

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE DRS55127-LDf-33C* (2/23)

Short Title: Consumer Credit Protection Act. (Public)

Sponsors: Senator Jacumin.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANY CONSUMER CREDIT REPORTING AGENCY TO,
UPON THE WRITTEN REQUEST OF A CONSUMER, PLACE A SECURITY
FREEZE THAT PROHIBITS THE AGENCY FROM PROVIDING A
CONSUMER'S CREDIT REPORT TO A THIRD PARTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 25B of the General Statutes is amended by adding a
new Article to read:

"Article 2.

"Security Freeze on Consumers' Credit Reports.

"§ 25B-10. Definitions.

As used in this Article, the following definitions apply:

- (1) 'Consumer credit file' means all of the information about a consumer that is recorded and retained by a consumer credit reporting agency regardless of how the information is stored.
- (2) 'Consumer credit report' means a communication or other information by a consumer credit reporting agency relating to the creditworthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living of a consumer that is used or expected to be used or collected, wholly or partly, as a factor in establishing the consumer's eligibility for credit or insurance for personal, family, or household purposes, employment purposes, or other purpose authorized under sections 603 and 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681a and § 1681b, as amended. The term does not include any of the following:
 - a. A report containing information solely on a transaction between the consumer and the person making the report.

- 1 **b.** An authorization or approval of a specific extension of credit
2 directly or indirectly by the issuer of a credit card or similar
3 device.
- 4 **c.** A report in which a person who has been requested by a third
5 party to make a specific extension of credit directly or indirectly
6 to a consumer makes a decision with respect to the request, if
7 the third party advises the consumer of the name and address of
8 the person to whom the request was made and the person makes
9 the disclosures that must be made under section 615 of the Fair
10 Credit Reporting Act, 15 U.S.C. § 1681m, as amended, to the
11 consumer in the event of adverse action against the consumer.
- 12 **d.** Any communication of information described in this
13 subdivision among persons related by common ownership or
14 affiliated by corporate control.

15 (3) 'Consumer credit reporting agency' means a person that regularly
16 engages wholly or partly in the practice of assembling or evaluating
17 consumer credit information or other information on consumers in
18 order to provide consumer credit reports to third parties for monetary
19 fees, for dues, or on a cooperative nonprofit basis. Consumer credit
20 reporting agency does not include a business entity that provides only
21 check verification or check guarantee services.

22 (4) 'Proper identification' means information generally sufficient to
23 identify a person.

24 **"§ 25B-20. Request and placement of security freeze.**

25 (a) A consumer may elect to place a security freeze on his or her consumer credit
26 file by submitting to a consumer credit reporting agency a request in writing that is sent
27 by certified mail and that includes proper identification of the consumer. Subject to
28 G.S. 25B-50, upon receiving the consumer's request for a security freeze under this
29 section, a consumer credit reporting agency shall place a notice in a consumer's credit
30 file that indicates the file is subject to a security freeze. When a consumer credit file is
31 subject to a security freeze, a consumer credit reporting agency shall not release
32 information from that consumer's credit file and shall not provide a consumer credit
33 report for that consumer to a third party, unless the agency receives prior express
34 authorization under G.S. 25B-40 from the consumer. This section does not prevent a
35 consumer credit reporting agency from advising a third party that a security freeze is in
36 effect with respect to the consumer's credit file.

37 (b) A consumer credit reporting agency shall place a security freeze for a
38 consumer no later than five business days after receiving the written request from the
39 consumer. The consumer credit reporting agency shall, no later than 10 business days
40 after receiving the written request from the consumer, also do all of the following:

41 (1) Send a written confirmation of the security freeze to the consumer.

42 (2) Disclose in writing to the consumer the process of placing and
43 removing the security freeze and the process for allowing access to
44 information from the consumer's credit file or for providing a

1 consumer credit report for a specific requester or a specific period of
2 time while the security freeze is in effect by temporarily lifting the
3 security freeze under G.S. 25B-40(b).

4 (3) Provide the consumer with a unique personal identification number or
5 password to be used by the consumer to authorize a removal or
6 temporary lifting of the security freeze under G.S. 25B-40.

7 (c) Any consumer credit reporting agency shall honor a security freeze placed by
8 any other consumer credit reporting agency.

9 (d) A consumer may request in writing a replacement personal identification
10 number or password. The request must comply with the requirements for requesting a
11 security freeze under subsection (a) of this section. The consumer reporting agency shall
12 no later than the third business day after the date the agency receives the request for a
13 replacement personal identification number or password provide the consumer with a
14 new unique personal identification number or password to be used by the consumer
15 instead of the number or password that was provided under subsection (b) of this
16 section.

17 **"§ 25B-30. Notification of change.**

18 If a security freeze is in place, a consumer credit reporting agency shall notify the
19 consumer in writing of a change in the consumer credit file to the consumer's name,
20 date of birth, social security number, or address no later than 30 calendar days after the
21 date the change is made. The agency shall send notification of a change of address to
22 the new address and former address. This section does not require notice of an
23 immaterial change, including a street abbreviation change or correction of a
24 transposition of letters or misspelling of a word.

25 **"§ 25B-40. Removal or temporary lifting of security freeze.**

26 (a) On a request in writing and with proper identification provided by a
27 consumer, including the consumer's personal identification number or password
28 provided under G.S. 25B-20, a consumer credit reporting agency shall remove a
29 security freeze no later than the third business day after the date the agency receives the
30 request.

31 (b) On a request in writing and with proper identification provided by a
32 consumer, including the consumer's personal identification number or password
33 provided under G.S. 25B-20, a consumer credit reporting agency, shall, no later than the
34 third business day after the date the agency receives the request, temporarily lift the
35 security freeze for either or both of the following:

36 (1) A certain properly designated period of time.

37 (2) A certain properly identified third party.

38 (c) A consumer credit reporting agency may develop procedures involving the
39 use of a telephone, a facsimile machine, the Internet, or another electronic medium to
40 receive and process a request from a consumer under this section.

41 (d) A consumer credit reporting agency shall remove a security freeze when the
42 security freeze was placed due to a material misrepresentation of fact by the consumer.
43 The consumer credit reporting agency shall notify the consumer in writing before
44 removing the security freeze under this subsection.

1 (e) A consumer credit reporting agency shall not charge a fee for a request under
2 subsection (a) or (b) of this section.

3 **"§ 25B-50. Exemptions from security freeze.**

4 A consumer credit reporting agency may provide a consumer credit report to all of
5 the following for any consumer credit file that is currently subject to a freeze under
6 G.S. 25B-20:

- 7 (1) A State or local governmental entity, including a law enforcement
8 agency or court or private collection agency, if the entity, agency, or
9 court is acting under a court order, warrant, subpoena, or
10 administrative subpoena.
- 11 (2) A child support agency acting to investigate or collect child support
12 payments or acting under title IV-D of the Social Security Act, 42
13 U.S.C. § 651, et seq., as amended.
- 14 (3) The Department of Health and Human Services acting to investigate
15 fraud.
- 16 (4) The Department of Revenue acting to investigate or collect delinquent
17 sales or franchise taxes.
- 18 (5) A tax assessor-collector acting to investigate or collect delinquent ad
19 valorem taxes.
- 20 (6) A person for the purposes of prescreening as provided by the Fair
21 Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.
- 22 (7) A person with whom the consumer has an account or contract or to
23 whom the consumer has issued a negotiable instrument, or the person's
24 subsidiary, affiliate, agent, assignee, prospective assignee, or private
25 collection agency, for purposes related to that account, contract, or
26 instrument.
- 27 (8) A subsidiary, affiliate, agent, assignee, or prospective assignee of a
28 person to whom access has been granted under G.S. 25B-40(b).
- 29 (9) A person who administers a credit file monitoring subscription service
30 to which the consumer has subscribed.
- 31 (10) A check service or fraud prevention service company that issues
32 consumer credit reports:
- 33 a. To prevent or investigate fraud; or
- 34 b. For purposes of approving or processing negotiable
35 instruments, electronic funds transfers, or similar methods of
36 payment.
- 37 (11) A deposit account information service company that issues consumer
38 reports related to account closures caused by fraud, substantial
39 overdrafts, automated teller machine abuses, or similar negative
40 information regarding a consumer to an inquiring financial institution
41 for use by the financial institution only in reviewing a consumer
42 request for a deposit account with that institution.
- 43 (12) A consumer credit reporting agency that:

- 1 a. Acts only to resell credit information by assembling and
2 merging information contained in a database of another
3 consumer credit reporting agency or multiple consumer credit
4 reporting agencies; and
5 b. Does not maintain a permanent database of credit information
6 from which new consumer credit reports are produced.

7 **"§ 25B-60. Charges for placing security freeze.**

8 A consumer credit reporting agency may impose a reasonable charge on a consumer
9 for each placement of a security freeze. The amount of the charge shall not exceed ten
10 dollars (\$10.00). A consumer credit reporting agency shall charge no such fee to any
11 victim of identity fraud under Article 20 of Chapter 14 of the General Statutes who
12 submits a valid police report.

13 **"§ 25B-70. Injunctive relief; civil penalty.**

14 (a) The Attorney General may file a suit against a person for either or both of the
15 following:

- 16 (1) Injunctive relief to prevent or restrain a violation of this Article.
17 (2) A civil penalty in an amount not to exceed two thousand five hundred
18 dollars (\$2,500) for each violation of this Article.

19 (b) If the Attorney General brings an action against a person under subsection (a)
20 of this section and an injunction is granted against the person or the person is found
21 liable for a civil penalty, the Attorney General may recover reasonable expenses, court
22 costs, investigative costs, and attorneys' fees.

23 (c) Each day a violation continues or occurs is a separate violation for purposes
24 of imposing a penalty under this section.

25 **"§ 25B-80. Exemptions from Article.**

26 The provisions of this Article do not apply to any of the following entities:

- 27 (1) A check service or fraud prevention service company that issues
28 consumer credit reports:
29 a. To prevent or investigate fraud, or
30 b. For purposes of approving or processing negotiable
31 instruments, electronic funds transfers, or similar methods of
32 payment.
33 (2) A deposit account information service company that issues consumer
34 credit reports related to account closures caused by fraud, substantial
35 overdrafts, automated teller machine abuses, or similar negative
36 information regarding a consumer to an inquiring financial institution
37 for use by only the financial institution in reviewing a consumer
38 request for a deposit account with that institution."

39 **SECTION 2.** This act becomes effective October 1, 2005.