

House Bill 1389

By: Representatives Benton of the 31st and Teilhet of the 40th

A BILL TO BE ENTITLED
AN ACT

To amend Article 8 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to identity fraud, so as to provide for definitions; to provide that a consumer who has been the victim of identity theft may place a security freeze on his or her credit report by making a written request to a consumer credit reporting agency; to provide that such request must be accompanied by a copy of a report that the consumer has filed with a law enforcement agency or the Governor's Office of Consumer Affairs about the unlawful use of his or her personal information by another person; to provide that a consumer credit reporting agency must place a security freeze on the consumer's credit report no later than five business days after receiving a proper written request; to provide that if a security freeze is in effect, the consumer credit reporting agency shall not change any official information in a credit report without sending a written notification to the consumer; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 8 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to identity fraud, is amended by designating the existing provisions as Part 1 and adding a new Part 2 to read as follows:

"Part 2

16-9-135.

(a) As used in this part, the term:

(1) 'Extension of credit' does not include an increase in an existing open-end credit plan, as defined in Regulation Z of the Federal Reserve System (12 C.F.R. 226.2), or any change to or review of an existing credit account.

1 (2) 'Proper identification' means information generally deemed sufficient to identify a
2 person. Only when the consumer is unable to reasonably identify himself or herself with
3 proper identification may a consumer credit reporting agency require additional
4 information concerning the consumer's employment and personal or family history in
5 order to verify his or her identity.

6 (b) A credit card issuer who mails an offer or solicitation to apply for a credit card and
7 who receives a completed application in response to the offer or solicitation which lists an
8 address that is not substantially the same as the address on the offer or solicitation may not
9 issue a credit card based on that application until reasonable steps have been taken to verify
10 the applicant's change of address.

11 (c) Any person who uses a consumer credit report in connection with the approval of credit
12 based on the application for an extension of credit, and who has received notification of a
13 report filed with a law enforcement agency, the Governor's Office of Consumer Affairs,
14 or another consumer credit reporting agency that the applicant has been a victim of identity
15 fraud, as defined in Code Section 16-9-121, may not lend money or extend credit without
16 taking reasonable steps to verify the consumer's identity and confirm that the application
17 for an extension of credit is not the result of identity fraud.

18 (d) A consumer who has been the victim of identity fraud may place a security freeze on
19 his or her credit report by making a request in writing by certified mail or overnight
20 statutory delivery to a consumer credit reporting agency with a valid copy of a police
21 report, investigative report, or complaint that the consumer has filed with a law
22 enforcement agency or the Governor's Office of Consumer Affairs about unlawful use of
23 his or her personal information by another person. A consumer credit reporting agency
24 shall not charge a fee for placing, removing, or removing for a specific party or period of
25 time a security freeze on a credit report. A security freeze shall prohibit, subject to the
26 exceptions under subsection (j) of this Code section, the consumer credit reporting agency
27 from releasing the consumer's credit report or any information from it without the express
28 authorization of the consumer. When a security freeze is in place, information from a
29 consumer's credit report shall not be released to a third party without prior express
30 authorization from the consumer. This subsection does not prevent a consumer credit
31 reporting agency from advising a third party that a security freeze is in effect with respect
32 to the consumer's credit report.

33 (e) A consumer credit reporting agency shall place a security freeze on a consumer's credit
34 report no later than five business days after receiving a written request from the consumer.

35 (f) The consumer credit reporting agency shall send a written confirmation of the security
36 freeze to the consumer within ten business days and shall provide the consumer with a
37 unique personal identification number or password, other than the consumer's social

1 security number, to be used by the consumer when providing authorization for the release
2 of his or her credit for a specific party or period of time.

3 (g) If the consumer wishes to allow his or her credit report to be accessed for a specific
4 party or period of time while a freeze is in place, he or she shall contact the consumer credit
5 reporting agency, request that the freeze be temporarily lifted, and provide the following:

6 (1) Proper identification;

7 (2) The unique personal identification number or password provided by the consumer
8 credit reporting agency; and

9 (3) The proper information regarding the third party or time period for which the report
10 shall be available to users of the credit report.

11 (h) A consumer credit reporting agency may develop procedures involving the use of
12 telephone, facsimile, the Internet, or other electronic media to receive and process a request
13 from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (g)
14 of this Code section in an expedited manner.

15 (i) A consumer credit reporting agency that receives a request from a consumer to
16 temporarily lift a freeze on a credit report pursuant to subsection (g) of this Code section
17 shall comply with the request no later than three business days after receiving the request.

18 (j) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on
19 a consumer's credit report only in the following cases:

20 (1) Upon the consumer's request, pursuant to subsection (f) or (l) of this Code section;
21 or

22 (2) If the consumer's credit report was frozen due to a material misrepresentation of fact
23 by the consumer.

24 If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit
25 report pursuant to this subsection, the consumer credit reporting agency shall notify the
26 consumer in writing prior to removing the freeze on the consumer's credit report.

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

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

35 (m) A security freeze shall remain in place until the consumer requests that the security
36 freeze be removed. A consumer credit reporting agency shall remove a security freeze

1 within three business days of receiving a request for removal from the consumer, who
2 provides the following:

3 (1) Proper identification; and

4 (2) The unique personal identification number or password provided by the consumer
5 credit reporting agency.

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

8 (o) The provisions of subsections (d) through (n) of this Code section shall not apply to
9 the use of a consumer credit report by any of the following:

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

20 (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom
21 access has been granted under subsection (g) of this Code section for purposes of
22 facilitating the extension of credit or other permissible use;

23 (3) Any state or local agency, law enforcement agency, trial court, or private collection
24 agency acting pursuant to a court order, warrant, or subpoena;

25 (4) A child support agency acting pursuant to Title IV-D of the Social Security Act;

26 (5) The relevant state agency or its agents or assigns acting to investigate Medicaid fraud;

27 (6) The Department of Revenue or its agents or assigns acting to investigate or collect
28 delinquent taxes or unpaid court orders or to fulfill any of its other statutory
29 responsibilities;

30 (7) The use of credit information for the purposes of prescreening as provided for by the
31 federal Fair Credit Reporting Act;

32 (8) Any person or entity administering a credit file monitoring subscription service to
33 which the consumer has subscribed; and

34 (9) Any person or entity for the purpose of providing a consumer with a copy of his or
35 her credit report upon the consumer's request.

36 (p) If a security freeze is in place, a consumer credit reporting agency shall not change any
37 of the following official information in a credit report without sending a written

confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file:

- (1) Name;
- (2) Date of birth;
- (3) Social security number; and
- (4) Address.

Written confirmation is not required for technical modifications of a consumer's official information, 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.

(q) The following entities are not required to place a security freeze on a credit report, provided that any person that is not required to place a security freeze on a credit report under paragraph (3) of this subsection shall be subject to any security freeze placed on a credit report by another credit reporting agency from which it obtains information:

- (1) 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 payment;
- (2) 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; and
- (3) A consumer credit reporting agency that:
 - (A) Acts only to resell credit information by assembling and merging information contained in a data base of one or more consumer credit reporting agencies; and
 - (B) Does not maintain a permanent data base of credit information from which new credit reports are produced.

16-9-136.

(a) A violation of this part shall be punishable by imprisonment for not less than one nor more than three years or a fine not to exceed \$10,000.00, or both. Any person who commits a second or any subsequent offense shall be punished by imprisonment for not less than two nor more than five years or a fine not to exceed \$25,000.00, or both.

(b) Any person found guilty of a violation of this part may be ordered by the court to make restitution to any victim of such identity fraud.

(c) Each violation of this part shall constitute a separate offense.

(d) Upon a conviction of a violation of this part, the court may issue any order necessary to correct a public record that contains false information resulting from the actions which resulted in the conviction.

16-9-137.

(a) Any consumer victim who suffers injury or damages as a result of a violation of this part may bring an action individually or as a representative of a class against the person or persons engaged in such violations under the rules of civil procedure to seek equitable injunctive relief and to recover general and punitive damages sustained as a consequence thereof in any court having jurisdiction over the defendant; provided, however, that punitive damages shall be awarded only in cases of intentional violation. A claim under this part may also be asserted as a defense, setoff, cross-claim, counterclaim, or third-party claim against such person.

(b) A court shall award three times actual damages for an intentional violation.

(c) If the court finds in any action that there has been a violation of this part, the consumer victim injured by such violation shall, in addition to other relief provided for in this Code section and irrespective of the amount in controversy, be awarded reasonable attorney's fees and expenses of litigation incurred in connection with said action.

(d) It shall not be a defense in any action under this part that others were, are, or will be engaged in like practices.

16-9-138.

Whenever an investigation has been conducted by the Governor's Office of Consumer Affairs under this part and such investigation reveals conduct which constitutes a criminal offense, the Governor's Office of Consumer Affairs shall forward the results of such investigation to the Attorney General or other prosecuting attorney of this state who shall commence any criminal prosecution that he or she deems appropriate.

16-9-139.

This part is cumulative with other laws and is not exclusive. The rights or remedies provided for in this part shall be in addition to any other procedures, rights, remedies, or duties provided for in any other law or in decisions of the courts of this state dealing with the same subject matter."

SECTION 2.

This Act shall become effective on July 1, 2006, and shall apply to transactions arising on or after that date.

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- SECTION 3.**
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- All laws and parts of laws in conflict with this Act are repealed.