

CHAPTER 43
FORMERLY
HOUSE BILL NO. 64

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO CREDIT AND IDENTITY THEFT.

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

Section 1. Amend Title 6 of the Delaware Code by inserting §2205 as shown by underlining as follows:

§ 2205. Security Freezes for Minors and Protected Persons.

(a) In this section the following words have the meanings indicated.

(1) “Protected Consumer” means an individual who is:

a. Under the age of 16 years at the time a request for the placement of a security freeze is made;

or

b. An incapacitated person or a protected person for whom a guardian or conservator has been appointed.

(2) “Record” means a compilation of information that:

a. Identifies a protected consumer;

b. Is created by a consumer reporting agency solely for the purpose of complying with this section; and

c. May not be created or used to consider the protected consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(3) “Representative” means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(4) “Protected Consumer Security Freeze” means:

a. If a consumer reporting agency does not have a consumer report pertaining to a protected consumer, a restriction that:

1. Is placed on the protected consumer’s record in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer’s record except as provided in this section; or

b. If a consumer reporting agency has a consumer report pertaining to the protected consumer, a restriction that:

1. Is placed on the protected consumer’s consumer report in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer’s consumer report or any information derived from the protected consumer’s consumer report except as provided in this section.

(5) “Sufficient proof of authority” means documentation that shows a representative has authority to act on behalf of a protected consumer. “Sufficient proof of authority” includes:

a. An order issued by a court of law;

b. A lawfully executed and valid Power of Attorney; or

c. A written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(6) “Sufficient proof of identification” means information or documentation that identifies a protected consumer or a representative of a protected consumer. “Sufficient proof of identification” includes:

a. A social security number or a copy of a social security card issued by the Social Security Administration;

b. A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;

c. A copy of a driver's license, an identification card issued by the Motor Vehicle Administration, or any other government-issued identification; or

d. A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

(b) This section does not apply to the use of a protected consumer's consumer report or record by:

(1) A person administering a consumer report monitoring subscription service to which:

a. The protected consumer has subscribed; or

b. The representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative; or

(3) an entity or purpose listed in § 2203(14).

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

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

(2) The protected consumer's representative:

a. 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;

b. Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

c. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

d. Pays to the consumer reporting agency a fee as provided in subsection (j) of this section.

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

(e) Within 30 days after receiving a request that meets the requirements of paragraph (c)(2) of this section, a consumer reporting agency shall place a protected consumer security freeze.

(f) Unless a protected consumer security freeze is removed in accordance with subsection (h) or (k) 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.

(g) A protected consumer security freeze placed under subsection (e) of this section shall remain in effect until:

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

(2) The protected consumer security freeze is removed in accordance with subsection (k) of this section.

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

(1) Submit a request for the removal of the protected consumer 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;

(2) Provide to the consumer reporting agency:

a. In the case of a request by the protected consumer:

1. 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

2. Sufficient proof of identification of the protected consumer; or

b. In the case of a request by the representative of a protected consumer;

1. Sufficient proof of identification of the protected consumer and the representative; and

2. Sufficient proof of authority to act on behalf of the protected consumer; and

(3) Pay to the consumer reporting agency a fee as provided in subsection (j) of this section.

(i) Within 30 days after receiving a request that meets the requirements of subsection (h) of this section, the consumer reporting agency shall remove the protected consumer security freeze.

(j) (1) Except as provided in paragraph (2) of this subsection, a consumer reporting agency may not charge a fee for any service performed under this section.

(2) A consumer reporting agency may charge a reasonable fee, not exceeding \$5, for each placement or removal of a protected consumer security freeze.

(3) Notwithstanding paragraph (2) of this subsection, a consumer reporting agency may not charge any fee under this section if:

a. The protected consumer's representative:

1. Has obtained a report of alleged identity fraud against the protected consumer; and

2. Provides a copy of the report to the consumer reporting agency; or

b. A request for the placement or removal of a protected consumer security freeze is for a protected consumer who is under the age of 16 years at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.

(k) A consumer reporting agency may remove a protected consumer security freeze or delete a record of a protected consumer if the protected consumer 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.

(l) Violations; penalties. -- If a consumer reporting agency negligently violates the protected consumer security freeze by releasing credit information that has been placed under a protected consumer security freeze, the affected protected consumer is entitled to:

(1) Notification within 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) In a civil action against the consumer reporting agency recover:

a. Injunctive relief to prevent or restrain further violation of the protected consumer security freeze; and/or

b. A civil penalty in an amount up to \$1,000 for each violation plus any damages available under other civil laws; and

c. Reasonable expenses, court costs, investigative costs, and attorney's fees.

(4) Each violation of the protected consumer security freeze shall be counted as a separate incident for purposes of imposing penalties under this section.

Section 2. This Act shall take effect January 1, 2014.

Approved June 19, 2013