

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

549X0539

SENATE COMMERCE AND ENERGY

ENGROSSED NO. **HB 1242** - 03/03/2016

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Gibson, Bartling, Bordeaux, Brunner, Hawks, Hawley, Johns, Killer, Klumb, Munsterman, Rasmussen, Russell, Schoenfish, Schrempp, and Soli and Senators Buhl O'Donnell, Bradford, Heinert, Parsley, Peterson (Jim), Rusch, Soholt, and Sutton

1 FOR AN ACT ENTITLED, An Act to authorize certain persons to request a security freeze on
2 the credit report of a protected consumer.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

- 6 (1) "Protected consumer," a person who is under the age of sixteen years at the time a
7 request for the placement of a security freeze is made or an incapacitated person or
8 a protected person for whom a guardian or conservator has been appointed;
- 9 (2) "Record," a compilation of information that is created by a consumer reporting
10 agency solely for the purpose of complying with this section, identifies a protected
11 consumer, and may not be used to consider the protected consumer's credit
12 worthiness, credit standing, credit capacity, character, general reputation, personal
13 characteristics, or mode of living;



- 1 (3) "Representative," a person who provides to a consumer reporting agency sufficient
2 proof of authority to act on behalf of a protected consumer;
- 3 (4) "Security freeze," a notice placed on a consumer's credit report that prohibits a
4 consumer reporting agency from releasing the consumer's credit report relating to the
5 extension of credit involving that consumer's report, without the express
6 authorization of the protected person's representative;
- 7 (5) "Sufficient proof of authority," documentation that shows a representative has
8 authority to act on behalf of a protected consumer and includes an order issued by a
9 court of law, a lawfully executed and valid power of attorney, or a notarized
10 statement signed by a representative that expressly describes the authority of the
11 representative to act on behalf of a protected consumer;
- 12 (6) "Sufficient proof of identification," information or documentation that identifies a
13 protected consumer or a representative of a protected consumer and includes a social
14 security number or a copy of a social security card issued by the social security
15 administration, a certified or official copy of a birth certificate, or a copy of a driver
16 license, an identification card issued by the motor vehicle administration, or any other
17 government issued identification.

18 Section 2. That the code be amended by adding a NEW SECTION to read:

19 A consumer reporting agency shall place a security freeze for a protected consumer if the
20 agency receives a request from the protected consumer's representative for the placement of the
21 security freeze under this section and the protected consumer's representative:

- 22 (1) Submits the request to the agency in the manner specified by the agency;
- 23 (2) Provides to the agency sufficient proof of identification of the protected consumer
24 and the representative;

1 (3) Provides to the agency sufficient proof of authority to act on behalf of the protected
2 consumer; and

3 (4) Pays to the agency a fee as provided in section 9 of this Act.

4 If a consumer reporting agency does not have a file pertaining to a protected consumer when
5 the consumer reporting agency receives a request under this section, the consumer reporting
6 agency shall create a record for the protected consumer.

7 Section 3. That the code be amended by adding a NEW SECTION to read:

8 This Act does not apply to the use of a protected consumer's credit report or record by:

9 (1) A person administering a credit file monitoring subscription service to which the
10 protected consumer has subscribed or the representative of the protected consumer
11 has subscribed on behalf of the protected consumer;

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

15 (3) A check services or fraud prevention services company that issues reports on
16 incidents of fraud or authorizations for the purpose of approving or processing
17 negotiable instruments, electronic funds transfers, or similar payment methods;

18 (4) A deposit account information service company that issues reports regarding account
19 closures due to fraud, substantial overdrafts, automated teller machine abuse, or
20 similar negative information regarding a consumer to inquiring financial institutions
21 for use only in reviewing a consumer request for a deposit account at the inquiring
22 financial institution;

23 (5) An insurance company for the purpose of conducting its ordinary business;

24 (6) A consumer reporting agency that acts only to resell credit information by assembling

1 and merging information contained in a database of one or more consumer reporting
2 agencies and does not maintain a permanent database of credit information from
3 which new credit reports are produced; and

4 (7) A consumer reporting agency's database that consists of information used for
5 criminal record information, fraud prevention or detection, personal loss history
6 information, or employment, tenant, or individual background screening, but not for
7 credit granting services.

8 Section 4. That the code be amended by adding a NEW SECTION to read:

9 Within thirty days after receiving a request that meets the requirements of this Act, a
10 consumer reporting agency shall place a security freeze for the protected consumer.

11 Section 5. That the code be amended by adding a NEW SECTION to read:

12 Unless a security freeze for a protected consumer is removed in accordance with sections
13 7 or 10 of this Act, a consumer reporting agency may not release the protected consumer's credit
14 report, any information derived from the protected consumer's credit report, or any record
15 created for the protected consumer.

16 Section 6. That the code be amended by adding a NEW SECTION to read:

17 A security freeze for a protected consumer placed under section 4 of this Act shall remain
18 in effect until:

19 (1) The protected consumer or the protected consumer's representative requests the
20 consumer reporting agency to remove the security freeze in accordance with section
21 7 of this Act; or

22 (2) The security freeze is removed in accordance with section 10 of this Act.

23 Section 7. That the code be amended by adding a NEW SECTION to read:

24 If a protected consumer or a protected consumer's representative wishes to remove a security

1 freeze for the protected consumer, the protected consumer or the protected consumer's
2 representative shall submit a request for the removal of the security freeze to the consumer
3 reporting agency in the manner specified by the agency. If the request is made by the protected
4 consumer, the requestor shall provide to the consumer reporting agency proof that the authority
5 for the protected consumer's representative is no longer valid and sufficient proof of the
6 identification of the protected consumer. If the request is made by the protected consumer's
7 representative, the requestor shall provide to the consumer reporting agency sufficient proof of
8 identification of the protected consumer and the representative, and sufficient proof of authority
9 to act on behalf of the protected consumer.

10 The requestor shall pay to the consumer reporting agency a fee as provided in section 9 of
11 this Act.

12 Section 8. That the code be amended by adding a NEW SECTION to read:

13 Within thirty days after receiving a request that meets the requirements of section 7 of this
14 Act, the consumer reporting agency shall remove the security freeze for the protected consumer.

15 Section 9. That the code be amended by adding a NEW SECTION to read:

16 A consumer reporting agency may charge a reasonable fee, not exceeding five dollars, for
17 each placement or removal of a security freeze for a protected consumer. However, no consumer
18 reporting agency may charge a fee under this section if the protected consumer's representative
19 provides a police report or affidavit of alleged identity fraud against the protected consumer to
20 the consumer reporting agency, or a request for the placement or removal of a security freeze
21 is for a protected consumer who is under the age of sixteen years at the time of the request, and
22 the agency has a consumer report pertaining to the protected consumer. No consumer reporting
23 agency may charge a fee for any other service performed under this Act.

24 Section 10. That the code be amended by adding a NEW SECTION to read:

1 A consumer reporting agency may remove a security freeze for a protected consumer or
2 delete a record of a protected consumer if the security freeze was placed or the record was
3 created based on a material misrepresentation of fact by the protected consumer or the protected
4 consumer's representative.