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**SUBSTITUTE HOUSE BILL 2384**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Business & Financial Services (originally sponsored by Representatives Hudgins, Valdez, Macri, Ormsby, Pollet, and Appleton)

AN ACT Relating to consumer reporting agency security freeze fees; amending RCW 19.182.170 and 19.182.230; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 19.182.170 and 2007 c 499 s 1 are each amended to read as follows:

(1) A consumer, who is a resident of this state, may elect to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer reporting agency. "Security freeze" means a prohibition, consistent with this section, on a consumer reporting agency's furnishing of a consumer's credit report to a third party intending to use the credit report to determine the consumer's eligibility for credit. If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer. This subsection 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.

(2) For purposes of this section and RCW 19.182.180 through 19.182.210:

(a) "Victim of identity theft" means a person who has a police report evidencing their claim to be a victim of a violation of RCW 9.35.020 and which report will be produced to a consumer reporting agency, upon such consumer reporting agency's request.

(b) "Credit report" means a consumer report, as defined in 15 U.S.C. Sec. 1681a, that is used or collected to serve as a factor in establishing a consumer's eligibility for credit for personal, family, or household purposes.

(c) "Normal business hours" means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m. Pacific time.

(3) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer ((~~and payment of the fee required by the consumer reporting agency under subsection (13) of this section~~)).

(4) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ten business days and 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 report for a specific party or period of time.

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

(a) Proper identification, which means that information generally deemed sufficient to identify a person. Only if the consumer is unable to sufficiently identify himself or herself, may a consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his or her identity;

(b) The unique personal identification number or password provided by the consumer reporting agency under subsection (4) of this section; and

(c) The proper information regarding the time period for which the report is available to users of the credit report((~~; and~~

~~(d) Payment of the fee required by the consumer reporting agency under subsection (13) of this section~~)).

(6) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report under subsection (5) of this section shall comply with the request within:

(a) Three business days of receiving the request by mail; or

(b) Fifteen minutes of receiving the request from the consumer through the electronic contact method chosen by the consumer reporting agency in accordance with subsection (8) of this section, if the request:

(i) Is received during normal business hours; and

(ii) Includes the consumer's proper identification and correct personal identification number or password.

(7) A consumer reporting agency is not required to remove a security freeze within the time provided in subsection (6)(b) of this section if:

(a) The consumer fails to meet the requirements of subsection (5) of this section; or

(b) The consumer reporting agency's ability to remove the security freeze within fifteen minutes is prevented by:

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

(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes, or disputes disrupting operations, or similar occurrences;

(iii) An interruption in operations, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruptions;

(iv) Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

(v) Regularly scheduled maintenance of, or updates to, the consumer reporting agency's systems outside of normal business hours;

(vi) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or

(vii) Receipt of a removal request outside of normal business hours.

(8) A consumer reporting agency may develop procedures involving the use of telephone, fax, the internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report under subsection (5) of this section in an expedited manner.

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

(a) Upon consumer request, under subsection (5) or (12) of this section; or

(b) When the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to remove a freeze upon a consumer's credit report under this subsection, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(10) When 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 period of time, the third party may treat the application as incomplete.

(11) When a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific period of time while the freeze is in place.

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

(a) Proper identification, as defined in subsection (5)(a) of this section; and

(b) The unique personal identification number or password provided by the consumer reporting agency under subsection (4) of this section((~~; and~~

~~(c) Payment of the fee required by the consumer reporting agency under subsection (13) of this section~~)).

(13)((~~(a) Except as provided in (b) of this subsection, a consumer reporting agency may charge a fee of no more than ten dollars to a consumer for placement of each freeze, temporary lift of the freeze, or removal of the freeze.~~

~~(b) A consumer reporting agency may not charge a fee to place a security freeze for a victim of identity theft or for a consumer, who is sixty-five years old or older.~~)) A consumer reporting agency may not impose a charge on a consumer for a request to place, temporarily lift, or remove a freeze.

(14) This section does not apply to the use of a consumer credit report by any of the following:

(a) 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 subsection, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(b) Any federal, state, or local entity, including a law enforcement agency, court, or their agents or assigns;

(c) Any person acting under a court order, warrant, or subpoena;

(d) A child support agency acting under Title IV-D of the social security act (42 U.S.C. Sec. 651 et seq.);

(e) The department of social and health services acting to fulfill any of its statutory responsibilities;

(f) The internal revenue service acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

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

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

(i) 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; and

(j) A mortgage broker or loan originator required to be licensed under chapter 19.146 RCW.

(15) Liability may not result to the consumer reporting agency if through inadvertence or mistake the consumer reporting agency releases credit report information to a person or entity purporting to be a mortgage broker or loan originator under subsection (14) of this section that is, in fact, not a mortgage broker or loan originator.

(16) The consumer's request for a security freeze does not prohibit the consumer reporting agency from disclosing the consumer's credit report for other than credit-related purposes.

(17) A violation of subsection (6) of this section does not provide a private cause of action under RCW 19.86.090. A violation of subsection (6) of this section shall be enforced exclusively by the attorney general. A violation of subsection (6) of this section is subject to all other remedies and penalties available under this chapter.

**Sec.**  RCW 19.182.230 and 2016 c 135 s 2 are each amended to read as follows:

(1) A consumer reporting agency shall place a security freeze for a protected consumer if:

(a) The consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

(b) The protected consumer's representative:

(i) Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

(ii) Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative; and

(iii) Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer((~~; and~~

~~(iv) Pays to the consumer reporting agency a fee as provided in this section~~)).

(2) If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request under subsection (1)(a) of this section, the consumer reporting agency shall create a record for the protected consumer.

(3) Within thirty days after receiving a request that meets the requirements of subsection (1) of this section, a consumer reporting agency shall place a security freeze for the protected consumer.

(4) Unless a security freeze for a protected consumer is removed in accordance with subsection (6) or (9) of this section, a consumer reporting agency may not release the protected consumer's consumer report, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

(5) A security freeze for a protected consumer placed in accordance with this section shall remain in effect until:

(a) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the security freeze in accordance with subsection (6) of this section; or

(b) The security freeze is removed in accordance with subsection (9) of this section.

(6) If a protected consumer or a protected consumer's representative wishes to remove a security freeze for the protected consumer, the protected consumer or the protected consumer's representative shall:

(a) Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

(b) Provide to the consumer reporting agency:

(i) In the case of a request by the protected consumer:

(A) Proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; and

(B) Sufficient proof of identification of the protected consumer; and

(ii) In the case of a request by the representative of a protected consumer:

(A) Sufficient proof of identification of the protected consumer and the representative; and

(B) Sufficient proof of authority to act on behalf of the protected consumer((~~; and~~

~~(iii) In any case, pay to the consumer reporting agency a fee as provided in this section~~)).

(7) Within thirty days after receiving a request that meets the requirements of subsection (6) of this section, the consumer reporting agency shall remove the security freeze for the protected consumer.

(8)((~~(a) Except as provided in (b) of this subsection,~~)) A consumer reporting agency may not charge a fee for any service performed under this section.

((~~(b) A consumer reporting agency may charge a reasonable fee, not exceeding ten dollars, for each placement or removal of a security freeze for a protected consumer.~~

~~(c) A consumer reporting agency may not charge any fee under this section if:~~

~~(i) The protected consumer's representative:~~

~~(A) Has obtained a report from a federal, state, county, or local law enforcement alleging identity theft in violation of RCW 9.35.020 against the protected consumer; and~~

~~(B) Provides a copy of the report to the consumer reporting agency; or~~

~~(ii)(A) A request for the placement or removal of a security freeze is for a protected consumer who is under the age of sixteen years at the time of the request; and~~

~~(B) The consumer reporting agency has a consumer report pertaining to the protected consumer.~~))

(9) A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(10) A violation of this section is enforced in accordance with RCW 19.182.170(17).

(11) This section does not apply to:

(a) Persons or transactions described in RCW 19.182.170(14)(b), (c), (d), (e), (f), (h), or (i);

(b) Persons or transactions described in RCW 19.182.190;

(c) Persons or transactions described in RCW 19.182.200; or

(d) A person or entity that maintains, or a database used solely for, the following:

(i) Criminal record information;

(ii) Personal loss history information;

(iii) Fraud prevention or detection;

(iv) Employment screening; or

(v) Tenant screening.

NEW SECTION. **Sec.**  The office of cybersecurity, the office of privacy and data protection, and the attorney general's office must work with stakeholders to evaluate the impact to consumers and the consumer reporting agencies regarding the modifications in this act. The report must include trends in data breaches including the frequency and nature of security breaches, best practices for preventing cybersecurity attacks, and identity theft mitigation protocols recommended by the federal trade commission, the consumer financial protection bureau, and other relevant federal or state agencies. The report must be submitted to the house of representatives committee on business and financial services and the senate committee on financial institutions and insurance by December 1, 2020.

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