

HOUSE BILL 3352
By West

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18, relative to consumer protection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding sections 2 through 7 as a new part 51:

SECTION 2.

§ 47-18-5101.

This part shall be known and may be cited as the "Tennessee Clean Credit and Identity Theft Protection Act of 2006".

SECTION 3.

§ 47-18-5102.

As used in this part, unless the context otherwise requires:

(1) "Division" means the division of consumer affairs of the department of commerce and insurance;

(2) "Security freeze" means a notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer. If a security freeze is in place, such a report or information may not be released to a third party without prior express authorization from the consumer. This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report; and

(3) "Tennessee Consumer Protection Act" means the Tennessee Consumer Protection Act of 1977, as amended, as compiled in part 1 of this chapter and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this definition, related statutes include, but are not limited to, the Membership Camping Act as compiled in title 66, chapter 32, part 3.

SECTION 4.

§ 47-18-5103.

(a) A consumer may elect to place a "security freeze" on his or her credit report by:

(1) Making a request by certified mail;

(2) Making a request by telephone by providing certain personal identification; or

(3) Making a request directly to the consumer reporting agency through a secure electronic mail connection if such connection is made available by the agency.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five (5) business days after receiving a written or telephone request from the consumer or three (3) business days after receiving a secure electronic mail request.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five (5) business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number

or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed by a specific party or for a period of time while a freeze is in place, he or she shall contact the consumer reporting agency via telephone, certified mail, or secure electronic mail, 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 reporting agency pursuant to this section; and

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

(e) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to this section shall comply with the request no later than three (e) business days after receiving the request.

(f) A consumer reporting agency may develop procedures involving the use of telephone, fax, or, upon the consent of the consumer for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to this section in an expedited manner.

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

(1) Upon consumer request, made pursuant to the terms of this section;

or

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subsection, the consumer reporting agency shall notify the consumer in writing five (5) business days prior to removing the freeze upon the consumer's credit report.

(h) 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 credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a third party requests access to a consumer credit report upon which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole purpose of account review, the consumer credit report agency must notify the consumer that an attempt has been made to access the credit report.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three (3) business days of receiving a request for removal from the consumer, who provides both of the following:

(1) Proper identification; and

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

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

(l) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report or rating.

(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 the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt.

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

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

(4) A state or local agency which administers a program for establishing and enforcing child support obligations.

(5) The state attorney general or his or her agents or assigns acting to investigate fraud.

(6) The department of revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(7) A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act.

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

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

(n) A consumer may not be charged for any security freeze services including, but not limited to, the placement or lifting of a security freeze. A consumer, however, can be charged not more than five dollars (\$5.00) if the consumer fails to retain or otherwise loses the personal identification number originally provided by the agency. The consumer may not be charged for a one-time reissuance of the same or a new personal identification number.

SECTION 5.

§ 47-18-5104.

At any time that a consumer is required to receive a summary of rights required under Section 609 of the federal Fair Credit Reporting Act or under this part, the following notice shall be included:

NOTICE

Tennessee Consumers Have the Right to Obtain a Security Freeze. You may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your credit report pursuant to the Clean Credit and Identity Theft Protection Act.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent.

When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

- (1) The unique personal identification number or password provided by the consumer reporting agency.
- (2) Proper identification to verify your identity.
- (3) The proper information regarding the third 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.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A security freeze does not apply to circumstances where 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 own applications for credit. You should plan ahead and lift a freeze –

either completely if you are shopping around, or specifically for a certain creditor – a few days before actually applying for new credit.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report.

SECTION 6.

§ 47-18-5105.

If a consumer reporting agency erroneously, whether by accident or design, violates the security freeze by releasing credit information that has been placed under a security freeze, the affected consumer is entitled to:

(1) Notification within five (5) business days of the release of the information, including specificity as to the information released and the third party recipient of the information.

(2) File a complaint with the Federal Trade Commission.

(3) File a complaint with the Tennessee department of commerce and insurance.

(4) In a civil action against the consumer reporting agency seek:

(A) Injunctive relief to prevent or restrain further violation of the security freeze;

(B) A civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation plus any damages available under other civil laws; and

(C) Reasonable expenses, court costs, investigative costs, and attorney's fees.

(e) Each violation of the security freeze shall be counted as a separate incident for purposes of imposing penalties under this part.

SECTION 7.

§ 47-18-5106.

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in such act, in addition to the penalties and remedies set forth in this part.

(c) If the division has reason to believe that any person has violated any provision of this part, the attorney general and reporter, at the request of the division, may institute a proceeding under this chapter.

SECTION 8. This act shall take effect on July 1, 2006 the public welfare requiring it.