

Enrolled
Senate Bill 574

Sponsored by Senator PROZANSKI

CHAPTER

AN ACT

Relating to security freezes on protected consumers' consumer reports; creating new provisions; amending ORS 646A.602, 646A.606, 646A.608, 646A.610, 646A.612 and 646A.614; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 646A.602 is amended to read:

646A.602. As used in ORS 646A.600 to 646A.628:

(1)(a) "Breach of security" means **an** unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of personal information *[maintained by the]* **that a person maintains**.

(b) "Breach of security" does not include *[good-faith]* **an inadvertent** acquisition of personal information by a person or *[that]* **the** person's employee or agent *[for a legitimate purpose of that person]* if the personal information is not used in violation of applicable law or in a manner that harms or poses an actual threat to the security, confidentiality or integrity of the personal information.

(2) "Consumer" means an individual *[who is also a]* resident of this state.

(3) "Consumer report" means a consumer report as described in section 603(d) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)), as that Act existed on October 1, 2007, that *[is compiled and maintained by]* a consumer reporting agency **compiles and maintains**.

(4) "Consumer reporting agency" means a consumer reporting agency as described in section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(p)) as that Act existed on October 1, 2007.

(5) "Debt" means any obligation or alleged obligation arising out of a consumer transaction, as defined in ORS 646.639.

(6) "Encryption" means the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key.

(7) "Extension of credit" means *[the]* **a** right to defer *[payment of]* **paying** debt or **a right** to incur debt and defer *[its payment]* **paying the debt, that is** offered or granted primarily for personal, family or household purposes.

(8) "Identity theft" has the meaning set forth in ORS 165.800.

(9) "Identity theft declaration" means a completed and signed statement *[documenting]* **that documents** alleged identity theft, using the form available from the Federal Trade Commission, or another substantially similar form.

(10) "Person" means any individual, private or public corporation, partnership, cooperative, association, estate, limited liability company, organization or other entity, whether or not organized to operate at a profit, or a public body as defined in ORS 174.109.

(11) "Personal information":

(a) Means a consumer's first name or first initial and last name in combination with any one or more of the following data elements, when the data elements are not rendered unusable through encryption, redaction or other methods, or when the data elements are encrypted and the encryption key has also been acquired:

(A) Social Security number;

(B) Driver license number or state identification card number issued by the Department of Transportation;

(C) Passport number or other United States issued identification number; or

(D) Financial account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to a consumer's financial account.

(b) Means any of the data elements or any combination of the data elements described in paragraph (a) of this subsection when not combined with the consumer's first name or first initial and last name and when the data elements are not rendered unusable through encryption, redaction or other methods, if the information obtained would be sufficient to permit a person to commit identity theft against the consumer whose information was compromised.

(c) Does not include information, other than a Social Security number, in a federal, state or local government record that is lawfully made available to the public.

(12) "Proper identification" means written information or documentation that a consumer or representative can present to another person as evidence of the consumer's or representative's identity, examples of which include:

(a) A valid Social Security number or a copy of a valid Social Security card;

(b) A certified or otherwise official copy of a birth certificate that a governmental body issued; and

(c) A copy of a driver license or other government-issued identification.

(13) "Protected consumer" means an individual who is:

(a) Not older than 16 years old at the time a representative requests a security freeze on the individual's behalf; or

(b) Incapacitated or for whom a court or other authority has appointed a guardian or conservator.

(14) "Protective record" means information that a consumer reporting agency compiles to identify a protected consumer for whom the consumer reporting agency has not prepared a consumer report.

[(12)] **(15) "Redacted" means altered or truncated so that no more than the last four digits of a Social Security number, driver license number, state identification card number, account number or credit or debit card number is accessible as part of the data.**

(16) "Representative" means a consumer who provides a consumer reporting agency with sufficient proof of the consumer's authority to act on a protected consumer's behalf.

[(13)] **(17) "Security freeze" means a notice placed in a consumer report[, at the request of a consumer and subject to certain exemptions, that prohibits the consumer reporting agency from releasing the consumer report for the extension of credit unless the consumer has temporarily lifted or removed the freeze] at a consumer's request or a representative's request or in a protective record at a representative's request that, subject to certain exemptions, prohibits a consumer reporting agency from releasing information in the consumer report or the protective record for an extension of credit, unless the consumer temporarily lifts the security freeze on the consumer's consumer report or a protected consumer or representative removes the security freeze on or deletes the protective record.**

SECTION 2. ORS 646A.606 is amended to read:

646A.606. (1) A consumer may elect to place a security freeze on the consumer's **consumer report or, if the consumer is a representative, on a protected consumer's consumer report or protective record** by sending a written request to a consumer reporting agency at an address [designated by] the agency **designates** to receive such requests, or a secure electronic request at a website [designated by] the agency **designates** to receive such requests if [such method is made available by] the consumer reporting agency, at the agency's discretion, **makes a secure electronic method available**.

(2) If the consumer **or protected consumer** is the victim of identity theft or has reported a **theft of personal information** to a law enforcement agency [*the theft of personal information*], the consumer **or representative** may include a copy of the police report, incident report or identity theft declaration.

(3)(a) The consumer **or representative** must provide proper identification and any fee authorized by ORS 646A.610.

(b)(A) **In addition to the information and fee described in paragraph (a) of this subsection, a representative who seeks to place a security freeze on a protected consumer's consumer report or protective record shall provide sufficient proof of the representative's authority to act on the protected consumer's behalf.**

(B) **For purposes of subparagraph (A) of this paragraph, sufficient proof of authority consists of:**

(i) **A court order that identifies or describes the relationship between the representative and the protected consumer;**

(ii) **A valid and lawfully executed power of attorney that permits the representative to act on the protected consumer's behalf; or**

(iii) **A written affidavit that the representative signs and has notarized in which the representative expressly describes the relationship between the representative and the protected consumer and the representative's authority to act on the protected consumer's behalf.**

(4)(a) Except as provided in ORS 646A.614, if a security freeze is in place **for a consumer report**, information from [a] **the consumer report** may not be released without prior express authorization from the consumer.

(b) **Information from a protective record may not be released until the protected consumer for whom the consumer reporting agency created the protective record, or a representative of the protected consumer, removes the security freeze.**

(5) This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report **or protective record**.

SECTION 3. ORS 646A.608 is amended to read:

646A.608. (1)(a) A consumer reporting agency shall place a security freeze on a consumer report [no] **not** later than five business days after receiving from [the] a consumer:

[(a)] (A) The request described in ORS 646A.606 (1);

[(b)] (B) Proper identification; and

[(c)] (C) A fee, if applicable.

(b) **If a consumer report does not exist for a protected consumer on behalf of whom a representative seeks to place a security freeze, a consumer reporting agency shall create a protective record after receiving from the representative the request described in ORS 646A.606 (1), proper identification for both the representative and the protected consumer and sufficient proof of authority, as described in ORS 646A.606 (3)(b). After creating a protective record for a protected consumer under this paragraph, the consumer reporting agency shall place the security freeze that the representative requested on the protected consumer's protective record.**

(c) **The protective record that the consumer reporting agency creates under paragraph (b) of this subsection does not need to contain any information other than the protected consumer's personal information, if other information for the protected consumer is not**

available. Except as provided in ORS 646A.614, a consumer reporting agency may not use or release to another person the information in a protective record for the purpose of assessing a protected consumer's eligibility or capacity for an extension of credit, as a basis for evaluating a protected consumer's character, reputation or personal characteristics or for other purposes that are not related to protecting the protected consumer from identity theft.

(2)(a) The consumer reporting agency shall send a written confirmation of *[the]* a security freeze on a consumer's consumer report to the consumer, *[to]* at the last known address for the consumer *[as contained]* shown in the consumer report *[maintained by]* that the consumer reporting agency maintains, within 10 business days after placing the security freeze and, with the confirmation, shall provide the consumer with a unique personal identification number or password or similar device *[to be used by]* the consumer *[when providing authorization for release of]* must use to authorize the consumer reporting agency to release the consumer's consumer report for a specific period of time or *[for permanently removing]* to permanently remove the security freeze. The consumer reporting agency shall *[also]* include with *[such]* the written confirmation information *[regarding the process of lifting a]* that describes how to remove a security freeze, and *[the process of temporarily lifting a]* how to temporarily lift a security freeze *[for allowing]* on a consumer report, other than a consumer report for a protected consumer, in order to allow access to information from the consumer's *[credit]* consumer report for a period of time while the security freeze is in place.

(b) This subsection does not require a consumer reporting agency to provide a consumer or representative with a personal identification number or password for the consumer or representative to use to authorize the consumer reporting agency to release information from a protective record.

(3)(a) If a consumer wishes to allow the consumer's consumer report to be accessed for a specific period of time while a security freeze is in effect, the consumer shall contact the consumer reporting agency using a point of contact *[designated by]* the consumer reporting agency designates, request that the security freeze be temporarily lifted and provide the following:

[(a)] (A) Proper identification;

[(b)] (B) The unique personal identification number or password or similar device *[provided by]* the consumer reporting agency *[pursuant to]* provided under subsection (2) of this section;

[(c)] (C) *[The information regarding the time period for which the consumer report shall]* An indication of the period of time during which the consumer report must be available to users of the *[credit]* consumer report; and

[(d)] (D) A fee, if applicable.

(b) A protective record is not subject to a temporary lift of a security freeze.

(c) Except as provided in ORS 646A.612 (2)(a), a consumer report for a protected consumer is not subject to a temporary lift of a security freeze.

(4) A consumer reporting agency that receives a request from the consumer to temporarily lift a security freeze on a *[credit]* consumer report, other than a consumer report for a protected consumer, *[pursuant to]* under subsection (3) of this section shall comply with the request *[no]* not later than three business days after receiving from the consumer:

(a) Proper identification;

(b) The unique personal identification number or password or similar device *[provided by]* the consumer reporting agency *[pursuant to]* provided under subsection (2) of this section;

(c) *[The information regarding the time period for which the consumer report shall]* An indication of the period of time during which the consumer report must be available to users of the consumer report; and

(d) A fee, if applicable.

(5)(a) A security freeze *[shall]* for a consumer report must remain in place until the consumer requests, using a point of contact *[designated by]* the consumer reporting agency designates, that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days *[of]* after receiving a request for removal from the consumer, who provides:

- [(a)] (A) Proper identification;
[(b)] (B) The unique personal identification number or password or similar device [provided by] the consumer reporting agency [pursuant to] **provided under** subsection (2) of this section; and
[(c)] (C) A fee, if applicable.

(b) A security freeze for a protective record must remain in place until the protected consumer or a representative requests, using a point of contact the consumer reporting agency designates, that the security freeze be removed or that the protective record be deleted. The consumer reporting agency does not have an affirmative duty to notify the protected consumer or the representative that a security freeze is in place or to remove the security freeze or delete the protective record once the protected consumer is no longer a protected consumer. A protected consumer or a representative has the affirmative duty to request that the consumer reporting agency remove the security freeze or delete the protective record. A consumer reporting agency shall remove a security freeze or delete a protective record within 30 business days after receiving a request for removal or deletion from the protected consumer or a representative, who provides:

- (A) Proper identification;**
(B) Sufficient proof of authority, as described in ORS 646A.606 (3)(b), if the representative seeks to remove the security freeze or delete the protective record;
(C) Proof that the representative's authority to act on the protected consumer's behalf is no longer valid or applicable, if the protected consumer seeks to remove the security freeze or delete the protective record; and
(D) A fee, if applicable.

[(6) No later than December 31, 2008, the Director of the Department of Consumer and Business Services shall report to the chairs of the legislative committees that considered ORS 646A.600 to 646A.628 concerning the minimum amount of time necessary, using current technology, to place, temporarily lift or remove a freeze on a consumer report, and to verify a consumer's identity. If the chair of any legislative committee is vacant at the time of making the report, the report shall also be made to the President of the Senate and the Speaker of the House of Representatives.]

SECTION 4. ORS 646A.610 is amended to read:

646A.610. (1) A consumer reporting agency may not charge a fee to a consumer **or a protected consumer** who is the victim of identity theft or **to a consumer** who has reported **or a protected consumer for whom a representative has reported** to a law enforcement agency the theft of personal information, provided the consumer **or the representative** has submitted to the consumer reporting agency a copy of a valid police report, incident report or identity theft declaration.

(2)(a) A consumer reporting agency may charge a reasonable fee of [no] **not** more than \$10 to a consumer, other than a consumer described in subsection (1) of this section, for each **placement of a security** freeze, temporary lift of the **security** freeze, removal of the **security** freeze or replacing a lost personal identification number or password previously provided to the consumer[, regarding access to a consumer credit report].

(b)(A) Except as provided in subsection (1) of this section and in subparagraph (B) of this paragraph, a consumer reporting agency may charge a reasonable fee of not more than \$10 to place or remove a security freeze for a protected consumer's consumer report or protective record or to create or delete a protective record for a protected consumer.

(B) A consumer reporting agency may not charge a fee to place or remove a security freeze on an existing consumer report or protective record for a protected consumer who is under 16 years of age at the time a representative requests the consumer reporting agency to place or remove the security freeze.

SECTION 5. ORS 646A.612 is amended to read:

646A.612. (1)(a) A consumer reporting agency shall temporarily lift or remove a **security** freeze placed on a [consumer's credit report only in the following cases:] **consumer report only if a consumer requests that the consumer reporting agency lift or remove the security freeze for the consumer report in accordance with ORS 646A.608.**

(b) A consumer reporting agency shall remove a security freeze from a protected consumer's consumer report or protective record or delete a protective record only if the protected consumer or a representative requests that the consumer reporting agency remove the security freeze from the consumer report or protective record or delete the protective record in accordance with ORS 646A.608.

(2)(a) A consumer reporting agency may temporarily lift or remove a security freeze placed on a consumer report if the security freeze was placed because of a consumer's, a protected consumer's or a representative's material misrepresentation of fact.

(b) A consumer reporting agency may remove a security freeze from or delete a protective record if the consumer reporting agency placed the security freeze or created the protective record as a result of the protected consumer's or the representative's material misrepresentation of fact.

(c) If a consumer reporting agency intends to remove a security freeze or delete a protective record under this subsection, the consumer reporting agency shall notify the consumer, protected consumer or representative, as appropriate, in writing at least five business days before removing the security freeze or deleting the protective record.

[(1) Upon the consumer's request, pursuant to ORS 646A.608 (3) or (5).]

[(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer, the consumer reporting agency may remove the security freeze. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subsection, the consumer reporting agency shall notify the consumer in writing at least five business days prior to removing the freeze placed on the consumer report.]

SECTION 6. ORS 646A.614 is amended to read:

646A.614. (1) The provisions of ORS 646A.606 to 646A.610 do not apply to the use of a consumer report **or a protective record** by or for any of the following:

[(1)] (a) A person, or the person's subsidiary, affiliate, agent or assignee with which the consumer **or protected 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 debtor-creditor relationship. For purposes of this subsection, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases and account upgrades and enhancements[;].

[(2)] (b) Any person acting pursuant to a judgment, court order, warrant or subpoena[;].

[(3)] (c) A federal, state or local governmental entity, *[including]* a law enforcement agency or court, or *[their agents or assignees, acting to investigate]* **an agent or assignee of the federal, state or local governmental entity, law enforcement agency or court, for the purpose of investigating** fraud or *[acting to investigate or collect]* **investigating or collecting** delinquent taxes, *[or]* unpaid judgments or court orders or **acting otherwise** to fulfill *[their]* statutory or regulatory duties, *[provided such responsibilities]* **if the activities or statutory or regulatory duties** are consistent with a permissible purpose under section 604 of the federal Fair Credit Reporting Act (15 U.S.C. 1681b) as that Act existed on October 1, 2007[;].

[(4)] (d) The use of credit information for the purposes of prescreening *[as provided by]* **in accordance with** the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) as that Act existed on October 1, 2007[;].

[(5)] (e) Any person for the sole purpose of providing a credit file monitoring subscription service, or similar service to which the consumer **or protected consumer** has subscribed **or to which a representative has subscribed on behalf of the protected consumer**[;].

[(6)] (f) A consumer reporting agency for the sole purpose of providing a consumer, **a protected consumer or a representative** with a copy of the consumer's **or protected consumer's** consumer report upon the consumer's, **protected consumer's or representative's** request[;].

[(7)] (g) Any person or entity for the *[use]* **purpose** of setting or adjusting rates, for **handling** claims *[handling]* or underwriting for insurance purposes, to the extent permitted by law[;].

[(8)] (h) A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted under ORS 646A.608 (3) for purposes of facilitating the extension of credit or other permissible use[;].

[(9)] (i) A child support agency acting pursuant to Title IV-D of the Social Security Act (42 U.S.C. 651 et seq.) as that Act existed on October 1, 2007[; and].

[(10)] (j) A person for the sole purpose of screening an applicant for a residential dwelling unit as described in ORS 90.295 (1).

(2) The provisions of ORS 646A.606 to 646A.610 do not apply to a protective record used:

(a) By an entity listed in ORS 646A.618 (2); or

(b) For purposes other than an extension of credit, including:

(A) Compiling a criminal record;

(B) Detecting or preventing fraud;

(C) Compiling a personal loss history; or

(D) Screening an applicant for employment, tenancy or other background checking purposes.

SECTION 7. (1) The amendments to ORS 646A.602, 646A.606, 646A.608, 646A.610, 646A.612 and 646A.614 by sections 1 to 6 of this 2013 Act become operative 91 days after the effective date of this 2013 Act.

(2) The Director of the Department of Consumer and Business Services may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the director by the amendments to ORS 646A.602, 646A.606, 646A.608, 646A.610, 646A.612 and 646A.614 by sections 1 to 6 of this 2013 Act.

SECTION 8. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate April 24, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 3, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State