

The Legislature
of the
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 54

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR

HOUSE BILL 131

Introduced by



Chapter 54

AN ACT

1
2 RELATING TO CREDIT REPORTING; REQUIRING A CONSUMER REPORTING
3 AGENCY TO REMOVE INFORMATION CONTESTED BECAUSE OF IDENTITY
4 THEFT OR FALSE REPORTING; AMENDING AND ENACTING SECTIONS OF
5 THE NMSA 1978.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 Section 1. Section 56-3A-1 NMSA 1978 (being Laws 2007,
9 Chapter 106, Section 1) is amended to read:

10 "56-3A-1. SHORT TITLE.--Chapter 56, Article 3A NMSA
11 1978 may be cited as the "Fair Credit Reporting and Identity
12 Security Act"."

13 Section 2. Section 56-3A-2 NMSA 1978 (being Laws 2007,
14 Chapter 106, Section 2) is amended to read:

15 "56-3A-2. DEFINITIONS.--As used in the Fair Credit
16 Reporting and Identity Security Act:

17 A. "consumer" means an individual who is a
18 resident of New Mexico;

19 B. "consumer reporting agency" means any person
20 that, for monetary fees, dues or on a cooperative nonprofit
21 basis, regularly engages in the practice of assembling or
22 evaluating consumer credit information or other information on
23 consumers for the purpose of furnishing credit reports to
24 third parties;

25 C. "credit report" means a written, oral or other

1 communication of information by a consumer reporting agency
2 bearing on a consumer's credit worthiness, credit standing,
3 credit capacity, character, general reputation, personal
4 characteristics or mode of living that is used or expected to
5 be used or collected for the purpose of serving as a factor in
6 establishing the consumer's eligibility for credit, insurance,
7 investment, benefit, employment or other purpose as authorized
8 by the federal Fair Credit Reporting Act, 15 U.S.C. Section
9 1681a;

10 D. "declaration of removal" means an identity
11 theft report with a sworn affidavit that is delivered by
12 regular or certified mail or facsimile or delivered
13 electronically to a consumer reporting agency that operates
14 within New Mexico and which affidavit states:

15 (1) that the consumer is entitled to removal
16 of information in the consumer reporting agency's files on
17 grounds that the consumer is the victim of identity theft; and

18 (2) the address at which the consumer is
19 available for service of process by the consumer reporting
20 agency and proper identifying information by which the
21 consumer can be identified by the consumer reporting agency;

22 E. "person" means an individual, corporation,
23 firm, association, organization, trust, estate, cooperative,
24 business, partnership, limited liability company, joint
25 venture, governmental agency or subdivision or any legal or

1 commercial entity;

2 F. "security freeze" means a notice placed in a
3 consumer's credit report, at the request of the consumer and
4 subject to certain exceptions, that prohibits a consumer
5 reporting agency from releasing the consumer's credit report
6 or score relating to the extension of credit or the opening of
7 new accounts without the express authorization of the
8 consumer; and

9 G. "operates within New Mexico" means accepting or
10 maintaining a credit report on a person that resides within
11 New Mexico."

12 Section 3. A new section of the Fair Credit Reporting
13 and Identity Security Act is enacted to read:

14 "DECLARATION OF REMOVAL--PROCEDURES.--

15 A. A consumer may file a declaration of removal
16 with a consumer reporting agency operating within New Mexico
17 declaring that the consumer:

18 (1) is the victim of identity theft;

19 (2) is eligible for removal of information
20 reported to or by the consumer reporting agency on the basis
21 of identity theft;

22 (3) is available for service of process at a
23 conclusively valid designated address for at least thirty
24 days; and

25 (4) discloses proper identifying information

1 by which the consumer may be identified by the consumer
2 reporting agency.

3 B. The attorney general may publish a sample
4 declaration of removal in compliance with the applicable
5 requirements of Subsection A of this section. The declaration
6 of removal published by the attorney general is not required
7 to be used. A consumer may use other forms that serve the
8 same purpose and that are in compliance with the applicable
9 requirements of Subsection A of this section.

10 C. A consumer reporting agency shall make
11 available on a web site and on all credit reports of the
12 consumer reporting agency the means for contacting the
13 consumer reporting agency through a physical mailing address,
14 by telephone and facsimile, and through use of a web site and
15 an internet electronic mailing address. A consumer reporting
16 agency shall state on a web site and on all credit reports of
17 the consumer the methods for submitting a declaration of
18 removal.

19 D. Within five days of receiving a declaration of
20 removal and, if applicable, receipt of a fee as authorized in
21 Subsection I of Section 56-3A-3 NMSA 1978, a consumer
22 reporting agency shall remove from its files and credit
23 reports of the affected consumer the information that is the
24 subject of the declaration of removal and notify the consumer
25 once the removal is complete. A consumer reporting agency

1 shall not state on a credit report that information was
2 removed at the request of a declaration of removal and shall
3 not use that information to suggest or otherwise state or
4 imply to a third party that the affected consumer has a
5 negative credit score, history, report or rating.

6 E. A consumer reporting agency may restore the
7 information that was the subject of a declaration of removal
8 upon:

- 9 (1) request of the affected consumer; or
10 (2) a court order after the adjudication of
11 the alleged debt in the judicial district in which the
12 consumer resides."

13 Section 4. Section 56-3A-3 NMSA 1978 (being Laws 2007,
14 Chapter 106, Section 3) is amended to read:

15 "56-3A-3. SECURITY FREEZE.--

16 A. A consumer may elect to place a security freeze
17 on the consumer's credit report by making a request to a
18 consumer reporting agency by means of certified or regular
19 mail sent to an address designated by the consumer reporting
20 agency, or by means of a telephone or a secure electronic
21 method if such means are provided by the agency. A consumer
22 shall provide any personal identification required by the
23 consumer reporting agency and pay a fee, if applicable.

24 B. A consumer reporting agency shall place a
25 security freeze on a consumer's credit report no later than

1 three business days after receiving a request from the
2 consumer.

3 C. Within five business days of placing a security
4 freeze on a consumer's credit report, a consumer reporting
5 agency shall:

6 (1) send a written confirmation of the
7 security freeze to the consumer; and

8 (2) provide the consumer with a unique
9 personal identification number, password or similar device to
10 be used by the consumer when providing authorization for the
11 release of the consumer's credit report to a specific person
12 or for a specific period of time or for permanent removal of
13 the freeze.

14 D. While a security freeze is in effect, a
15 consumer may authorize a consumer reporting agency to release
16 the consumer's credit report to a specific person or to
17 release the credit report for a specific period of time by
18 contacting the consumer reporting agency by regular or
19 certified mail or by telephone, and as of September 1, 2008,
20 by contacting the consumer reporting agency by mail, by
21 telephone or by a secure electronic method, and providing:

22 (1) proper identification;

23 (2) the unique personal identification
24 number, password or similar device;

25 (3) information regarding the party that is

1 to have access to the credit report or the time period during
2 which the credit report can be released; and

3 (4) payment of a fee, if applicable.

4 E. A consumer reporting agency that receives a
5 request pursuant to Subsection D of this section shall release
6 a consumer's credit report as requested by the consumer within
7 three business days after the business day on which the
8 consumer's request by regular or certified mail or by
9 telephone is received by the consumer reporting agency. As of
10 September 1, 2008, a consumer reporting agency that receives a
11 request pursuant to Subsection D of this section shall release
12 a consumer's credit report as requested by the consumer within
13 fifteen minutes after the consumer's request is received by
14 the consumer reporting agency through the use of a telephone
15 or a secure electronic method provided by the agency, which
16 may include the use of the internet, facsimile or other
17 electronic means; provided that the consumer reporting agency
18 is not required to release the credit report within fifteen
19 minutes unless the consumer's request is received by the
20 consumer reporting agency between the hours of 6:00 a.m. and
21 9:30 p.m. mountain standard or mountain daylight time, as
22 applicable, Sunday through Saturday.

23 F. A consumer reporting agency need not release a
24 credit report within the time periods set forth in Subsection
25 E of this section if:

1 (1) the consumer fails to meet the
2 requirements of Subsection D of this section; or

3 (2) the consumer reporting agency's ability
4 to remove the security freeze within fifteen minutes is
5 prevented by:

6 (a) an act of God, including fire,
7 earthquake, hurricane, storm or similar natural disaster or
8 phenomenon;

9 (b) unauthorized or illegal acts by a
10 third party, including terrorism, sabotage, riots, vandalism,
11 labor strikes or disputes disrupting operations or similar
12 occurrences;

13 (c) operational interruption, including
14 electrical failure, unanticipated delay in equipment or
15 replacement part delivery, computer hardware or software
16 failure inhibiting response time or similar disruption;

17 (d) governmental action, including
18 emergency orders or regulations, judicial or law enforcement
19 actions or similar directives;

20 (e) regularly scheduled maintenance of,
21 or updates to, the consumer reporting agency's systems during
22 other than normal business hours; or

23 (f) commercially reasonable maintenance
24 of, or repair to, the consumer reporting agency's systems that
25 is unexpected or unscheduled.

1 G. If a consumer reporting agency erroneously
2 releases information on a credit report while a security
3 freeze is in effect and without a consumer's authorization, it
4 shall notify the consumer of the release of information within
5 five business days of the agency's discovery of the erroneous
6 release of information and inform the consumer of the specific
7 information released and the third party to whom it has been
8 released.

9 H. A security freeze shall remain in place until a
10 consumer requests its removal. A consumer reporting agency
11 shall remove the security freeze within three business days
12 after receiving a request from a consumer who provides the
13 unique personal identification number, password or similar
14 device and proper identification.

15 I. A consumer reporting agency may charge a
16 consumer a fee of no more than ten dollars (\$10.00) for the
17 placement of a security freeze or for processing a declaration
18 of removal. A consumer reporting agency may charge a fee of
19 no more than five dollars (\$5.00) for the release of a credit
20 report, upon which a security freeze has been placed, to a
21 specific person or for a specific period of time. A consumer
22 reporting agency may charge a fee of no more than five dollars
23 (\$5.00) for the removal of a security freeze or to change a
24 declaration of removal. A fee shall not be charged to a
25 consumer who is sixty-five years of age or older or to a

1 victim of identity theft who provides a valid police or
2 investigative report filed with a law enforcement agency
3 alleging the crime of identity theft. A consumer reporting
4 agency shall accept payment by check sent via regular or
5 certified mail and by debit or credit card via a secure
6 electronic method and telephone and shall accept automatic
7 clearinghouse and electronic fund transfer payments.

8 J. If a consumer's credit report was frozen due to
9 a material misrepresentation of fact by the consumer and a
10 consumer reporting agency intends to remove the freeze, the
11 consumer reporting agency shall notify the consumer in writing
12 five business days prior to removing the security freeze on
13 the consumer's credit report.

14 K. A consumer reporting agency may advise a third
15 party that a security freeze is in effect with respect to a
16 consumer's credit report. A consumer reporting agency shall
17 not suggest or otherwise state or imply to a third party that
18 the security freeze reflects a negative credit score, history,
19 report or rating.

20 L. The provisions of this section do not prevent a
21 consumer reporting agency from releasing a consumer's credit
22 report:

23 (1) to a person or the person's subsidiary,
24 affiliate, agent or assignee with which the consumer has or,
25 prior to assignment, had an account, contract or debtor-

1 creditor relationship for the purpose of reviewing the account
2 or collecting the financial obligation owing for the account,
3 contract or debt, or to a prospective assignee of a financial
4 obligation owing by the consumer in conjunction with the
5 proposed purchase of the financial obligation. As used in
6 this paragraph, "reviewing the account" includes activities
7 related to account maintenance, monitoring, credit line
8 increases and account upgrades and enhancements;

9 (2) to a subsidiary, affiliate, agent,
10 assignee or prospective assignee of a person to whom access
11 has been granted by the consumer pursuant to Subsection D of
12 this section for the purpose of facilitating the extension of
13 credit or other permissible use;

14 (3) to a person or entity administering a
15 credit file monitoring subscription service to which the
16 consumer has subscribed;

17 (4) to a person or entity for the purpose of
18 providing a consumer with a copy of the consumer's credit
19 report upon the consumer's request;

20 (5) to a person acting pursuant to a court
21 order, warrant or subpoena;

22 (6) to the child support enforcement
23 division of the human services department for the purpose of
24 carrying out its statutory duties of establishing and
25 collecting child support obligations;

1 (7) to a governmental agency acting to
2 investigate fraud, to investigate or collect delinquent taxes
3 or unpaid court orders or to fulfill any of its other
4 statutory duties;

5 (8) to a person for the purposes of
6 prescreening as defined by the federal Fair Credit Reporting
7 Act;

8 (9) from a consumer reporting agency's
9 database or file that consists only of and is used solely for
10 one or more of the following:

11 (a) criminal record information;

12 (b) tenant screening;

13 (c) employment screening; or

14 (d) fraud prevention or detection; or

15 (10) to a person or entity for use in
16 setting or adjusting an insurance rate, adjusting an insurance
17 claim or underwriting for insurance purposes.

18 M. The following entities are not required to
19 place a security freeze on a credit report:

20 (1) a consumer reporting agency that acts
21 only as a reseller of credit information by assembling and
22 merging information contained in the database of another
23 consumer reporting agency or multiple consumer credit
24 reporting agencies and does not maintain a permanent database
25 of credit information from which new consumer credit reports

1 are produced. However, a consumer reporting agency acting as
2 a reseller shall honor any security freeze placed on a
3 consumer credit report by another consumer reporting agency;

4 (2) a check services or fraud prevention
5 services company that issues reports on incidents of fraud or
6 authorizations for the purpose of approving or processing
7 negotiable instruments, electronic funds transfers or similar
8 methods of payment; or

9 (3) a deposit account information service
10 company that issues reports regarding account closures due to
11 fraud, substantial overdrafts, automatic teller machine abuse
12 or similar negative information regarding a consumer to
13 inquiring banks or other financial institutions for use only
14 in reviewing a consumer request for a deposit account at the
15 inquiring bank or financial institution."

16 Section 5. Section 56-3A-4 NMSA 1978 (being Laws 2007,
17 Chapter 106, Section 4) is amended to read:

18 "56-3A-4. NOTICE OF RIGHTS.--At any time that a
19 consumer reporting agency is required to provide the consumer
20 with a summary of rights pursuant to Section 609 of the
21 federal Fair Credit Reporting Act, the following notice shall
22 be included:

23 "New Mexico Consumers Have the
24 Right to Obtain a Security Freeze or
25 Submit a Declaration of Removal

1 You may obtain a security freeze on your
2 credit report to protect your privacy and ensure
3 that credit is not granted in your name without
4 your knowledge. You may submit a declaration of
5 removal to remove information placed in your credit
6 report as a result of being a victim of identity
7 theft. You have a right to place a security freeze
8 on your credit report or submit a declaration of
9 removal pursuant to the Fair Credit Reporting and
10 Identity Security Act.

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

15 The security freeze is designed to prevent
16 credit, loans and services from being approved in
17 your name without your consent. When you place a
18 security freeze on your credit report, you will be
19 provided with a personal identification number,
20 password or similar device to use if you choose to
21 remove the freeze on your credit report or to
22 temporarily authorize the release of your credit
23 report to a specific party or parties or for a
24 specific period of time after the freeze is in
25 place. To remove the freeze or to provide

1 authorization for the temporary release of your
2 credit report, you must contact the consumer
3 reporting agency and provide all of the following:

4 (1) the unique personal identification
5 number, password or similar device provided by the
6 consumer reporting agency;

7 (2) proper identification to verify
8 your identity;

9 (3) information regarding the third
10 party or parties who are to receive the credit
11 report or the period of time for which the credit
12 report may be released to users of the credit
13 report; and

14 (4) payment of a fee, if applicable.

15 A consumer reporting agency that receives a
16 request from a consumer to lift temporarily a
17 freeze on a credit report shall comply with the
18 request no later than three business days after
19 receiving the request. As of September 1, 2008, a
20 consumer reporting agency shall comply with the
21 request within fifteen minutes of receiving the
22 request by a secure electronic method or by
23 telephone.

24 A security freeze does not apply in all
25 circumstances, such as where you have an existing

1 account relationship and a copy of your credit
2 report is requested by your existing creditor or
3 its agents for certain types of account review,
4 collection, fraud control or similar activities;
5 for use in setting or adjusting an insurance rate
6 or claim or insurance underwriting; for certain
7 governmental purposes; and for purposes of
8 prescreening as defined in the federal Fair Credit
9 Reporting Act.

10 If you are actively seeking a new credit,
11 loan, utility, telephone or insurance account, you
12 should understand that the procedures involved in
13 lifting a security freeze may slow your own
14 applications for credit. You should plan ahead and
15 lift a freeze, either completely if you are
16 shopping around or specifically for a certain
17 creditor, with enough advance notice before you
18 apply for new credit for the lifting to take
19 effect. You should contact a consumer reporting
20 agency and request it to lift the freeze at least
21 three business days before applying. As of
22 September 1, 2008, if you contact a consumer
23 reporting agency by a secure electronic method or
24 by telephone, the consumer reporting agency should
25 lift the freeze within fifteen minutes. You have a

1 right to bring a civil action against a consumer
2 reporting agency that violates your rights under
3 the Fair Credit Reporting and Identity Security
4 Act".

5 Section 6. Section 56-3A-5 NMSA 1978 (being Laws 2007,
6 Chapter 106, Section 5) is amended to read:

7 "56-3A-5. VIOLATIONS--CIVIL LIABILITY.--If a consumer
8 reporting agency violates the provisions of the Fair Credit
9 Reporting and Identity Security Act, the affected consumer or
10 the attorney general may bring a civil action against the
11 consumer reporting agency for:

12 A. injunctive relief to prevent further violation
13 of the Fair Credit Reporting and Identity Security Act;

14 B. any actual damages sustained by the consumer as
15 a result of a violation of the Fair Credit Reporting and
16 Identity Security Act;

17 C. a civil penalty in an amount not to exceed two
18 thousand dollars (\$2,000) for each violation of the security
19 freeze or each violation of the provisions of Subsection D of
20 Section 3 of this 2010 act; and

21 D. costs of the action and reasonable attorney
22 fees."

23 Section 7. Section 56-3A-6 NMSA 1978 (being Laws 2007,
24 Chapter 106, Section 6) is amended to read:

25 "56-3A-6. SEVERABILITY.--If any part or application of

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the Fair Credit Reporting and Identity Security Act is held
invalid, the remainder or its application to other persons or
situations shall not be affected." _____



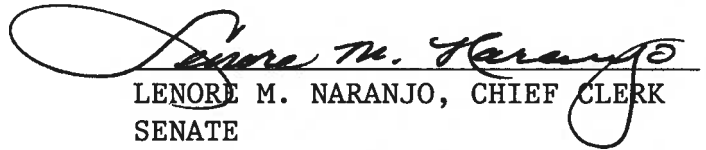
BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT
SENATE



LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 8th day of March, 2010



BILL RICHARDSON, GOVERNOR
STATE OF NEW MEXICO

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