

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 621

BY SENATOR TRUMP

[Introduced February 19, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §46A-6L-102 of the Code of West Virginia, 1931, as amended,
 2 relating to prohibiting a consumer-reporting agency from charging a fee to a consumer
 3 who elects to place, remove, or temporarily lift a security freeze on the consumer’s credit
 4 report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6L. THEFT OF CONSUMER IDENTITY PROTECTIONS.

§46A-6L-102. Security freeze; timing; effect; covered entities; cost.

1 (a) A consumer-reporting agency shall permit a consumer to place a security freeze on
 2 his or her credit report by the consumer selecting either of the following:

- 3 (1) A request in writing by certified or overnight mail to a consumer-reporting agency; or
- 4 (2) Making a request directly to the consumer-reporting agency through a secure
 5 electronic method, if available: *Provided*, That by January 31, 2009, a secure electronic method
 6 shall be made available to the consumer by the consumer-reporting agency.

7 (b) A consumer-reporting agency shall place a security freeze on a credit report no later
 8 than five business days after receiving a written request from the consumer. If a security freeze
 9 is in place, a report or information may not be distributed to a third party without prior express
 10 authorization from the consumer. This subdivision does not prevent a consumer-reporting agency
 11 from advising a third party that a security freeze is in effect with respect to the consumer's credit
 12 report. A consumer-reporting agency may, regardless of the existence of a security freeze,
 13 distribute information contained in a consumer file to the extent otherwise permitted by law if the
 14 information was lawfully obtained by or for a consumer-reporting agency from an open public
 15 record, without respect to the existence of a security freeze. Nothing herein prevents a consumer-
 16 reporting agency from choosing to apply the security freeze to the entire contents of the credit
 17 reporting file that is subject to the security freeze.

18 (c) The consumer-reporting agency shall send a written confirmation of the security freeze
 19 to the consumer within five business days of placing the freeze and at the same time shall provide

20 the consumer with a unique personal identification number or password to be used by the
21 consumer when providing authorization for the distribution of his or her credit information.

22 (d) If the consumer wishes to allow his or her credit report to be accessed for a period of
23 time while a freeze is in place, he or she shall contact the consumer-reporting agency by regular
24 mail or a procedure developed under subsection (f) of this section and request that the freeze be
25 temporarily lifted, providing all of the following:

26 (1) Proper identification;

27 (2) The unique personal identification number or password provided by the consumer-
28 reporting agency pursuant to subsection (c) of this section; and

29 (3) The time period for which the credit report shall be available to users of the credit
30 report.

31 (e) A consumer-reporting agency that receives a request from a consumer to temporarily
32 lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the
33 request no later than three business days after receiving the request.

34 (f) A consumer-reporting agency shall develop procedures involving the use of telephone,
35 fax, the Internet or other electronic media to receive and process a request from a consumer
36 pursuant to subsection (d) of this section to temporarily lift a freeze on a credit report in an
37 expedited manner.

38 (g) (1) Beginning on September 1, 2008, a consumer-reporting agency shall temporarily
39 lift a security freeze from a consumer's credit report within fifteen minutes after the consumer's
40 request is received pursuant to subsection (f) of this section by the consumer-reporting agency.

41 (2) A consumer-reporting agency does not have to remove a security freeze within the
42 time provided in this subsection if:

43 (A) The consumer fails to meet the requirements of subsection (d) of this section; or

44 (B) The consumer-reporting agency's ability to remove the security freeze within 15
45 minutes is prevented by:

46 (i) An act of God, including fire, earthquakes, hurricanes, storms or similar natural
47 disasters or phenomena;

48 (ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot,
49 vandalism, labor strikes or disputes disrupting operations or similar occurrence;

50 (iii) Operational interruption, including electrical failure, unanticipated delay in equipment
51 or replacement part delivery, computer hardware or software failures inhibiting response time or
52 similar disruption;

53 (iv) Governmental action, including emergency orders or regulations, judicial or law-
54 enforcement action or similar directives;

55 (v) Regularly scheduled maintenance, during other than normal business hours, of, or
56 updates to, the consumer-reporting agency's systems; or

57 (vi) Commercially reasonable maintenance of, or repair to, the consumer-reporting
58 agency's systems that is unexpected or unscheduled.

59 (h) A consumer-reporting agency shall remove or temporarily lift a freeze placed on a
60 credit report only upon the request of the consumer, pursuant to subsection (d) or (j) of this
61 section.

62 (i) If a third party requests access to a credit report on which a security freeze is in effect,
63 and this request is in connection with an application for credit or any other use, and the consumer
64 has not allowed his or her credit report to be accessed for a period of time, the third party may
65 treat the application as incomplete.

66 (j) A security freeze shall remain in place until the consumer requests that the security
67 freeze be removed. A consumer-reporting agency shall remove a security freeze within three
68 business days of receiving a request for removal from the consumer who provides the following:

69 (1) Proper identification; and

70 (2) The unique personal identification number or password provided by the consumer-
71 reporting agency pursuant to subsection (c) of this section.

72 (k) A consumer-reporting agency shall require proper identification of the person making
73 a request to place or remove a security freeze.

74 (l) The provisions of this section do not apply to the distribution of a consumer credit report
75 to any of the following:

76 (1) A person or the person's subsidiary, affiliate, agent or assignee with whom the
77 consumer has or, prior to assignment, had an account, contract or debtor-creditor relationship for
78 the purposes of reviewing the account or collecting the financial obligation owing for the account,
79 contract or debt;

80 (2) A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom
81 access has been granted under this section for purposes of facilitating the extension of credit or
82 other permissible use;

83 (3) A person acting pursuant to a court order, warrant or subpoena;

84 (4) A state or local agency that administers a program for establishing and enforcing child
85 support obligations;

86 (5) The West Virginia Department of Health and Human Resources or its agents or assigns
87 acting to investigate fraud;

88 (6) The West Virginia Department of Revenue or its agents or assigns acting to investigate
89 or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory
90 responsibilities;

91 (7) A person for the purposes of prescreening as defined by the federal Fair Credit
92 Reporting Act;

93 (8) A person or entity administering a credit file monitoring subscription service to which
94 the consumer has subscribed; and

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

97 (10) Any person or entity for use in setting or adjusting a rate, adjusting a claim or

98 underwriting for insurance purposes to the extent not otherwise prohibited by law.

99 (m) The provisions of this section do not apply to any of the following:

100 (1) A consumer-reporting agency that acts only as a reseller of credit information by
101 assembling and merging information contained in the database of another consumer-reporting
102 agency or multiple consumer credit-reporting agencies and does not maintain a permanent
103 database of credit information from which new consumer credit reports are produced. A
104 consumer-reporting agency acting as a reseller shall honor any security freeze placed on a
105 consumer credit report by another consumer-reporting agency.

106 (2) A check services or fraud prevention services company which issues reports on
107 incidents of fraud or authorizations for the purpose of approving or processing negotiable
108 instruments, electronic funds transfers or similar methods of payments.

109 (3) A deposit account information service company which issues reports regarding
110 account closures due to fraud, a substantial number of overdrafts, ATM abuse or similar negative
111 information regarding a consumer to inquiring banks or other financial institutions for use only in
112 reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

113 (4) A consumer-reporting agency's database or file which consists of information
114 concerning, and used for, criminal record information, fraud prevention or detection, personal loss
115 history information and employment, tenant or background screening.

116 (n) ~~Except as prohibited by subsection (o) of this section~~ A consumer-reporting agency
117 may not charge a ~~reasonable fee not to exceed \$5 fee~~ to a consumer who elects to place, remove
118 or temporarily lift a security freeze on the consumer's credit report. No fees except those
119 authorized by ~~this subsection~~ and subsection (p) of this section may be charged in connection
120 with a security freeze.

121 (o) A consumer-reporting agency may not charge a fee for security freeze services to a
122 consumer who is a victim of identity theft and who provides a copy of a police report, an
123 investigative report or a written complaint made to the Federal Trade Commission, to the office of

124 the Attorney General of West Virginia or to a law-enforcement agency concerning the identity
125 theft.

126 (p) A consumer may be charged a reasonable fee, not to exceed \$5, if the consumer fails
127 to retain the original unique personal identification number or password provided by the
128 consumer-reporting agency and must be reissued the same or a new unique personal
129 identification number or password.

NOTE: The purpose of this bill is to prohibit a consumer-reporting agency from charging a fee to a consumer who elects to place, remove or temporarily lift a security freeze on the consumer's credit report.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.