

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY MARCH 19, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 372

Introduced by Assembly Member Salas

February 15, 2007

~~An act to amend Section 1798.84 of the Civil Code, relating to personal information.~~ *An act to amend Section 1785.11.2 of the Civil Code, relating to consumer credit reporting agencies.*

LEGISLATIVE COUNSEL'S DIGEST

AB 372, as amended, Salas. ~~Personal information.~~ *Consumer credit reports: security freezes.*

Existing state and federal law defines and regulates consumer credit reports. Existing state law permits a consumer to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. Existing law requires an agency to place a security freeze on the consumer's credit report within 5 business days after receiving a request by the consumer. Existing law allows an agency to charge a fee of no more than \$10 to a consumer for each freeze, removal of a freeze, or temporary lift of a freeze, and no more than \$12 for a temporary lift of a freeze for a specific party, except as specified.

This bill would instead require that a request be sent by mail rather than by certified mail and would require a consumer credit reporting agency to place a security freeze within 3 business days after receiving a request from a consumer. The bill would authorize an agency to charge a fee of no more than \$5 for placing or permanently removing

a security freeze, except with respect to a consumer who provides certain documentation alleging identity theft, who is 65 years of age or older, or, with respect to placing a freeze, who has not previously requested a freeze from that agency. It would prohibit an agency from charging a fee for temporarily lifting a freeze for a specific party or period of time. The bill would impose specified disclosure requirements on consumer credit reporting agencies regarding security freezes.

~~Existing law requires a business to take all reasonable steps to destroy, or arrange for the destruction of, a customer’s records within its custody or control containing personal information that is no longer to be retained by the business, as specified.~~

~~Existing law requires a business that owns or licenses personal information about a California resident to implement and maintain reasonable security procedures and practices appropriate to the nature of the information, and to protect that personal information from unauthorized access, destruction, use, modification, or disclosure. Existing law requires a business that discloses that information to a 3rd party to ensure by contract that the 3rd party agrees to implement and maintain reasonable security procedures.~~

~~Existing law requires any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, to disclose any breach of that data.~~

~~Existing law, upon request, requires a business to provide specified information to a customer in relation to the disclosure of personal information to 3rd parties, as specified.~~

~~For a violation of any of the above-described provisions, existing law allows an injured customer to institute a civil action to recover damages or for injunctive relief.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1785.11.2 of the Civil Code is amended
- 2 to read:
- 3 1785.11.2. (a) A consumer may elect to place a security freeze
- 4 on his or her credit report by making a request in writing by
- 5 certified mail to a consumer credit reporting agency. “Security

1 freeze” means a notice placed in a consumer’s credit report, at the
2 request of the consumer, and subject to certain exceptions, that
3 prohibits the consumer credit reporting agency from releasing the
4 consumer’s credit report or any information from it without the
5 express authorization of the consumer. If a security freeze is in
6 place, information from a consumer’s credit report may not be
7 released to a third party without prior express authorization from
8 the consumer. This subdivision does not prevent a consumer credit
9 reporting agency from advising a third party that a security freeze
10 is in effect with respect to the consumer’s credit report.

11 (b) A consumer credit reporting agency shall place a security
12 freeze on a consumer’s credit report no later than ~~five~~ *three*
13 business days after receiving a written request from the consumer.

14 (c) The consumer credit reporting agency shall send a written
15 confirmation of the security freeze to the consumer within 10
16 business days and shall provide the consumer with a unique
17 personal identification number or password to be used by the
18 consumer when providing authorization for the release of his or
19 her credit for a specific party or period of time.

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

25 (1) Proper identification, as defined in subdivision (c) of Section
26 1785.15.

27 (2) The unique personal identification number or password
28 provided by the credit reporting agency pursuant to subdivision
29 (c).

30 (3) The proper information regarding the third party who is to
31 receive the credit report or the time period for which the report
32 shall be available to users of the credit report.

33 (e) A consumer credit reporting agency that receives a request
34 from a consumer to temporarily lift a freeze on a credit report
35 pursuant to subdivision (d) shall comply with the request no later
36 than three business days after receiving the request.

37 (f) A consumer credit reporting agency may develop procedures
38 involving the use of telephone, fax, the Internet, or other electronic
39 media to receive and process a request from a consumer to

1 temporarily lift a freeze on a credit report pursuant to subdivision
2 (d) in an expedited manner.

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

6 (1) Upon consumer request, pursuant to subdivision (d) or (j).

7 (2) If the consumer's credit report was frozen due to a material
8 misrepresentation of fact by the consumer. If a consumer credit
9 reporting agency intends to remove a freeze upon a consumer's
10 credit report pursuant to this paragraph, the consumer credit
11 reporting agency shall notify the consumer in writing prior to
12 removing the freeze on the consumer's credit report.

13 (h) ~~If a~~ A third party *who* requests access to a consumer credit
14 report ~~on which in connection with an application for credit or~~
15 ~~any other use may treat the application as incomplete if a security~~
16 ~~freeze is in effect, and this request is in connection with an~~
17 ~~application for credit or any other use, and the consumer does not~~
18 ~~allow his or her credit report to be accessed for that specific party~~
19 ~~or period of time, the third party may treat the application as~~
20 ~~incomplete.~~

21 (i) If a consumer requests a security freeze, the consumer credit
22 reporting agency shall disclose the process of placing and
23 temporarily lifting a freeze; and the process for allowing access
24 to information from the consumer's credit report for a specific
25 party or period of time while the freeze is in place.

26 (j) A security freeze shall remain in place until the consumer
27 requests that the security freeze be removed. A consumer credit
28 reporting agency shall remove a security freeze within three
29 business days of receiving a request for removal from the
30 consumer, ~~who~~ *if the consumer* provides both of the following:

31 (1) Proper identification, as defined in subdivision (c) of Section
32 1785.15.

33 (2) The unique personal identification number or password
34 provided by the credit reporting agency pursuant to subdivision
35 (c).

36 (k) A consumer credit reporting agency shall require proper
37 identification, as defined in subdivision (c) of Section 1785.15, of
38 the person making a request to place or remove a security freeze.

39 (l) The provisions of this section do not apply to the use of a
40 consumer credit report by any of the following:

1 (1) (A) (i) A person or entity, ~~or a subsidiary, affiliate, or agent~~
2 ~~of that person or entity, or an assignee of a financial obligation~~
3 ~~owing by the consumer to that person or entity, or a prospective~~
4 ~~assignee of a financial obligation owing by the consumer to that~~
5 ~~person or entity in conjunction with the proposed purchase of the~~
6 ~~financial obligation, with which the consumer has or had, prior to~~
7 ~~any assignment, an account or contract, including a demand deposit~~
8 ~~account, or to whom which the consumer issued a negotiable~~
9 ~~instrument, for the purposes~~ *purpose* of reviewing the account or
10 collecting the financial obligation owing for the account, contract,
11 or negotiable instrument. ~~For purposes of this paragraph,~~
12 ~~“reviewing the account” includes activities related to account~~
13 ~~maintenance, monitoring, credit line increases, and account~~
14 ~~upgrades and enhancements.~~

15 (ii) *A subsidiary, affiliate, or agent of a person or entity*
16 *described in clause (i), an assignee of a financial obligation owing*
17 *by the consumer to such a person or entity, or a prospective*
18 *assignee of a financial obligation owing by the consumer to such*
19 *a person or entity in conjunction with the proposed purchase of*
20 *the financial obligation, for the purpose of reviewing the account*
21 *or collecting the financial obligation owing for the account,*
22 *contract, or negotiable instrument.*

23 (B) *For purposes of this paragraph, “reviewing the account”*
24 *includes activities related to account maintenance, monitoring,*
25 *credit line increases, and account upgrades and enhancements.*

26 (2) A subsidiary, affiliate, agent, assignee, or prospective
27 assignee of a person to whom access has been granted under
28 subdivision (d) ~~of Section 1785.11.2~~ for purposes of facilitating
29 the extension of credit or other permissible use.

30 (3) Any state or local agency, law enforcement agency, trial
31 court, or private collection agency acting pursuant to a court order,
32 warrant, or subpoena.

33 (4) A child support agency acting pursuant to Chapter 2
34 (*commencing with Section 17400*) of Division 17 of the Family
35 Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).

36 (5) The State Department of Health *Care* Services or its agents
37 or assigns acting to investigate Medi-Cal fraud.

38 (6) The Franchise Tax Board or its agents or assigns acting to
39 investigate or collect delinquent taxes or unpaid court orders or to
40 fulfill any of its other statutory responsibilities.

1 (7) The use of credit information for the purposes of
2 prescreening as provided for by the federal Fair Credit Reporting
3 Act.

4 (8) Any person or entity administering a credit file monitoring
5 subscription service to which the consumer has subscribed.

6 (9) Any person or entity for the purpose of providing a consumer
7 with a copy of his or her credit report upon the consumer's request.

8 ~~(m) This act does not prevent a consumer credit reporting agency
9 from charging a fee of no more than ten dollars (\$10) to a consumer
10 for each freeze, removal of the freeze, or temporary lift of the
11 freeze for a period of time, or a fee of no more than twelve dollars
12 (\$12) for a temporary lift of a freeze for a specific party, regarding
13 access to a consumer credit report, except that a consumer credit
14 reporting agency may not charge a fee to a victim of identity theft
15 who has submitted a valid police report or valid Department of
16 Motor Vehicles investigative report that alleges a violation of
17 Section 530.5 of the Penal Code.~~

18 *(m) (1) Except as provided in paragraphs (2) and (3), a
19 consumer credit reporting agency may charge a fee not to exceed
20 five dollars (\$5) for placing a freeze or permanently removing a
21 freeze. An agency shall not charge a fee for temporarily lifting a
22 freeze for a specific party or period of time.*

23 *(2) A consumer credit reporting agency shall not charge a fee
24 for placing a freeze or permanently removing a freeze to either of
25 the following persons:*

26 *(A) A consumer who has submitted a copy of any of the following
27 documents alleging a violation of Section 530.5 of the Penal Code:*

28 *(i) A valid police report.*

29 *(ii) A valid investigative report issued by the Department of
30 Motor Vehicles.*

31 *(iii) A complaint filed with a law enforcement agency.*

32 *(B) A consumer who is 65 years of age or older and who has
33 provided identification confirming his or her age.*

34 *(3) A consumer credit reporting agency shall not charge a fee
35 for placing a freeze if the consumer requesting the freeze has not
36 previously requested the placement of a security freeze from that
37 consumer credit reporting agency.*

38 *(n) (1) Any time a consumer credit reporting agency is required
39 to send a summary of rights required under Section 1681g of Title*

1 15 of the United States Code to a consumer residing in this state,
2 the following notice shall be included with that summary of rights:
3 “California consumers have the right to obtain a security freeze.
4 You have a right to place a security freeze on your credit report,
5 which will prohibit a consumer credit reporting agency from
6 releasing information in your credit report without your express
7 authorization. A security freeze must be requested in writing by
8 mail. The security freeze is designed to prevent credit, loans, and
9 services from being approved in your name without your consent.
10 However, you should be aware that using a security freeze to take
11 control over who gets access to the personal and financial
12 information in your credit report may delay, interfere with, or
13 prohibit the timely approval of any subsequent request or
14 application you make regarding a new loan, credit mortgage, or
15 cellular telephone, or other new account, including an extension
16 of credit at point of sale. When you place a security freeze on your
17 credit report, you will be provided a personal identification number
18 or password to use if you choose to remove the freeze on your
19 credit report or authorize the release of your credit report to a
20 specific party or for a period of time after the freeze is in place.
21 To provide that authorization, you must contact the consumer
22 credit reporting agency and provide all of the following:
23 (1) The personal identification number or password.
24 (2) Proper identification to verify your identity.
25 (3) The proper information regarding the party or parties who
26 are to receive the credit report or the period of time for which the
27 report shall be available to users of the credit report.
28 (4) Payment of any applicable fee.
29 A consumer credit reporting agency must authorize the release
30 of your credit report no later than three business days after
31 receiving the above information.
32 A security freeze does not apply to circumstances in which you
33 have an existing account relationship and a copy of your report
34 is requested by your existing creditor or its agents or affiliates for
35 certain types of account review, collection, fraud control, or similar
36 activities.
37 If you are actively seeking credit, you should understand that
38 the procedures involved in lifting a security freeze may slow your
39 application for credit. You should plan ahead and lift a freeze,

1 *either completely if you are shopping around, or specifically for*
2 *a certain creditor, before applying for new credit.*

3 *A consumer credit reporting agency may not charge a fee to a*
4 *consumer for placing or removing a security freeze if the consumer*
5 *(1) is a victim of identity theft and submits a copy of a valid police*
6 *report, valid Department of Motor Vehicles investigative report,*
7 *or complaint filed with a law enforcement agency, or (2) is 65*
8 *years of age or older with proper identification. A consumer also*
9 *cannot be charged a fee to place a security freeze the first time*
10 *the consumer requests a freeze from the particular consumer*
11 *reporting agency.”*

12
13 *(2) A consumer credit reporting agency shall place a prominent*
14 *link on its Internet Web site containing the notice described in*
15 *paragraph (1) and directing consumers to information regarding*
16 *how to place a security freeze.*

17 ~~(n)~~

18 *(o) Regardless of the existence of a security freeze, a consumer*
19 *reporting agency may disclose public record information lawfully*
20 *obtained by, or for, the consumer reporting agency from an open*
21 *public record to the extent otherwise permitted by law. This*
22 *subdivision does not prohibit a consumer reporting agency from*
23 *electing to apply a valid security freeze to the entire contents of a*
24 *credit report.*

25 ~~SECTION 1. Section 1798.84 of the Civil Code is amended~~
26 ~~to read:~~

27 ~~1798.84. (a) Any waiver of a provision of this title is contrary~~
28 ~~to public policy and is void and unenforceable.~~

29 ~~(b) Any customer injured by a violation of this title may institute~~
30 ~~a civil action to recover damages.~~

31 ~~(c) Any business that violates, proposes to violate, or has~~
32 ~~violated this title may be enjoined.~~

33 ~~(d) In addition, for a willful, intentional, or reckless violation~~
34 ~~of Section 1798.83, a customer may recover a civil penalty not to~~
35 ~~exceed three thousand dollars (\$3,000) per violation. Otherwise,~~
36 ~~the customer may recover a civil penalty of up to five hundred~~
37 ~~dollars (\$500) per violation for a violation of Section 1798.83.~~

38 ~~(e) Unless the violation is willful, intentional, or reckless, a~~
39 ~~business that is alleged to have not provided all the information~~
40 ~~required by subdivision (a) of Section 1798.83, to have provided~~

1 ~~inaccurate information, failed to provide any of the information~~
2 ~~required by subdivision (a) of Section 1798.83, or failed to provide~~
3 ~~information in the time period required by subdivision (b) of~~
4 ~~Section 1798.83, may assert as a complete defense in any action~~
5 ~~in law or equity that it thereafter provided regarding the information~~
6 ~~that was alleged to be untimely, all the information, or accurate~~
7 ~~information, to all customers who were provided incomplete or~~
8 ~~inaccurate information, respectively, within 90 days of the date~~
9 ~~the business knew that it had failed to provide the information,~~
10 ~~timely information, all the information, or the accurate information,~~
11 ~~respectively.~~

12 ~~(f) A prevailing plaintiff in any action commenced under Section~~
13 ~~1798.83 shall also be entitled to recover his or her reasonable~~
14 ~~attorney's fees and costs.~~

15 ~~(g) The rights and remedies available under this section are~~
16 ~~cumulative to each other and to any other rights and remedies~~
17 ~~available under law.~~