

The House Committee on Judiciary Non-Civil offers the following substitute to HB 1389:

A BILL TO BE ENTITLED
AN ACT

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

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

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

19 "Part 2

20 16-9-135.

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

22 (1) 'Consumer' means a natural person.

23 (2) 'Consumer credit reporting agency' means any person, who for monetary fees, dues,
24 or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice

1 of assembling or evaluating consumer credit information or other information on
2 consumers for the purpose of furnishing credit reports to third parties.

3 (3) 'Credit report' means any written or other communication of any information by a
4 consumer reporting agency bearing on a consumer's credit worthiness, credit standing,
5 or credit capacity which is used or intended to be used or collected in whole or in part for
6 the purpose of serving as a factor in establishing the consumer's eligibility for credit or
7 insurance to be used primarily for personal, family, or household purposes or
8 employment consideration.

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

12 (5) 'Person' means a natural person, corporation, trust, partnership, incorporated or
13 unincorporated association, or any other legal entity.

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

19 (7) 'Security freeze' means a notice placed on a consumer file that prohibits a consumer
20 reporting agency from releasing a credit report relating to the extension of credit
21 involving that consumer file without the express authorization of the consumer.

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

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

34 (d) A consumer who has been the victim of identity fraud may place a security freeze on
35 his or her credit report by making a request in writing by certified mail or overnight
36 statutory delivery to a consumer credit reporting agency with a valid copy of a police
37 report, investigative report, or complaint that the consumer has filed with a law

1 enforcement agency or the Governor's Office of Consumer Affairs about unlawful use of
2 his or her personal information by another person. A consumer credit reporting agency
3 shall not charge a fee for placing, removing, or removing for a specific party or period of
4 time a security freeze on a credit report. A security freeze shall prohibit, subject to the
5 exceptions under this Code section, the consumer credit reporting agency from releasing
6 the consumer's credit report or any information from it without the express authorization
7 of the consumer. When a security freeze is in place, a consumer's credit report shall not
8 be released to a third party without prior express authorization from the consumer. This
9 subsection does not prevent a consumer credit reporting agency from:

10 (1) Advising a third party that a security freeze is in effect with respect to the consumer's
11 credit report; or

12 (2) Disclosing the consumer's credit report or information from it for other than credit
13 related purposes.

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

16 (f) If a third party requests a credit report in connection with an application for credit and
17 the request is denied due to a security freeze, the third party may treat the application as
18 incomplete.

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

22 (1) Proper identification;

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

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

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

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

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

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

37 or

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

3 If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit
4 report pursuant to paragraph (2) of this subsection, the consumer credit reporting agency
5 shall notify the consumer in writing prior to removing the freeze on the consumer's credit
6 report.

7 (k) The consumer credit reporting agency shall send a written confirmation of the security
8 freeze to the consumer within ten business days of receipt of the request. The written
9 confirmation shall also provide the consumer with the following:

10 (1) A unique personal identification number or password, other than the consumer's
11 social security number, to be used by the consumer when providing authorization for the
12 release of his or her credit for a specific party or period of time;

13 (2) Notification to the consumer of his or her right to be excluded from credit
14 pre-screening lists provided by a consumer reporting agency in connection with a credit
15 or insurance transaction that is not initiated by the consumer;

16 (3) Information regarding the procedure for placing a fraud alert with consumer reporting
17 agencies; and

18 (4) Information regarding the process for placing and temporarily lifting a security freeze
19 to allow access to the consumer's credit report for a specific party or period of time while
20 the freeze is in place.

21 (l) A security freeze shall remain in place until the consumer requests that the security
22 freeze be removed. A consumer credit reporting agency shall remove a security freeze
23 within three business days of receiving a request for removal from the consumer, who
24 provides the following:

25 (1) Proper identification; and

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

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

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

32 (1) A person for the use of a credit report for purposes permitted under 15 U.S.C. Section
33 1681b(c);

34 (2) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an
35 assignee of a financial obligation owing by the consumer to that person or entity, or a
36 prospective assignee of a financial obligation owing by the consumer to that person or
37 entity in conjunction with the proposed purchase of the financial obligation, with which

1 the consumer has or had prior to assignment an account or contract, including a demand
2 deposit account, or to whom the consumer issued a negotiable instrument, for the
3 purposes of reviewing the account or collecting the financial obligation owing for the
4 account, contract, or negotiable instrument. For purposes of this subsection, 'reviewing
5 the account' includes activities related to account maintenance, monitoring, credit line
6 increases, and account upgrades and enhancements;

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

10 (4) For other than credit related purposes consistent with the definition of credit report
11 found in paragraph (3) of subsection (a) of this Code section;

12 (5) Any state or local agency, law enforcement agency, trial court, or private collection
13 agency acting pursuant to a court order, warrant, or subpoena;

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

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

16 (8) The Department of Revenue or its agents or assigns acting to investigate or collect
17 delinquent taxes or unpaid court orders or to fulfill any of its other statutory
18 responsibilities;

19 (9) Any person or entity administering a credit file monitoring subscription service to
20 which the consumer has subscribed; or

21 (10) Any person or entity for the purpose of providing a consumer with a copy of his or
22 her credit report or credit score upon the consumer's request.

23 (o) If a security freeze is in place, a consumer credit reporting agency shall not change any
24 of the following official information in a credit report without sending a written
25 confirmation of the change to the consumer within 30 days of the change being posted to
26 the consumer's file:

27 (1) Name;

28 (2) Date of birth;

29 (3) Social security number; or

30 (4) Address.

31 Written confirmation is not required for technical modifications of a consumer's official
32 information, including name and street abbreviations, complete spellings, or transposition
33 of numbers or letters. In the case of an address change, the written confirmation shall be
34 sent to both the new address and to the former address.

35 (p) The following entities are not required to place a security freeze on a credit report,
36 provided that any person that is not required to place a security freeze on a credit report

1 under paragraph (3) of this subsection shall be subject to any security freeze placed on a
2 credit report by another credit reporting agency from which it obtains information:

3 (1) A check services or fraud prevention services company, including issuers of reports
4 on incidents of fraud or potential fraud or authorizations for the purpose of approving or
5 processing negotiable instruments, electronic funds transfers, or similar methods of
6 payment;

7 (2) A deposit account information service company, which issues reports regarding
8 account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative
9 information regarding a consumer to inquiring banks or other financial institutions for use
10 only in reviewing a consumer request for a deposit account at the inquiring bank or
11 financial institution; or

12 (3) A consumer credit reporting agency that:

13 (A) Acts only to resell credit information by assembling and merging information
14 contained in a data base of one or more consumer credit reporting agencies; and

15 (B) Does not maintain a permanent data base of credit information from which new
16 credit reports are produced.

17
18 16-9-136.

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

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

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

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

29 16-9-137.

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

1 part may also be asserted as a defense, setoff, cross-claim, counterclaim, or third-party
2 claim against such person.

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

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

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

10 16-9-138.

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

15 **SECTION 2.**

16 This Act shall become effective on January 1, 2007, and shall apply to transactions arising
17 on or after that date.

18 **SECTION 3.**

19 All laws and parts of laws in conflict with this Act are repealed.