

Senate Bill 361

By: Senators Rogers of the 21st, Hamrick of the 30th, Shafer of the 48th, Grant of the 25th, Goggans of the 7th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 34 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 relating to protection from identity theft, so as to provide for security freezes on consumer
3 credit accounts; to provide for definitions; to provide for procedures for placing, removing,
4 and temporarily lifting a security freeze; to provide for fees; to provide for a penalty for
5 violations; to provide for notice to consumers; to provide for related matters; to provide an
6 effective date; to repeal conflicting laws; and for other purposes.

7 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

8 **SECTION 1.**

9 Article 34 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
10 identity theft, is revised by adding new Code sections to read as follows:

11 "10-1-913.

12 As used in this Code section and in Code Section 10-1-914, the term:

13 (1) 'Consumer' means a natural person residing in this state.

14 (2) 'Consumer credit report' means a 'consumer report' as defined in 15 U.S.C. Section
15 1681a(d) that a consumer reporting agency furnishes to a person which it has reason to
16 believe intends to use the information as a factor in establishing the consumer's eligibility
17 for credit to be used primarily for personal, family, or household purposes.

18 (3) 'Consumer credit reporting agency' means any person who, for monetary fees, dues,
19 or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice
20 of assembling or evaluating consumer credit information or other information on
21 consumers for the purpose of furnishing consumer credit reports to third parties.

22 (4) 'Normal business hours' means any day, between the hours of 8:00 A.M. and 9:30
23 P.M., Eastern Standard Time.

24 (5) 'Person' means any individual, partnership, corporation, trust, estate, cooperative,
25 association, government, or governmental subdivision or agency, or other entity.

1 (6) 'Proper identification' means information generally deemed sufficient to identify a
2 person for consumer reporting agency purposes under 15 U.S.C. Section 1681 et seq.

3 (7) 'Security freeze' means a restriction placed on a consumer credit report at the request
4 of the consumer that prohibits a consumer credit reporting agency from releasing all or
5 any part of the consumer's consumer credit report or any information derived from the
6 consumer's consumer credit report for a purpose relating to the extension of credit
7 without the express authorization of the consumer.

8 10-1-914.

9 (a) A consumer may place a security freeze on the consumer's credit report by making a
10 request in writing by certified mail to a consumer credit reporting agency. No later than
11 August 1, 2008, a consumer credit reporting agency shall make available to consumers an
12 Internet based method of requesting a security freeze and a toll-free telephone number for
13 consumers to use to place a security freeze, temporarily lift a security freeze, or completely
14 remove a security freeze. A security freeze shall prohibit, subject to exceptions in
15 subsection (m) of this Code section, the consumer credit reporting agency from releasing
16 the consumer's credit report or credit score without the prior express authorization of the
17 consumer as provided in subsection (d) or (e) of this Code section. Nothing in this
18 subsection prevents a consumer credit reporting agency from advising a third party that a
19 security freeze is in effect with respect to the consumer's credit report.

20 (b) A consumer credit reporting agency shall place a security freeze on a consumer's credit
21 report no later than three business days after receiving the consumer's written request sent
22 by certified mail.

23 (c) The consumer credit reporting agency shall send a written confirmation of the security
24 freeze to the consumer within ten business days of placing the security freeze and at the
25 same time shall provide the consumer with a unique personal identification number or
26 password, other than the consumer's social security number, to be used by the consumer
27 when providing authorization for the release of the consumer's credit report for a specific
28 period of time.

29 (d) If the consumer wishes to allow the consumer's credit report to be accessed for a
30 specific period of time while a security freeze is in place, the consumer shall contact the
31 consumer credit reporting agency through the contact method established by the consumer
32 credit reporting agency, request that the security freeze be temporarily lifted, and provide
33 all of the following:

34 (1) Proper identification;

35 (2) The unique personal identification number or password provided by the consumer
36 credit reporting agency pursuant to subsection (c) of this Code section;

1 (3) The proper information regarding the time period for which the report shall be
2 available to users of the consumer credit report; and

3 (4) The proper payment as may be required by the consumer credit reporting agency.

4 (e) A consumer credit reporting agency shall develop procedures involving the use of
5 telephone, facsimile, the Internet, or other electronic media to receive and process a request
6 from a consumer to temporarily lift a security freeze on a consumer credit report pursuant
7 to subsection (d) of this Code section.

8 (f) A consumer credit reporting agency that receives a request from a consumer to
9 temporarily lift a security freeze on a consumer credit report pursuant to subsection (d)
10 or (e) of this Code section shall comply with the request:

11 (1) No later than three business days after receiving a written request;

12 (2) Within 15 minutes after the request and payment are received by telephone or
13 electronically by the contact method chosen by the consumer reporting agency during
14 normal business hours and the request includes the consumer's proper identification,
15 correct personal identification number or password, and the proper payment as may be
16 required by the consumer credit reporting agency; or

17 (3) A consumer reporting agency need not remove a security freeze within 15 minutes
18 as required by this subsection if such removal is prevented by:

19 (A) An act of God, including fire, earthquakes, hurricanes, storms, or similar natural
20 disasters or phenomena;

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

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

26 (D) Governmental action, including emergency orders or regulations, judicial or law
27 enforcement action, or similar directives.

28 (g) A consumer credit reporting agency shall only remove or temporarily lift a security
29 freeze placed on a consumer's credit report:

30 (1) Upon the consumer's request, in compliance with the requirements of this Code
31 section; or

32 (2) If the consumer's credit report was frozen due to a material misrepresentation of fact
33 by the consumer. If a consumer credit reporting agency intends to remove a security
34 freeze upon a consumer's credit report pursuant to this paragraph, the consumer credit
35 reporting agency shall notify the consumer in writing prior to removing the security
36 freeze on the consumer's credit report.

1 (h) If a third party requests access to a consumer credit report on which a security freeze
2 is in effect and this request is in connection with an application for credit or any other use
3 related to the extension of credit and the consumer does not allow the consumer's credit
4 report to be accessed for that specific period of time, the third party may treat the
5 application as incomplete.

6 (i) If a consumer requests a security freeze pursuant to this Code section, the consumer
7 credit reporting agency shall disclose to the consumer the process of placing and
8 temporarily lifting a security freeze and the process for allowing access to information from
9 the consumer's credit report for a specific period of time while the security freeze is in
10 place.

11 (j) A security freeze shall remain in place until the consumer requests that the security
12 freeze be removed. A consumer credit reporting agency shall remove a security freeze
13 within three business days of receiving a request for removal from the consumer. The
14 consumer shall provide all of the following:

15 (1) Proper identification;

16 (2) The unique personal identification number or password provided by the consumer
17 credit reporting agency pursuant to subsection (c) of this Code section; and

18 (3) The proper fee as may be required by the consumer credit reporting agency.

19 (k) A consumer credit reporting agency shall require proper identification of the person
20 making a request to place, temporarily lift, or remove a security freeze.

21 (l) By way of example only, and not intending to be exclusive, the provisions of this Code
22 section shall not apply to the use of a consumer credit report by any of the following:

23 (1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with
24 whom the consumer has, or prior to assignment had, an account, contract, or
25 debtor-creditor relationship for the purposes of reviewing the active account or collecting
26 the financial obligation owing for the account, contract, or debt;

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

30 (3) Any person acting pursuant to a court order, warrant, or subpoena;

31 (4) A state or local agency, or its agents or assigns, which administers a program for
32 establishing and enforcing child support obligations;

33 (5) A state or local agency, or its agents or assigns, acting to investigate fraud, including
34 Medicaid fraud; acting to investigate or collect delinquent taxes or assessments, including
35 interest, penalties, and unpaid court orders; or acting to fulfill any of its other statutory
36 responsibilities;

- 1 (6) A federal, state, or local governmental entity, including a law enforcement agency,
2 court, or its agents or assigns;
- 3 (7) Any person for the use of a credit report for purposes permitted under 15 U.S.C.
4 Section 1681b(c);
- 5 (8) Any person for the sole purpose of providing a credit file monitoring subscription
6 service to which the consumer has subscribed;
- 7 (9) Any person for the purpose of providing a consumer with a copy of the consumer's
8 credit report or credit score upon the consumer's request;
- 9 (10) Any depository financial institution for checking, savings, and investment accounts;
10 or
- 11 (11) Any person or entity for insurance purposes, including use in setting or adjusting
12 a rate, adjusting a claim, or underwriting.
- 13 (m) If a security freeze is in place, a consumer credit reporting agency shall not change
14 any of the following official information in a credit report without providing at least 30
15 days prior written notice to the consumer at his or her last known address: name, date of
16 birth, social security number, and address. Written notice is not required for technical
17 modifications of a consumer's official information, including name and street
18 abbreviations, complete spellings, or transposition of numbers or letters. In the case of an
19 address change, the written notice shall be sent to both the new address and the former
20 address.
- 21 (n) The following persons shall not be required to place a security freeze in a consumer
22 credit report pursuant to this Code section; provided, however, that any person that shall
23 not be required to place a security freeze on a consumer credit report under the provisions
24 of paragraph (3) of this subsection shall be subject to any security freeze placed on a
25 consumer credit report by another consumer credit reporting agency from which it obtains
26 information:
- 27 (1) A check services or fraud prevention services company, including reports on
28 incidents of fraud, or authorizations for the purpose of approving or processing negotiable
29 instruments, electronic funds transfers, or similar methods of payment;
- 30 (2) A deposit account information service company, which issues reports regarding
31 account closures due to fraud, substantial overdrafts, automated teller machine abuse, or
32 other similar negative information regarding a consumer to inquiring banks or other
33 financial institutions for use only in reviewing a consumer request for a deposit account
34 at the inquiring bank or financial institution;
- 35 (3) Resellers of consumer credit report information that assemble and merge information
36 contained in a data base of one or more consumer credit reporting agencies and do not

1 maintain a permanent data base of consumer credit information from which new
2 consumer credit reports are produced; or

3 (4) A consumer credit reporting agency's data base or file which consists of information
4 concerning, and used for, one or more of the following: criminal record information,
5 fraud prevention or detection, personal claim loss history information, and employment,
6 tenant, or individual background screening.

7 (o) This Code section shall not prevent a consumer credit reporting agency from charging
8 a reasonable fee, that does not exceed the actual cost to the consumer credit reporting
9 agency as determined by the commissioner of banking and finance, to a consumer for each
10 security freeze placement or for temporarily lifting a security freeze more than twice in a
11 calendar year. Any consumer who is 65 or older shall not be charged a fee for a security
12 freeze placement. A consumer reporting agency may not charge a consumer to temporarily
13 lift a security freeze twice in each calendar year or permanently remove a security freeze.
14 However, a consumer credit reporting agency may not charge any fee to a victim of
15 identity theft who has submitted a copy of a valid investigative or incident report or
16 complaint with a law enforcement agency about the unlawful use of the victim's
17 identifying information by another person that was filed with the law enforcement agency.
18 A consumer credit reporting agency may charge a fee of no more than \$5.00 to a consumer
19 for each replacement of a unique personal identification number or password.

20 (p) Exclusive of all other remedies that may be imposed, any person who willfully fails
21 to comply with any requirement imposed under this Code section with respect to any
22 consumer is liable to that consumer in an amount equal to the sum of:

23 (1)(A) Any actual damages sustained by the consumer as a result of the failure or
24 damages of not less than \$100.00 and not more than \$1,000.00; or

25 (B) In the case of liability of a natural person for obtaining a consumer report under
26 false pretenses or knowingly without a permissible purpose, actual damages sustained
27 by the consumer as a result of the failure or \$1,000.00, whichever is greater;

28 (2) Such amount of punitive damages as the court may allow; and

29 (3) In the case of any successful action to enforce any liability under this Code section,
30 the costs of the action together with reasonable attorney's fees as determined by the court.

31 (q) Any person who is negligent in failing to comply with any requirement imposed under
32 this Code section with respect to any consumer is liable to that consumer in an amount
33 equal to the sum of:

34 (1) Any actual damages sustained by the consumer as a result of the failure; and

35 (2) In the case of any successful action to enforce any liability under this Code section,
36 the costs of the action together with reasonable attorney's fees as determined by the court.

1 (r) Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed
2 in connection with an action under this Code section was filed in bad faith or for purposes
3 of harassment, the court shall award to the prevailing party attorney's fees reasonable in
4 relation to the work expended in responding to the pleading, motion, or other paper.

5 10-1-915.

6 At any time that a consumer is required to receive a summary of rights required by 15
7 U.S.C. Section 1681g(d) of the federal Fair Credit Reporting Act, the consumer shall also
8 be provided with the following notice:

9 'Georgia Consumers Have the Right to Obtain a Security Freeze.

10 You have a right to place a "security freeze" on your credit report, which will prohibit
11 a consumer reporting agency from releasing information in your credit report without
12 your express authorization. A security freeze must be requested in writing by certified
13 mail or by electronic means as provided by a consumer reporting agency. The security
14 freeze is designed to prevent credit, loans, and services from being approved in your
15 name without your consent. If you are actively seeking a new credit, loan, utility,
16 telephone, or insurance account, you should understand that the procedures involved in
17 lifting a security freeze may slow your applications for credit. You should plan ahead
18 and lift a freeze in advance of actually applying for new credit. When you place a
19 security freeze on your credit report, you will be provided a personal identification
20 number or password to use if you choose to remove the freeze on your credit report or
21 authorize the release of your credit report for a period of time after the freeze is in place.

22 To provide that authorization you must contact the consumer reporting agency and
23 provide all of the following:

- 24 (1) The personal identification number or password.
25 (2) Proper identification to verify your identity.
26 (3) The proper information regarding the period of time for which the report shall be
27 available.

28 A consumer reporting agency must authorize the release of your credit report no later
29 than fifteen (15) minutes after receiving the above information.

30 A security freeze does not apply to a person or entity, or its affiliates, or collection
31 agencies acting on behalf of the person or entity, with which you have an existing
32 account, that requests information in your credit report for the purposes of reviewing or
33 collecting the account. Reviewing the account includes activities related to account
34 maintenance. You have a right to bring civil action against anyone, including a consumer
35 reporting agency, who improperly obtains access to a file, knowingly or willfully misuses
36 file data, or fails to correct inaccurate file data. Unless you are a victim of identity theft

1 with a police report or other official document acceptable to a consumer reporting agency
2 to verify the crimes, or you are 65 or older, a consumer reporting agency has the right to
3 charge you a reasonable fee, as determined by the commissioner of banking and finance,
4 to place a freeze on your credit report, but may not charge you to temporarily lift a freeze
5 on your credit report twice each year or to remove a freeze from your credit report."

6 **SECTION 2.**

7 This Act shall become effective on August 1, 2008.

8 **SECTION 3.**

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