

AMENDED IN ASSEMBLY APRIL 18, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

AMENDED IN ASSEMBLY MARCH 3, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1580

Introduced by Assembly Members Gatto and Irwin
(Coauthors: Assembly Members Dodd, Gallagher, and Lackey)
(Coauthor: Senator Hertzberg)

January 5, 2016

An act to add Sections 1785.11.9, 1785.11.10, and 1785.11.11 to the Civil Code, relating to consumer credit reports.

LEGISLATIVE COUNSEL'S DIGEST

AB 1580, as amended, Gatto. Consumer credit reports: security freezes: protected consumer.

Existing state law defines and regulates consumer credit reports and authorizes a consumer to place a security freeze on his or her credit report by making a request in writing by mail to a consumer credit reporting agency. Existing state law requires a consumer credit reporting agency to place the security freeze on the consumer's credit report no later than 3 business days after receiving the consumer's request.

This bill would require a consumer credit reporting agency to place a security freeze for a protected consumer, defined as an individual who is under 16 years of age at the time a request for the placement of a security freeze is ~~made or~~ made, an incapacitated person or a protected individual for whom a guardian or conservator has been appointed, *or a person under the jurisdiction of a county welfare department or county probation department who has been placed in a foster care setting and*

is under 16 years of age at the time a request for a security freeze is made, upon that consumer’s representative’s request and compliance with certain requirements. The bill would require a consumer credit reporting agency to send written confirmation of the security freeze to the protected consumer’s representative within 10 days of the placement of the security freeze.

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 1785.11.9 is added to the Civil Code, to
- 2 read:
- 3 1785.11.9. For purposes of Sections 1785.11.10 and
- 4 1785.11.11, the following terms shall have the following meanings:
- 5 (a) “Protected consumer” means an individual who is ~~either~~ *any*
- 6 of the following:
- 7 (1) Under 16 years of age at the time a request for the placement
- 8 of a security freeze is made.
- 9 (2) An incapacitated person or a protected person for whom a
- 10 guardian or conservator has been appointed.
- 11 (3) *Under the jurisdiction of a county welfare department or*
- 12 *county probation department, has been placed in a foster care*
- 13 *setting, and is under 16 years of age at the time a request for*
- 14 *placement of a security freeze is made.*
- 15 (b) “Record” means a compilation of information that:
- 16 (1) Identifies a protected consumer.
- 17 (2) Was created by a consumer credit reporting agency solely
- 18 for the purpose of complying with this section.
- 19 (3) Is not otherwise authorized to be created or used to consider
- 20 the protected consumer’s creditworthiness, credit standing, credit
- 21 capacity, character, general reputation, personal characteristics,
- 22 or mode of living.
- 23 (c) (1) “Representative” means a person who provides to a
- 24 consumer credit reporting agency sufficient proof of authority to
- 25 act on behalf of a protected consumer.
- 26 (2) *For a protected consumer who has been placed in a foster*
- 27 *care setting, “representative” means either of the following:*
- 28 (A) *A county welfare department or its agent or designee.*
- 29 (B) *A county probation department or its agent or designee.*

1 (3) *For a protected consumer who has been placed in a foster*
2 *care setting, “representative” does not mean a foster parent.*

3 (d) “Security freeze” means:

4 (1) If a consumer credit reporting agency does not have a file
5 pertaining to a protected consumer, a restriction that:

6 (A) Is placed on the protected consumer’s record in accordance
7 with this section.

8 (B) Prohibits the consumer credit reporting agency from
9 releasing the protected consumer’s record except as authorized in
10 this section.

11 (2) If a consumer credit reporting agency has a file pertaining
12 to a protected consumer, a restriction that:

13 (A) Is placed on the protected consumer’s consumer report in
14 accordance with this section.

15 (B) Prohibits the consumer credit reporting agency from
16 releasing the protected consumer’s consumer report or any
17 information derived from the protected consumer’s consumer
18 report except as authorized in this section.

19 (e) “Sufficient proof of authority” means documentation that
20 shows that a representative has authority to act on behalf of a
21 protected consumer in a financial matter. This documentation
22 includes, but is not limited to:

23 (1) A court order or relevant enabling document issued by a
24 court.

25 (2) A legally sufficient and valid power of attorney, or a durable
26 power of attorney.

27 (3) A written, notarized statement signed by a representative
28 that expressly describes the authority of the representative to act
29 on behalf of a protected consumer, including a temporary
30 conservator or temporary guardian.

31 (4) *A written communication from a county welfare department*
32 *or its agency or designee or a county probation department or its*
33 *agent or designee certifying that the protected consumer is a foster*
34 *youth under its jurisdiction.*

35 (f) “Sufficient proof of identification” means information or
36 documentation that identifies a protected consumer or a
37 representative of a protected consumer. This information or
38 documentation includes, but is not limited to:

39 (1) A social security number or a copy of a social security card
40 issued by the Social Security Administration.

1 (2) A certified copy or official copy of a birth certificate issued
 2 by the entity authorized to issue the birth certificate.

3 (3) A copy of a driver’s license, an identification issued by the
 4 Department of Motor Vehicles, or any other government-issued
 5 identification.

6 (4) A copy of a bill for telephone, sewer, septic tank, water,
 7 electric, oil, or natural gas services that shows a name and a home
 8 address.

9 (5) *A written communication from a county welfare department*
 10 *or its agency or designee or a county probation department or its*
 11 *agent or designee certifying that the protected consumer is a foster*
 12 *youth under its jurisdiction.*

13 SEC. 2. Section 1785.11.10 is added to the Civil Code, to read:
 14 1785.11.10. Sections 1785.11.9 to 1785.11.11, inclusive, do
 15 not apply to the use of a protected consumer’s report or record by
 16 any of the following:

17 (a) A person or entity listed in subdivision (l) of Section
 18 1785.11.2, or Section 1785.11.4 or 1785.11.6.

19 (b) A person administering a credit file monitoring subscription
 20 service to which the representative of the protected consumer has
 21 subscribed on behalf of the protected consumer.

22 (c) A person who provides the protected consumer or the
 23 protected consumer’s representative with a copy of the protected
 24 consumer’s consumer report at the request of the protected
 25 consumer or at the request of the protected consumer’s
 26 representative.

27 ~~(d) A person or entity that maintains or is a database used solely~~
 28 ~~for one of the following purposes:~~

- 29 ~~(1) Criminal record information.~~
- 30 ~~(2) Personal loss history information.~~
- 31 ~~(3) Fraud prevention or protection.~~
- 32 ~~(4) Employment screening.~~
- 33 ~~(5) Tenant screening.~~

34 (d) *Any state or local agency, law enforcement agency, trial*
 35 *court, or private collection agency acting pursuant to a court*
 36 *order, warrant, or subpoena.*

37 (e) *A child support agency acting pursuant to Chapter 2*
 38 *(commencing with Section 17400) of Division 17 of the Family*
 39 *Code and Title IV-D of the Social Security Act (42 U.S.C. et seq.).*

1 (f) *The State Department of Health Care Services or its agents*
2 *or assigns acting to investigate Medi-Cal fraud.*

3 (g) *The Franchise Tax Board or its assigns acting to investigate*
4 *or collect delinquent taxes or unpaid court orders or to fulfill any*
5 *of its other statutory responsibilities.*

6 SEC. 3. Section 1785.11.11 is added to the Civil Code, to read:

7 1785.11.11. (a) A consumer credit reporting agency shall place
8 a security freeze for a protected consumer if both of the following
9 occur:

10 (1) The consumer credit reporting agency receives a request
11 from the protected consumer's representative for the placement
12 of the security freeze pursuant to this section.

13 (2) The protected consumer's representative does all of the
14 following:

15 (A) Submits the request to the consumer credit reporting agency
16 at the address or other point of contact and in the manner specified
17 by the consumer credit reporting agency.

18 (B) Provides to the consumer credit reporting agency sufficient
19 proof of identification of the protected consumer and the
20 representative.

21 (C) Provides to the consumer credit reporting agency sufficient
22 proof of authority to act on behalf of the protected consumer.

23 (D) Pays to the consumer credit reporting agency a fee as
24 authorized by subdivision (i).

25 (b) If a consumer credit reporting agency does not have a file
26 pertaining to a protected consumer when the consumer credit
27 reporting agency receives a request pursuant to paragraph (1) of
28 subdivision (a), the consumer credit reporting agency shall create
29 a record for the protected consumer.

30 (c) If a protected consumer's representative requests a security
31 freeze, the consumer credit reporting agency shall disclose the
32 process for placing and removing a security freeze.

33 (d) Within 30 days after receiving a request that meets the
34 requirements of subdivision (a), a consumer credit reporting agency
35 shall place a security freeze for the protected consumer. The
36 consumer credit reporting agency shall send written confirmation
37 of the security freeze to the protected consumer's representative
38 within 10 days of the placement of the security freeze.

39 (e) Unless a security freeze for a protected consumer is removed
40 pursuant to subdivision (h) or (j), a consumer credit reporting

1 agency shall not release the protected consumer’s consumer report,
 2 any information derived from the protected consumer’s consumer
 3 report, or any record created for the protected consumer.

4 (f) A security freeze for a protected consumer placed pursuant
 5 to this section shall remain in effect until either of the following
 6 occurs:

7 (1) The protected consumer or the protected consumer’s
 8 representative requests that the consumer credit reporting agency
 9 remove the security freeze in accordance with subdivision (h).

10 (2) The security freeze is removed in accordance with
 11 subdivision (j).

12 (g) To remove a security freeze, a protected consumer or a
 13 protected consumer’s representative shall do all of the following:

14 (1) Submit a request for removal of the security freeze to the
 15 consumer credit reporting agency at the address or other point of
 16 contact and in the manner specified by the consumer credit
 17 reporting agency.

18 (2) Provide to the consumer credit reporting agency:

19 (A) If the request is made by the protected consumer:

20 (i) Proof that the sufficient proof of authority for the protected
 21 consumer’s representative to act on behalf of the protected
 22 consumer is no longer ~~valid~~: *valid, he or she has been emancipated,*
 23 *or he or she is 16 years of age or older.*

24 (ii) Sufficient proof of identification of the protected consumer.

25 (B) If the request is made by the representative of a protected
 26 consumer:

27 (i) Sufficient proof of identification of the protected consumer
 28 and the representative.

29 (ii) Sufficient proof of authority to act on behalf of the protected
 30 consumer.

31 (3) Pay to the consumer credit reporting agency a fee as
 32 authorized by subdivision (i).

33 (h) Within 30 days after receiving a request that meets the
 34 requirements of subdivision (g), a consumer credit reporting agency
 35 shall remove a security freeze for a protected consumer.

36 (i) (1) Except as provided in paragraph (2), a consumer credit
 37 reporting agency may not charge a fee for any service performed
 38 pursuant to this section.

1 (2) A consumer credit reporting agency is authorized to charge
2 a reasonable fee, not exceeding ten dollars (\$10), for each
3 placement or removal of a security freeze for a protected consumer.

4 (3) Notwithstanding paragraph (2), a consumer credit reporting
5 agency shall not charge any fee pursuant to this section under any
6 of the following circumstances:

7 (A) The protected consumer's representative has received a
8 report of alleged identity theft against the protected consumer
9 under Section 530.5 of the Penal Code and has provided copy of
10 the report to the consumer credit reporting agency.

11 (B) The request for the placement or removal of a security freeze
12 is for a protected consumer who is under 16 years of age at the
13 time of the request and the consumer credit reporting agency has
14 a report pertaining to the protected consumer.

15 (C) *The request for the placement or removal of a security freeze*
16 *is for a protected consumer who has been placed in a foster care*
17 *setting.*

18 (j) A consumer credit reporting agency is authorized to remove
19 a security freeze for a protected consumer or to delete a record of
20 a protected consumer if the security freeze was placed or the record
21 was created based upon a material misrepresentation of fact by the
22 protected consumer or the protected consumer's representative.

23 (k) A consumer credit reporting agency may develop procedures
24 involving the use of telephone, *mail*, fax, the Internet, or other
25 electronic media to receive and process a request for a protected
26 consumer's security freeze to be placed or removed.