retain the personal identification number or password provided to such consumer by such consumer credit reporting agency pursuant to subdivision (c) of this section.

(o) If a security freeze is in place, a consumer credit reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the file of or relating to such consumer: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of the official information of or relating to such consumer, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

(p) [~~The following entities are not required to place a security freeze on a consumer credit report:~~

~~(1) a consumer credit reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer credit reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced. However, a consumer credit reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer credit reporting agency;~~

~~(2) a check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; or~~

~~(3) a deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.~~

~~(q)~~] (1) Any time a consumer credit reporting agency is required to send a summary of rights required under 15 U.S.C. section 1681g, to a consumer residing in this state the following notice shall be included with such summary of rights:

"NEW YORK CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE.

YOU HAVE A RIGHT TO PLACE A "SECURITY FREEZE" ON YOUR CREDIT REPORT, WHICH WILL PROHIBIT A CONSUMER CREDIT REPORTING AGENCY FROM RELEASING INFORMATION IN YOUR CREDIT REPORT WITHOUT YOUR EXPRESS AUTHORIZATION. A SECURITY FREEZE MUST BE REQUESTED IN WRITING DELIVERY CONFIRMATION REQUESTED OR VIA TELEPHONE, SECURE ELECTRONIC MEANS, OR OTHER METHODS DEVELOPED BY THE CONSUMER CREDIT REPORTING AGENCY. THE SECURITY FREEZE IS DESIGNED TO PREVENT CREDIT, LOANS, AND SERVICES FROM BEING APPROVED IN YOUR NAME WITHOUT YOUR CONSENT. HOWEVER, YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO TAKE CONTROL OVER WHO GETS ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN YOUR CREDIT REPORT MAY DELAY, INTERFERE WITH, OR PROHIBIT THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION YOU MAKE REGARDING A NEW LOAN, CREDIT, MORTGAGE, GOVERNMENT SERVICES OR PAYMENTS, INSURANCE, RENTAL HOUSING, EMPLOYMENT, INVESTMENT, LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN EXTENSION OF CREDIT AT POINT OF SALE. WHEN YOU PLACE A SECURITY FREEZE ON YOUR CREDIT REPORT, YOU WILL BE PROVIDED A PERSONAL IDENTIFICATION NUMBER OR PASSWORD TO USE IF YOU CHOOSE TO REMOVE THE FREEZE ON YOUR CREDIT REPORT OR AUTHORIZE THE RELEASE OF YOUR CREDIT REPORT TO A SPECIFIC PARTY OR FOR A PERIOD OF TIME AFTER THE FREEZE IS IN PLACE. TO PROVIDE THAT AUTHORIZATION YOU MUST CONTACT THE CONSUMER CREDIT REPORTING AGENCY AND PROVIDE ALL OF THE FOLLOWING:

(1) THE PERSONAL IDENTIFICATION NUMBER OR PASSWORD;

(2) PROPER IDENTIFICATION TO VERIFY YOUR IDENTITY;

(3) THE PROPER INFORMATION REGARDING THE 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; AND

(4) PAYMENT OF ANY APPLICABLE FEE.

A CONSUMER CREDIT REPORTING AGENCY MUST AUTHORIZE THE RELEASE OF YOUR CREDIT REPORT NO LATER THAN THREE BUSINESS DAYS AFTER RECEIVING THE ABOVE INFORMATION. EFFECTIVE SEPTEMBER FIRST, TWO THOUSAND NINE, A CONSUMER CREDIT REPORTING AGENCY THAT RECEIVES A REQUEST VIA TELEPHONE OR SECURE ELECTRONIC METHOD SHALL RELEASE A CONSUMER'S CREDIT REPORT WITHIN FIFTEEN MINUTES WHEN THE REQUEST IS RECEIVED.

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 APPLICATION FOR CREDIT. YOU SHOULD PLAN AHEAD AND LIFT A FREEZE, EITHER COMPLETELY IF YOU ARE SHOPPING AROUND, OR SPECIFICALLY FOR A CERTAIN CREDITOR, BEFORE APPLYING FOR NEW CREDIT. WHEN SEEKING CREDIT OR PURSUING ANOTHER TRANSACTION REQUIRING ACCESS TO YOUR CREDIT REPORT, IT IS NOT NECESSARY TO RELINQUISH YOUR PIN OR PASSWORD TO THE CREDITOR OR

BUSINESS; YOU CAN CONTACT THE CONSUMER CREDIT REPORTING AGENCY DIRECTLY. IF YOU CHOOSE TO GIVE OUT YOUR PIN OR PASSWORD TO THE CREDITOR OR BUSINESS, IT IS RECOMMENDED THAT YOU OBTAIN A NEW PIN OR PASSWORD FROM THE CONSUMER CREDIT REPORTING AGENCY."

(2) If a consumer requests information about a security freeze, such consumer shall be provided with the notice set forth in paragraph one of this subdivision and with any other information necessary to place, temporarily lift or permanently lift a security freeze, including but not limited to the address, telephone number or point of contact at which the consumer credit reporting agency receives such requests.

[~~(r)~~] **(q)** When a consumer credit reporting agency erroneously releases a consumer credit report subject to a security freeze or any information contained in such consumer credit report, the consumer credit reporting agency shall send written notification to the affected consumer within three business days following discovery or notification of such erroneous release. Such notification shall also inform the consumer of the nature of the information released and identify and provide contact information for the recipient of such information or consumer credit report.

[~~(s)~~] **(r)** Whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 3. Paragraph 3 of subdivision (j) of section 380-u of the general business law, as added by chapter 441 of the laws of 2014, is amended to read as follows:

(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)~~] **(ii)** 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.

§ 4. This act shall take effect immediately.