

1 HB541
2 158971-1
3 By Representative Williams (J)
4 RFD: Financial Services
5 First Read: 26-FEB-14

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8 SYNOPSIS: Under existing law, a consumer may place a
9 security freeze on his or her consumer credit
10 information which prohibits a consumer credit
11 reporting agency from disclosing information about
12 the consumer's credit except in limited
13 circumstances.

14 This bill would authorize a representative
15 to freeze the consumer credit information of a
16 minor under the age of 17 or of an individual who
17 is incapacitated or for whom a court or other
18 authority has appointed a guardian or conservator.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 Relating to consumer credit; to amend Sections
25 8-35-1 and 8-35-2, Code of Alabama 1975, and to authorize a
26 representative to freeze the consumer credit information of a
27 minor under the age of 17 or of an individual who is

1 incapacitated or for whom a court or other authority has
2 appointed a guardian or conservator, thereby prohibiting a
3 consumer credit reporting agency from disclosing information
4 about the consumer's credit except in limited circumstances.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 8-35-1 and 8-35-2, Code of
7 Alabama 1975, are amended to read as follows:

8 "§8-35-1.

9 "As used in this chapter, the following terms shall
10 have the following meanings:

11 "(1) CONSUMER. ~~A natural person~~ An individual
12 residing in this state.

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

19 "(3) CONSUMER CREDIT REPORTING AGENCY. Any person
20 who, for monetary fees, dues, or on a cooperative nonprofit
21 basis, regularly engages in whole or in part in the practice
22 of assembling or evaluating consumer credit information or
23 other information on consumers for the purpose of furnishing
24 consumer credit reports to third parties.

25 "(4) NORMAL BUSINESS HOURS. Any day between the
26 hours of 8:00 A.M. and 9:30 P.M., Central Standard Time.

1 "(5) PERSON. Any individual, partnership,
2 corporation, trust, estate, cooperative, association,
3 government or governmental subdivision or agency, or other
4 entity.

5 "(6) PROPER IDENTIFICATION. Information generally
6 deemed sufficient to identify a person for consumer reporting
7 agency purposes under 15 U.S.C. §1681 et seq.

8 "(7) PROTECTED CONSUMER. An individual who is
9 either:

10 "a. Not older than 16 years old at the time a
11 representative requests a security freeze on the individual's
12 behalf; or

13 "b. Incapacitated or for whom a court or other
14 authority has appointed a guardian or conservator.

15 "(8) PROTECTIVE RECORD. Information that a consumer
16 reporting agency compiles to identify a protected consumer for
17 whom the consumer credit reporting agency has not prepared a
18 consumer report.

19 "(9) REPRESENTATIVE. A consumer who provides a
20 consumer credit reporting agency with sufficient proof of the
21 consumer's authority to act on a protected consumer's behalf.

22 "~~(7)~~ (10) SECURITY FREEZE. A restriction placed on a
23 consumer ~~credit~~ report at the request of ~~the~~ a consumer or
24 representative, or on a protective record as provided in
25 subsection (e) of Section 8-35-2, that prohibits a consumer
26 credit reporting agency from releasing ~~the consumer's consumer~~
27 ~~credit report~~ information in the consumer report or the

1 protective record for a purpose relating to the extension of
2 credit without the express authorization of the consumer or
3 representative.

4 "§8-35-2.

5 "(a) A consumer may place a security freeze on the
6 consumer's ~~credit~~ consumer report or, if the consumer is a
7 representative, on a protected consumer's consumer report or
8 protective record by making a request in writing by certified
9 mail to a consumer credit reporting agency. No later than
10 August 31, 2012, a consumer credit reporting agency shall make
11 available to consumers an Internet based method of requesting
12 a security freeze and a toll-free telephone number for
13 consumers to use to place a security freeze, temporarily lift
14 a security freeze, or completely remove a security freeze. A
15 security freeze shall prohibit, subject to exceptions in
16 subsection ~~(m)~~ (n), the consumer credit reporting agency from
17 releasing information from the consumer's ~~credit~~ consumer
18 report or ~~credit score~~ the protected consumer's consumer
19 report or protective record, without the prior express
20 authorization of the consumer or representative as provided in
21 subsection ~~(d) or (e)~~ (f). Nothing in this subsection shall
22 prevent a consumer credit reporting agency from advising a
23 third party that a security freeze is in effect with respect
24 to the consumer's ~~credit report~~ consumer report or protected
25 consumer's consumer report or protective record.

26 "(b) A representative who seeks to place a security
27 freeze on a protected consumer's consumer report or protective

1 record shall provide sufficient proof of the representative's
2 authority to act on the protected consumer's behalf. For
3 purposes of this subsection, sufficient proof of authority
4 consists of any of the following:

5 "(1) A court order that identifies or describes the
6 relationship between the representative and the protected
7 consumer.

8 "(2) A valid and lawfully executed power of attorney
9 that permits the representative to act on the protected
10 consumer's behalf.

11 "(3) A written affidavit that the representative
12 signs and has notarized in which the representative expressly
13 describes the relationship between the representative and the
14 protected consumer and the representative's authority to act
15 on the protected consumer's behalf.

16 ~~"(b)(c)~~ A consumer credit reporting agency shall
17 place a security freeze on a ~~consumer's credit~~ consumer report
18 no later than three business days after receiving from the
19 consumer or representative, sent by certified mail, all of the
20 following:

21 "(1) ~~the consumer's~~ The written request.

22 "(2) Proper identification.

23 "(3) If the request is made by a representative on
24 behalf of a protected consumer, sufficient proof of authority
25 pursuant to subsection (b).

26 "(4) The proper fee as may be required by the
27 consumer credit reporting agency. ~~sent by certified mail.~~

1 "~~(c)~~ (d) The consumer credit reporting agency shall
2 send a written confirmation of the security freeze to the
3 consumer or representative within 10 business days of placing
4 the security freeze and at the same time shall provide the
5 consumer or the protected consumer and his or her
6 representative with a unique personal identification number or
7 password, other than the consumer's or protected consumer's
8 Social Security number, to be used by the consumer or the
9 protected consumer or his or her representative when providing
10 authorization for the release of the ~~consumer's credit~~
11 consumer report either permanently or for a specific period of
12 time.

13 "(e) (1) If a consumer report does not exist for a
14 protected consumer on behalf of whom a representative seeks to
15 place a security freeze, a consumer credit reporting agency
16 shall create a protective record within three business days
17 after receiving from the representative the written request,
18 proper identification for both the representative and the
19 protected consumer, and sufficient proof of authority pursuant
20 to subsection (b). The protective record does not need to
21 contain any information other than the protected consumer's
22 personal information, if other information for the protected
23 consumer is not available. After creating a protective record
24 for a protected consumer, the consumer credit reporting agency
25 shall place the security freeze that the representative
26 requested on the protected consumer's protective record. The
27 consumer credit reporting agency shall send a written

1 confirmation of the security freeze to the protected consumer
2 and his or her representative within 10 business days of
3 placing the security freeze and at the same time shall provide
4 the protected consumer and representative with a unique
5 personal identification number or password, other than the
6 protected consumer's Social Security number, which may be the
7 same number the consumer credit reporting agency provided
8 pursuant to subsection (d), to be used by the protected
9 consumer or representative when providing authorization for
10 the permanent release of the protective record or deletion of
11 the protective record.

12 "(2) A consumer credit reporting agency may not use
13 or release to another person the information in a protective
14 record for the purpose of assessing a protected consumer's
15 eligibility or capacity for an extension of credit, as a basis
16 for evaluating a protected consumer's character, reputation,
17 or personal characteristics, or for other purposes that are
18 not related to protecting the protected consumer from identity
19 theft.

20 "(3) A protective record is not subject to a
21 temporary lift of a security freeze.

22 "(d)(f) If the consumer or representative wishes to
23 allow the ~~consumer's credit~~ consumer report to be accessed for
24 a specific period of time while a security freeze is in place,
25 the consumer or representative shall contact the consumer
26 credit reporting agency through the contact method established
27 by the consumer credit reporting agency, request that the

1 security freeze be temporarily lifted, and provide all of the
2 following:

3 "(1) Proper identification.

4 "(2) The unique personal identification number or
5 password provided by the consumer credit reporting agency
6 pursuant to subsection ~~(c)~~ (d).

7 "(3) The proper information regarding the time
8 period for which the report shall be available to users of the
9 consumer credit report.

10 "(4) The proper ~~payment~~ fee as may be required by
11 the consumer credit reporting agency.

12 "~~(e)~~ (g) A consumer credit reporting agency shall
13 develop procedures involving the use of telephone, the
14 Internet, or other electronic media to receive and process a
15 request from a consumer or representative to temporarily lift
16 a security freeze on a consumer ~~credit~~ report pursuant to
17 subsection ~~(d)~~ (e).

18 "~~(f)~~ (h) A consumer credit reporting agency that
19 receives a request from a consumer or representative to
20 temporarily lift a security freeze on a consumer ~~credit~~ report
21 pursuant to subsection ~~(d) or (e)~~ (f) shall comply with the
22 request as follows:

23 "(1) No later than three business days after
24 receiving a written request.

25 "(2) Within 15 minutes after the request and payment
26 are received by telephone or electronically by the contact
27 method chosen by the consumer credit reporting agency during

1 normal business hours and the request includes the consumer's
2 or representative's proper identification, correct personal
3 identification number or password, and the proper ~~payment~~ fee
4 as may be required by the consumer credit reporting agency.

5 "~~(g)~~ (i) A consumer credit reporting agency need not
6 temporarily lift a security freeze within 15 minutes, as
7 specified in subdivision (2) of subsection ~~(f)~~ (h), if either
8 of the following occurs:

9 "(1) The consumer fails to satisfy the requirements
10 of subsection ~~(d)~~ (e).

11 "(2) The consumer credit reporting agency's ability
12 to temporarily lift the security freeze within 15 minutes is
13 prevented by the following:

14 "a. An act of God, including earthquakes,
15 hurricanes, storms, or similar natural disaster or phenomenon,
16 or fire.

17 "b. Unauthorized or illegal acts by a third party,
18 including terrorism, sabotage, riot, vandalism, labor strikes
19 or disputes disrupting operations, or similar occurrence.

20 "c. Operational interruption, including electrical
21 failure, unanticipated delay in equipment or replacement part
22 delivery, computer hardware or software failures inhibiting
23 response time, or similar disruption.

24 "d. Governmental action, including emergency orders
25 or regulations, judicial or law enforcement action, or similar
26 directives.

1 "e. Regularly scheduled maintenance or updates,
2 during other than normal business hours, to the consumer
3 reporting agency's systems.

4 "f. Commercially reasonable maintenance of, or
5 repair to, the consumer credit reporting agency's systems that
6 is unexpected or unscheduled.

7 "g. Receipt of a request outside of normal business
8 hours.

9 "~~(h)~~ (j) A consumer credit reporting agency shall
10 only remove or temporarily lift a security freeze placed on a
11 ~~consumer's credit~~ consumer report upon any of the following
12 circumstances:

13 "(1) Upon the consumer's or representative's
14 request, in compliance with the requirements of this section.

15 "(2) If the ~~consumer's credit~~ consumer report was
16 frozen due to a material misrepresentation of fact by the
17 consumer or representative. If a consumer credit reporting
18 agency intends to remove a security freeze upon a ~~consumer's~~
19 ~~credit~~ consumer report pursuant to this subdivision, the
20 consumer credit reporting agency shall notify the consumer or
21 representative in writing prior to removing the security
22 freeze on the ~~consumer's credit~~ consumer report.

23 "~~(i)~~ (k) If a third party requests access to a
24 consumer ~~credit~~ report on which a security freeze is in effect
25 and this request is in connection with an application for
26 credit or any other use related to the extension of credit and
27 the consumer or representative does not allow the ~~consumer's~~

1 ~~credit~~ consumer report to be accessed for that specific period
2 of time, the third party may treat the application as
3 incomplete.

4 "~~(j)~~ (l) If a consumer or representative requests a
5 security freeze on a consumer report pursuant to this section,
6 the consumer credit reporting agency shall disclose to the
7 consumer or representative the process of placing and
8 temporarily lifting a security freeze and the process for
9 allowing access to information from the ~~consumer's credit~~
10 consumer report for a specific period of time while the
11 security freeze is in place.

12 "~~(k)~~ (m) A security freeze for a consumer report
13 shall remain in place until the consumer, the protected
14 consumer or the protected consumer's representative requests
15 that the security freeze be removed. A consumer credit
16 reporting agency shall remove a security freeze within three
17 business days of receiving a request for removal from the
18 consumer. ~~The consumer shall provide,~~ the protected consumer,
19 or the protected consumer's representative who provides all of
20 the following:

21 "(1) Proper identification.

22 "(2) The unique personal identification number or
23 password provided by the consumer credit reporting agency
24 pursuant to subsection ~~(c)~~ (d).

25 "(3) If a protected consumer seeks to remove the
26 security freeze, proof that the representative's authority to

1 act on the protected consumer's behalf is no longer valid or
2 applicable.

3 "(4) If a representative is making the request on
4 behalf of a protected consumer, sufficient proof of the
5 representative's authority to act on the protected consumer's
6 behalf as described in subsection (b).

7 ~~"(3)~~ (5) The proper fee as may be required by the
8 consumer credit reporting agency.

9 ~~"(1) A consumer credit reporting agency shall~~
10 ~~require proper identification of the person making a request~~
11 ~~to place, temporarily lift, or remove a security freeze.~~

12 "(n) A security freeze for a protective record shall
13 remain in place until the protected consumer or the protected
14 consumer's representative requests that the security freeze be
15 removed or that the protective record be deleted. The consumer
16 credit reporting agency does not have an affirmative duty to
17 remove the security freeze or delete the protective record
18 once the protected consumer is no longer a protected consumer.
19 A consumer credit reporting agency shall remove a security
20 freeze within 30 business days of receiving a request for
21 removal from the protected consumer or representative who
22 provides all of the following:

23 "(1) Proper identification.

24 "(2) The unique personal identification number or
25 password provided by the consumer credit reporting agency
26 pursuant to subsection (d) or (e).

1 "(3) If a protected consumer seeks to remove the
2 security freeze or delete the protective record, proof that
3 the representative's authority to act on the protected
4 consumer's behalf is no longer valid or applicable.

5 "(4) If a representative making the request on
6 behalf of a protected consumer, sufficient proof of the
7 representative's authority to act on the protected consumer's
8 behalf as described in subsection (b).

9 "(5) The proper fee as may be required by the
10 consumer credit reporting agency.

11 "~~(m)~~ (o) This section shall not apply to the use of a
12 consumer report by any of the following persons or entities.
13 The persons and entities exempt from this section include but
14 are not limited to:

15 "(1) A person, or the person's subsidiary,
16 affiliate, agent, subcontractor, or assignee with whom the
17 consumer has, or prior to assignment had, an account,
18 contract, or debtor-creditor relationship for the purposes of
19 reviewing the active account or collecting the financial
20 obligation owing for the account, contract, or debt.

21 "(2) A subsidiary, affiliate, agent, assignee, or
22 prospective assignee of a person to whom access has been
23 granted under subsection ~~(d)~~ (f) for purposes of facilitating
24 the extension of credit or other permissible use.

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

1 "(4) A state or local agency, or its agents or
2 assigns, which administers a program for establishing and
3 enforcing child support obligations.

4 "(5) A state or local agency, or its agents or
5 assigns, acting to investigate fraud, including Medicaid
6 fraud; acting to investigate or collect delinquent taxes or
7 assessments, including interest, penalties, and unpaid court
8 orders; or acting to fulfill any of its other statutory
9 responsibilities.

10 "(6) A federal, state, or local governmental entity,
11 including a law enforcement agency, court, or its agents or
12 assigns.

13 "(7) Any person for the use of a credit report for
14 purposes permitted under 15 U.S.C. §1681b(c).

15 "(8) Any person for the sole purpose of providing a
16 credit file monitoring subscription service to which the
17 consumer has subscribed.

18 "(9) Any person for the purpose of providing a
19 consumer with a copy of the ~~consumer's credit~~ consumer report
20 or credit score upon the ~~consumer's~~ request of the consumer or
21 the protected consumer's representative.

22 "(10) Any depository financial institution for
23 checking, savings, and investment accounts.

24 "(11) Any person or entity for insurance purposes,
25 including use in setting or adjusting a rate, adjusting a
26 claim, or underwriting.

1 "~~(n)~~(p) If a security freeze is in place, a consumer
2 credit reporting agency shall not change any of the following
3 official information in a ~~credit~~ consumer report without
4 sending a written confirmation of the change to the consumer
5 or representative within 30 days of the change being posted to
6 the consumer's file: Name, date of birth, Social Security
7 number, and address. Written confirmation shall not be
8 required for technical modifications of a consumer's official
9 information, including name and street abbreviations, complete
10 spellings, or transposition of numbers or letters. In the case
11 of an address change, the written confirmation shall be sent
12 to both the new address and the former address.

13 "~~(o)~~(q) The following persons shall not be required
14 to place a security freeze in a consumer ~~credit~~ report
15 pursuant to this section, provided, however, that any person
16 not required to place a security freeze on a consumer ~~credit~~
17 report under the provisions of subdivision (3) shall be
18 subject to any security freeze placed on a consumer ~~credit~~
19 report by another consumer credit reporting agency from which
20 it obtains information:

21 "(1) A check services or fraud prevention services
22 company, including reports on incidents of fraud, or
23 authorizations for the purpose of approving or processing
24 negotiable instruments, electronic funds transfers, or similar
25 methods of payment.

26 "(2) A deposit account information service company
27 which issues reports regarding account closures due to fraud,

1 substantial overdrafts, automated teller machine abuse, or
2 other similar negative information regarding a consumer to
3 inquiring banks or other financial institutions for use only
4 in reviewing a consumer request for a deposit account at the
5 inquiring bank or financial institution.

6 "(3) Resellers of consumer credit report information
7 that assemble and merge information contained in a database of
8 one or more consumer credit reporting agencies and do not
9 maintain a permanent database of consumer credit information
10 from which new consumer ~~credit~~ reports are produced.

11 "(4) A consumer credit reporting agency's database
12 or file which consists of information concerning, and used
13 for, one or more of the following:

14 "a. Criminal record information.

15 "b. Fraud prevention or detection.

16 "c. Personal claim loss history information.

17 "d. Employment, tenant, or individual background
18 screening.

19 "~~(p)~~ (r) This section shall not prevent a consumer
20 credit reporting agency from charging a fee of no more than
21 ten dollars (\$10) to a consumer or representative for each
22 security freeze placement, any permanent removal of the
23 security freeze, or any temporary lifting of the security
24 freeze for a period of time. A consumer credit reporting
25 agency shall not charge a person age 65 years or over for the
26 placement of a security freeze. A consumer credit reporting
27 agency shall not charge any fee to a victim of identity theft

1 who has submitted a copy of a valid investigative or incident
2 report or complaint with a law enforcement agency about the
3 unlawful use of the victim's identifying information by
4 another person that was filed with the law enforcement agency
5 no more than 90 days prior to the consumer's request for a
6 security freeze. A consumer credit reporting agency may charge
7 a fee of no more than five dollars (\$5) to a consumer or
8 representative for each replacement of a unique personal
9 identification number or password.

10 "~~(q)~~ (s) A person that violates this section may be
11 fined not more than one hundred dollars (\$100) for a violation
12 concerning a specific consumer."

13 Section 2. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.