Senate Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 43

SENATE BILL 1185

AN ACT

AMENDING SECTION 44-1695, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-1698; RELATING TO CONSUMER REPORTING AGENCIES AND FAIR CREDIT REPORTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 44-1695, Arizona Revised Statutes, is amended to read:

44-1695. Liability

A. A consumer reporting agency or information source is not liable to any consumer resulting from:

1. Reporting inaccurate information corrected in compliance with ~~section~~ SECTIONS 44-1694 AND 44-1698 except as provided in this section.

2. FAILING TO LIFT A SECURITY FREEZE PURSUANT TO SECTION 44-1698, SUBSECTION G.

B. A consumer reporting agency is liable for any damages and attorney fees and court costs that are incurred by a consumer and that result from reporting of inaccurate information that a consumer reporting agency refuses to correct as provided in section 44-1694.

C. Any consumer reporting agency, user of information or source of information that is grossly negligent in the use or preparation of a consumer report or ~~who~~ THAT acts ~~willfully~~ WILFULLY and maliciously with intent to harm a consumer is liable to the consumer for actual damages, if any, punitive damages and attorney fees and court costs. If a consumer reporting agency prepares a consumer report, the consumer reporting agency shall follow reasonable procedures to ~~assure~~ ENSURE the maximum possible accuracy of the information relating to the consumer who is the subject of the consumer report.

D. UNDER SECTION 44-1698, ANY CONSUMER REPORTING AGENCY THAT IS GROSSLY NEGLIGENT OR THAT ACTS WILFULLY AND MALICIOUSLY WITH INTENT TO HARM A CONSUMER IS LIABLE TO THE CONSUMER FOR ACTUAL DAMAGES, IF ANY, ATTORNEY FEES AND COURT COSTS FOR THE FOLLOWING:

1. FAILING TO IMPLEMENT A SECURITY FREEZE.

2. RELEASING A CREDIT REPORT OR CREDIT SCORE IF A SECURITY FREEZE HAS BEEN PLACED BY THE CONSUMER.

3. FAILING TO REMOVE A SECURITY FREEZE AT THE CONSUMER'S REQUEST.

Sec. 2. Title 44, chapter 11, article 6, Arizona Revised Statutes, is amended by adding section 44-1698, to read:

44-1698. Credit reports; credit score; security freeze; definitions

A. A CONSUMER MAY REQUEST IN WRITING OR IN A FORM ACCEPTABLE TO THE CONSUMER REPORTING AGENCY THAT A CONSUMER REPORTING AGENCY PLACE A SECURITY FREEZE ON THE CONSUMER'S CREDIT REPORT. IF A SECURITY FREEZE IS IN PLACE, A CONSUMER REPORTING AGENCY SHALL NOT RELEASE A CONSUMER'S CREDIT REPORT OR CONSUMER'S CREDIT SCORE TO A THIRD PARTY WITHOUT THE CONSUMER'S PRIOR EXPRESS AUTHORIZATION. THIS SUBSECTION DOES NOT PREVENT A CONSUMER REPORTING AGENCY FROM ADVISING A SPECIFIC PARTY THAT A SECURITY FREEZE IS IN EFFECT WITH RESPECT TO THE CONSUMER'S CREDIT REPORT.

1 B. A CONSUMER REPORTING AGENCY SHALL PLACE A SECURITY FREEZE ON A
2 CONSUMER'S CREDIT REPORT NOT LATER THAN TEN BUSINESS DAYS AFTER RECEIVING A
3 WRITTEN REQUEST FROM THE CONSUMER.
4 C. THE CONSUMER REPORTING AGENCY SHALL SEND A WRITTEN CONFIRMATION OF
5 THE SECURITY FREEZE TO THE CONSUMER WITHIN TEN BUSINESS DAYS AFTER PLACING
6 THE SECURITY FREEZE ON THE CONSUMER'S CREDIT REPORT AND SHALL PROVIDE THE
7 CONSUMER WITH A UNIQUE PERSONAL IDENTIFICATION NUMBER OR PASSWORD, OTHER THAN
8 THE CONSUMER'S SOCIAL SECURITY NUMBER, THAT THE CONSUMER MAY USE TO PROVIDE
9 AUTHORIZATION FOR THE RELEASE OF THE CONSUMER'S CREDIT REPORT FOR A SPECIFIC
10 PERIOD OF TIME AND TO REMOVE THE SECURITY FREEZE.
11 D. A SECURITY FREEZE REMAINS IN EFFECT UNTIL THE CONSUMER REQUESTS
12 THAT THE SECURITY FREEZE BE REMOVED OR TEMPORARILY LIFTED AS PROVIDED IN THIS
13 SECTION. A CONSUMER MAY REQUEST THAT A SECURITY FREEZE BE REMOVED OR
14 TEMPORARILY LIFTED BY MAIL, TELEPHONE, INTERNET OR OTHER ELECTRONIC CONTACT
15 METHOD IN A FORM ACCEPTABLE TO THE CONSUMER REPORTING AGENCY. A CONSUMER
16 REPORTING AGENCY SHALL REQUIRE PROPER IDENTIFICATION OF ANY PERSON WHO MAKES
17 A REQUEST TO PLACE OR REMOVE A SECURITY FREEZE.
18 E. ON REQUESTING REMOVAL, THE CONSUMER SHALL PROVIDE THE FOLLOWING
19 INFORMATION:
20 1. PROPER IDENTIFICATION.
21 2. THE UNIQUE PERSONAL IDENTIFICATION NUMBER OR PASSWORD THAT THE
22 CONSUMER REPORTING AGENCY PROVIDED TO THE CONSUMER.
23 F. ON REQUESTING A TEMPORARY LIFT TO ALLOW A CREDIT REPORT TO BE
24 ACCESSED FOR A SPECIFIC PERIOD OF TIME, THE CONSUMER SHALL CONTACT THE
25 CONSUMER REPORTING AGENCY AND SHALL REQUEST THAT THE SECURITY FREEZE BE
26 TEMPORARILY LIFTED AND SHALL PROVIDE THE FOLLOWING INFORMATION:
27 1. PROPER IDENTIFICATION.
28 2. THE UNIQUE PERSONAL IDENTIFICATION NUMBER OR PASSWORD THAT THE
29 CONSUMER REPORTING AGENCY PROVIDED TO THE CONSUMER.
30 3. THE PROPER INFORMATION REGARDING THE SPECIFIC TIME PERIOD FOR WHICH
31 THE CREDIT REPORT SHALL BE AVAILABLE TO USERS OF THE CREDIT REPORT.
32 G. A CONSUMER REPORTING AGENCY SHALL REMOVE OR TEMPORARILY LIFT A
33 SECURITY FREEZE FROM A CONSUMER'S CREDIT REPORT WITHIN:
34 1. THREE BUSINESS DAYS AFTER RECEIVING THE CONSUMER'S REQUEST FOR THE
35 REMOVAL OR TEMPORARY LIFT BY MAIL.
36 2. FIFTEEN MINUTES AFTER RECEIVING THE CONSUMER'S REQUEST THROUGH THE
37 USE OF TELEPHONE, INTERNET OR OTHER ELECTRONIC CONTACT METHOD IN A FORM
38 ACCEPTABLE TO THE CONSUMER REPORTING AGENCY, DURING NORMAL BUSINESS HOURS.
39 THE CONSUMER REPORTING AGENCY IS NOT REQUIRED TO REMOVE OR TEMPORARILY LIFT
40 THE SECURITY FREEZE WITHIN THE FIFTEEN MINUTE TIME LIMIT IF THE AGENCY'S
41 ABILITY IS PREVENTED BY ANY OF THE FOLLOWING:
42 (a) AN ACT OF GOD, INCLUDING FIRE, EARTHQUAKES, HURRICANES, STORMS OR
43 SIMILAR NATURAL DISASTER OR PHENOMENA.

1 (b) UNAUTHORIZED OR ILLEGAL ACTS BY A THIRD PARTY, INCLUDING
2 TERRORISM, SABOTAGE, RIOT, VANDALISM, LABOR STRIKES OR DISPUTES DISRUPTING
3 OPERATIONS OR SIMILAR OCCURRENCE.
4 (c) OPERATIONAL INTERRUPTION, INCLUDING ELECTRICAL FAILURE,
5 UNANTICIPATED DELAY IN EQUIPMENT OR REPLACEMENT PART DELIVERY, COMPUTER
6 HARDWARE OR SOFTWARE FAILURES INHIBITING RESPONSE TIME OR SIMILAR DISRUPTION.
7 (d) GOVERNMENTAL ACTION, INCLUDING EMERGENCY ORDERS OR REGULATIONS,
8 JUDICIAL OR LAW ENFORCEMENT ACTION OR SIMILAR DIRECTIVES.
9 (e) REGULARLY SCHEDULED MAINTENANCE, DURING OTHER THAN NORMAL BUSINESS
10 HOURS OF, OR UPDATES TO, THE CONSUMER REPORTING AGENCY'S SYSTEMS.
11 (f) COMMERCIALLY REASONABLE MAINTENANCE OF, OR REPAIR TO, THE CONSUMER
12 REPORTING AGENCY'S SYSTEMS THAT IS UNEXPECTED OR UNSCHEDULED.
13 (g) RECEIPT OF A REMOVAL OR TEMPORARY LIFT REQUEST OUTSIDE OF NORMAL
14 BUSINESS HOURS.
15 H. A CONSUMER REPORTING AGENCY SHALL REMOVE OR TEMPORARILY LIFT A
16 SECURITY FREEZE PLACED ON A CONSUMER'S CREDIT REPORT ONLY IN THE FOLLOWING
17 CASES:
18 1. IF THE CONSUMER REQUESTS REMOVAL PURSUANT TO SUBSECTION E OR A
19 TEMPORARY LIFT PURSUANT TO SUBSECTION F.
20 2. IF THE CONSUMER'S CREDIT REPORT WAS FROZEN AS A RESULT OF A
21 MATERIAL MISREPRESENTATION OF FACT. IF A CONSUMER REPORTING AGENCY INTENDS
22 TO REMOVE A SECURITY FREEZE ON A CONSUMER'S CREDIT REPORT PURSUANT TO THIS
23 PARAGRAPH, THE CONSUMER REPORTING AGENCY SHALL NOTIFY BY MAIL, TELEPHONE,
24 INTERNET OR OTHER ELECTRONIC CONTACT METHOD THE CONSUMER BEFORE REMOVING THE
25 SECURITY FREEZE ON THE CONSUMER'S CREDIT REPORT.
26 I. WHEN A CONSUMER REQUESTS A SECURITY FREEZE, THE CONSUMER REPORTING
27 AGENCY SHALL DISCLOSE THE PROCESS FOR PLACING AND FOR REMOVING OR TEMPORARILY
28 LIFTING A FREEZE AND THE PROCESS FOR ALLOWING ACCESS TO INFORMATION FROM THE
29 CONSUMER'S CREDIT REPORT FOR A SPECIFIC PERIOD OF TIME WHILE THE SECURITY
30 FREEZE IS IN PLACE.
31 J. IF A THIRD PARTY REQUESTS ACCESS TO A CREDIT REPORT ON WHICH A
32 SECURITY FREEZE IS IN EFFECT, THE REQUEST IS IN CONNECTION WITH AN
33 APPLICATION FOR CREDIT OR ANY OTHER USE AND THE CONSUMER DOES NOT ALLOW THE
34 CONSUMER'S CREDIT REPORT TO BE ACCESSED FOR A SPECIFIC PERIOD OF TIME, THE
35 THIRD PARTY MAY TREAT THE APPLICATION AS INCOMPLETE.
36 K. A CONSUMER REPORTING AGENCY MAY CHARGE A FIVE DOLLAR FEE FOR EACH
37 SECURITY FREEZE, REMOVAL OF THE FREEZE OR TEMPORARY LIFT OF THE FREEZE FOR A
38 PERIOD OF TIME ON THE CONSUMER'S CREDIT REPORT. A CONSUMER REPORTING AGENCY
39 SHALL NOT CHARGE A FEE TO A VICTIM OF IDENTITY THEFT WHO SUBMITS A VALID
40 POLICE REPORT THAT ALLEGES A VIOLATION OF SECTION 13-2008, 13-2009 OR
41 13-2010.

L. A CONSUMER REPORTING AGENCY MAY CHARGE A FIVE DOLLAR FEE IF THE CONSUMER FAILS TO RETAIN THE ORIGINAL UNIQUE PERSONAL IDENTIFICATION NUMBER OR PASSWORD PROVIDED BY THE CONSUMER REPORTING AGENCY AND THE CONSUMER REPORTING AGENCY MUST REISSUE THE UNIQUE PERSONAL IDENTIFICATION NUMBER OR PASSWORD OR PROVIDE A NEW UNIQUE PERSONAL IDENTIFICATION NUMBER OR PASSWORD TO THE CONSUMER.

M. IF A SECURITY FREEZE IS IN PLACE, A CONSUMER REPORTING AGENCY SHALL NOT CHANGE A CONSUMER'S NAME, DATE OF BIRTH, SOCIAL SECURITY NUMBER OR ADDRESS IN THE CONSUMER'S CREDIT REPORT WITHOUT SENDING A WRITTEN CONFIRMATION OF THE CHANGE TO THE CONSUMER WITHIN THIRTY DAYS AFTER THE CHANGE IS POSTED TO THE CONSUMER'S FILE. WRITTEN CONFIRMATION IS NOT REQUIRED FOR TECHNICAL MODIFICATIONS OF A CONSUMER'S OFFICIAL INFORMATION, INCLUDING NAME AND STREET ABBREVIATIONS, COMPLETE SPELLINGS OR TRANSPOSITION OF NUMBERS OR LETTERS. FOR THE PURPOSES OF ADDRESS CHANGES, THE CONSUMER REPORTING AGENCY SHALL SEND THE WRITTEN CONFIRMATION TO BOTH THE NEW ADDRESS AND THE FORMER ADDRESS.

N. THIS SECTION DOES NOT APPLY TO THE USE OF A CREDIT REPORT OR CREDIT SCORE BY ANY OF THE FOLLOWING:

1. A PERSON, A SUBSIDIARY, AFFILIATE, AGENT OR SUBCONTRACTOR OF THAT PERSON, AN ASSIGNEE OF A FINANCIAL OBLIGATION OWED BY THE CONSUMER TO THAT PERSON OR A PROSPECTIVE ASSIGNEE OF A FINANCIAL OBLIGATION OWED BY THE CONSUMER TO THAT PERSON IN CONJUNCTION WITH THE PROPOSED PURCHASE OF THE FINANCIAL OBLIGATION WITH WHICH THE CONSUMER HAS OR HAD BEFORE 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 OWED FOR THE ACCOUNT, CONTRACT OR NEGOTIABLE INSTRUMENT. FOR THE PURPOSES OF THIS PARAGRAPH, "REVIEWING THE ACCOUNT" INCLUDES ACTIVITIES THAT ARE RELATED TO ACCOUNT MAINTENANCE, MONITORING, CREDIT LINE INCREASES AND ACCOUNT UPGRADES AND ENHANCEMENTS.

2. A SUBSIDIARY, AFFILIATE, AGENT, ASSIGNEE OR PROSPECTIVE ASSIGNEE OF A PERSON TO WHOM ACCESS HAS BEEN GRANTED UNDER THIS SECTION FOR THE PURPOSE OF FACILITATING THE EXTENSION OF CREDIT OR OTHER PERMISSIBLE USE.

3. ANY STATE OR LOCAL AGENCY, LAW ENFORCEMENT AGENCY, TRIAL COURT OR PRIVATE COLLECTION AGENCY ACTING PURSUANT TO A COURT ORDER, WARRANT OR SUBPOENA.

4. A CHILD SUPPORT AGENCY ACTING PURSUANT TO TITLE 25, CHAPTER 3, ARTICLE 2 OR TITLE IV-D OF THE SOCIAL SECURITY ACT.

5. THE DEPARTMENT OF HEALTH SERVICES OR ITS 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. THE DEPARTMENT OF TRANSPORTATION 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.

8. THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONDUCT AUDITS OR INVESTIGATE FRAUD OR FOR APPLICANT SCREENING.

9. ANY AGENCY OR ENTITY FOR THE PURPOSES OF PRESCREENING OR POSTSCREENING AS PROVIDED FOR BY THE FEDERAL FAIR CREDIT REPORTING ACT (15 UNITED STATES CODE SECTION 1681b).

10. ANY PERSON OR ENTITY THAT ADMINISTERS A CREDIT FILE MONITORING SUBSCRIPTION SERVICE TO WHICH THE CONSUMER HAS SUBSCRIBED.

11. ANY PERSON OR ENTITY FOR THE PURPOSE OF PROVIDING A CONSUMER WITH A COPY OF THE CONSUMER'S CREDIT REPORT OR CONSUMER'S CREDIT SCORE ON THE CONSUMER'S REQUEST.

12. EXCEPT AS OTHERWISE PROVIDED BY LAW, A PERSON SETTING OR ADJUSTING A RATE OR CLAIM OR UNDERWRITING FOR INSURANCE PURPOSES.

13. ANY PERSON WHO USES A CONSUMER REPORTING AGENCY'S DATABASE OR FILE THAT CONSISTS ENTIRELY OF INFORMATION CONCERNING, AND IS USED SOLELY FOR, ONE OR MORE OF THE FOLLOWING:

(a) CRIMINAL RECORD INFORMATION.

(b) FRAUD PREVENTION OR DETECTION.

(c) TENANT SCREENING.

(d) EMPLOYMENT SCREENING.

14. ANY STATE OR FEDERALLY REGULATED BANK OR FINANCIAL INSTITUTION FOR CHECKING, SAVINGS AND INVESTMENT ACCOUNTS.

O. THE FOLLOWING ENTITIES ARE NOT REQUIRED TO PLACE A SECURITY FREEZE ON A CREDIT REPORT:

1. A CHECK SERVICES OR FRAUD PREVENTION SERVICES COMPANY THAT ISSUES REPORTS ON INCIDENTS OF FRAUD OR AUTHORIZATIONS FOR THE PURPOSE OF APPROVING OR PROCESSING NEGOTIABLE INSTRUMENTS, ELECTRONIC FUNDS TRANSFERS OR SIMILAR METHODS OF PAYMENTS.

2. A DEPOSIT ACCOUNT INFORMATION SERVICE COMPANY THAT ISSUES REPORTS REGARDING ACCOUNT CLOSURES DUE TO FRAUD, SUBSTANTIAL OVERDRAFTS, AUTOMATED TELLER MACHINE ABUSE OR SIMILAR NEGATIVE INFORMATION REGARDING A CONSUMER TO INQUIRING BANKS OR FINANCIAL INSTITUTIONS FOR USE ONLY IN REVIEWING A CONSUMER REQUEST FOR A DEPOSIT ACCOUNT AT THE INQUIRING BANK OR FINANCIAL INSTITUTION.

3. A CONSUMER REPORTING AGENCY THAT ACTS ONLY AS A RESELLER OF CREDIT INFORMATION BY ASSEMBLING AND MERGING INFORMATION CONTAINED IN THE DATABASE OF ANOTHER CONSUMER REPORTING AGENCY OR MULTIPLE CONSUMER REPORTING AGENCIES AND THAT DOES NOT MAINTAIN A PERMANENT DATABASE OF CREDIT INFORMATION FROM WHICH NEW CREDIT REPORTS OR CREDIT SCORES ARE PRODUCED.

P. AN ACT OR PRACTICE IN VIOLATION OF THIS SECTION IS AN UNLAWFUL PRACTICE UNDER SECTION 44-1522 AND IS SUBJECT TO ENFORCEMENT THROUGH A PRIVATE ACTION AND BY THE ATTORNEY GENERAL. INJUNCTIVE RELIEF MAY BE SOUGHT TO PREVENT FUTURE VIOLATIONS OF THIS SECTION. THE REMEDIES PROVIDED IN THIS SECTION ARE NOT INTENDED TO BE THE EXCLUSIVE REMEDIES AVAILABLE TO A CONSUMER. THIS SUBSECTION DOES NOT APPLY TO SUBSECTION G, PARAGRAPH 2 OF THIS SECTION.

1 Q. FOR THE PURPOSES OF THIS SECTION:
2 1. "PROPER IDENTIFICATION" MEANS INFORMATION THAT IS GENERALLY DEEMED
3 TO BE SUFFICIENT TO IDENTIFY A PERSON UNDER THE CIRCUMSTANCES.
4 2. "SECURITY FREEZE" MEANS A NOTICE THAT IS PLACED IN A CONSUMER'S
5 CREDIT REPORT AT THE REQUEST OF THE CONSUMER AND THAT PROHIBITS THE CONSUMER
6 REPORTING AGENCY FROM RELEASING THE CONSUMER'S CREDIT REPORT WITHOUT THE
7 EXPRESS AUTHORIZATION OF THE CONSUMER.
8 Sec. 3. Effective date; conditional retroactivity
9 This act is effective from and after August 31, 2008, except that if
10 the general effective date for legislation passed in the forty-eighth
11 Legislature, second regular session is after September 1, 2008 this act
12 applies retroactively to from and after August 31, 2008.

APPROVED BY THE GOVERNOR APRIL 16, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2008.