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As of: June 5, 2006 (1:25pm)

LC8888

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act entitled "the Identity Theft Protection Act"; allowing consumers to create a security freeze on credit reports; requiring implementation procedures for consumer reporting agencies; providing for temporary lifting of security freezes; requiring notices to consumers about the option for a security freeze; setting limits on fees; providing penalties; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Definitions.** As used in [section 1] through [section 11], the following definitions apply:

(1) "Consumer" means an individual.

(2) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information on consumers for the purpose of furnishing **consumer [credit?]** reports to a third party and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing **consumer [credit?]** reports.

(3) "Credit report" means:

(a) any written, oral, or other communication of any

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information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(b) is used or expected to be used in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) any other purpose authorized under 15 U.S.C. 1681(b).

(4) "Person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(5) "Proper identification" means information sufficient to verify identity.

(6) "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(7) (a) "Security freeze" means a notice that:

(i) is placed in a consumer's credit report at the request of the consumer;

(ii) is subject to exceptions provided in [section 9];

(iii) prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or credit score without the express authorization of the consumer, as provided in [section 2(5)].

(b) A security freeze does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

NEW SECTION. **Section 2. Placement of security freeze.** A consumer may elect to place a security freeze on the consumer's own credit report by making a request:

(1) in writing by regular or certified mail to a consumer reporting agency at an address designated by the consumer reporting agency to receive such requests; or

(2) directly to the consumer reporting agency through a secure electronic connection at the earliest date required by any other state law or within one year of [the effective date of this act].

NEW SECTION. **Section 3. Consumer reporting agency requirements.** (1) Except as provided in subsection (2), a consumer reporting agency shall place a security freeze on a consumer's credit report no later than 5 business days after receiving from the consumer:

(a) a written or electronic request, as provided in [section 2];

(b) proper identification; and

(c) a fee, if applicable.

(2) **If a consumer who has been the victim of identity theft and who has an identity theft passport as provided in 46-24-220 requests a security freeze, the consumer reporting agency shall**

place a security freeze on the consumer's credit report no later than 24 hours after receiving notice as provided in [section 2].

(3) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 5 (AG) 10 (CDIA) business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number, password, or similar device (CDIA) to be used by the consumer when providing authorization for a release of the consumer's credit for a specific party or period of time, as provided in [section 4].

(4) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report, or rating.

NEW SECTION. **Section 4. Temporary lifting of security freeze -- consumer requirements -- consumer reporting agency duties -- notification.** (1) A consumer who wishes to allow access to the consumer's own credit report by a specific party or for a specific period of time while a freeze is in place shall contact a [?each?] consumer reporting agency using a point of contact designated by the consumer reporting agency [CDIA] by regular or certified mail, telephone, or a secure electronic method, request that the freeze be temporarily lifted, and provide all of the following:

- (a) proper identification;
- (b) the unique personal identification number, password, or

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device [CDIA] provided by the consumer reporting agency pursuant to [section 3(3)];

(c) the proper information regarding the third party who is to receive the **consumer [credit??]** report or the time period for which the **consumer [credit??]** report is to be available to users of the **consumer [credit??]** report; and

(d) payment of a fee, if applicable.

(2) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a **consumer [credit??]** report as provided in subsection (1) of this section shall comply with the request no later than 3 business days after receiving the request **or at the earliest time required by any other state, whichever is earlier [AG].**

(3) A consumer reporting agency shall:

(a) designate the contact address, phone number, fax number, or appropriate electronic access address when providing the unique personal identification number, password, or **other device [CDIA]** as provided in [section 3(3)];

(b) send written verification of the thaw by regular or certified mail or electronically to the consumer requesting the temporary lift of the security freeze; and

(c) **develop procedures within 1 year [of the effective date of this act] involving the use of telephone, fax, or, electronic media using a process for legally required notices provided for in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 96. [AG]**

NEW SECTION. **Section 5. Removal of freeze.** (1) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report:

(a) upon the consumer's request pursuant to [section 4] or [section 7]; or

(b) if the consumer reporting agency determines that the consumer made a material misrepresentation of fact when requesting the security freeze.

(2) When a consumer reporting agency removes a security freeze as provided in subsection (1), the consumer reporting agency shall notify the consumer in writing at least five business days [AG] prior to removing the freeze on the consumer [credit??] report.

NEW SECTION. **Section 6. Third party contacts.** (1) If a third party, not exempt as provided for in [section 9], requests access to a consumer [credit??] report on which a security freeze is in effect, and the consumer has not provided a temporary lifting of a freeze for that specific party or a period of time, the third party may treat the application as incomplete.

(2) If a third party requests access to a consumer credit report or information derived from it on which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit associated with the consumer and not for the sole purpose of account review, the consumer reporting agency shall notify the consumer than an attempt has

been made to access the credit report. [AG]

NEW SECTION. **Section 7. Removal of security freeze.** (1) A security freeze must remain in place until the consumer requests that the security freeze be removed or temporarily lifted as provided in [section 4].

(2) After receiving a request from the consumer to remove a security freeze, a consumer reporting agency shall remove the security freeze within 3 business days of receiving a removal request **at the point of contact designated by the consumer reporting agency [CDIA]** if the consumer provides the following:

(a) proper identification;

(b) the unique personal identification number, password, **or other device** provided by the consumer reporting agency pursuant to [section 3(3)]; and

(c) a fee, if applicable.

NEW SECTION. **Section 8. Notice of rights.** A consumer reporting agency shall provide a notice of rights as stated below at any time that a consumer is required to receive a summary of rights required under 15 U.S.C. 1681(g)(609) of the Fair Credit Reporting Act.

NOTICE OF RIGHTS: Montana Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a

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"security freeze" on your credit report pursuant to Montana law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within 5 business days you will be provided a personal identification number, password, **or other device [CDIA]** to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

- (1) the unique personal identification number, password, **or other device** provided by the consumer reporting agency;
- (2) proper identification to verify your identity;
- (3) the proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report is to be available to users of the credit report; and
- (4) payment of a fee, if applicable.

A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report shall comply after receiving the request no later than 3 business days **or less, if the request is made electronically. [AG]**

A security freeze does not apply to circumstances in which

you have an existing account relationship and a copy of your **credit** report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow down your application for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, a few days before actually applying for new credit.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report.

NEW SECTION. **Section 9. Exemptions.** (1) The provisions of [section 1] through [section 11] do not apply to the use of a **consumer [credit??]** report by the following:

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

(b) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under [section 4] for purposes of facilitating the extension of credit or other permissible use;

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(c) any person acting pursuant to a court order, warrant, or subpoena;

(d) any federal, state, or local agency that administers a program for establishing and enforcing child support obligations;

(e) any federal, state, or local agency or its agents or assigns acting to investigate fraud;

(f) any federal, state, or local agency or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(g) a person for **use of a credit report for [CDIA]** the purpose of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. 1681(a) et seq.;

(h) a check services company or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments;

(i) a deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;

(j) a person or entity administering a credit file monitoring subscription or similar service to which the consumer

has subscribed;

(k) a person or entity for the purpose of providing a consumer with a copy of the consumer's own credit report or score and upon the consumer's request;

(l) a person or entity regulated under Title 33; or

(m) a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and that does not maintain a permanent database of credit information from which new credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a credit report by another consumer reporting agency.

NEW SECTION. **Section 10. Fees.** (1) Except as provided in subsection (2), a consumer reporting agency may charge a fee, not to exceed \$10, to a consumer for each security freeze, removal of a freeze, or temporary lifting of a freeze requested by a consumer under [sections 2, 4, or 5].

(2) A consumer reporting agency may not charge a fee to a consumer who has been the victim of identity theft and who has submitted a valid police report to the consumer reporting agency **or has been notified of a security breach involving the consumer's own personal information [AG].**

(3) A consumer may be charged a reasonable fee, not to exceed \$5, if the consumer fails to retain the original personal identification number, password, **or other device** provided by the

consumer reporting agency and **if the consumer asks the consumer reporting agency to reissue the same or a new personal identification number, password, or other device.**

NEW SECTION. **Section 11. Violations -- penalties.** (1) Any person who wilfully fails to comply with any requirements imposed in [sections 2 through 10] with respect to a consumer is liable to that consumer in an amount equal to the sum of:

(a) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or

(b) punitive damages in an amount the court may allow; and

(c) the costs of the action together with reasonable attorney's fees as determined by the court in the case of a successful action to enforce liability under this section.

(2) Any person who obtains a **consumer [credit??]** report, requests a security freeze, a temporary lift of a security freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.

(3) Any person who negligently fails to comply with any requirement imposed in [sections 2 through 10] with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) any actual damages sustained by the consumer as a result

of the failure; and

(b) the costs of the action together with reasonable attorney's fees as determined by the court in the case of a successful action to enforce liability under this section.

(4) If a court finds that an unsuccessful pleading, motion, or other paper filed under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees that are reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

NEW SECTION. **Section 12. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 13. {standard} Codification instruction.** (1) [Sections 1 through 11] are intended to be codified as an integral part of Title 30, chapter 14, part 17, and the provisions of Title 30, chapter 14, part 17, apply to [sections 1 through 11].

NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on July 1, 2007.

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