

SENATE FILE NO. SF0053

Credit freeze reports.

Sponsored by: Senator(s) Case, Cooper, Decaria, Massie and Meier and Representative(s) Brown, Illoway, Martin and Simpson

A BILL

for

1 AN ACT relating to consumer protection; providing for
2 notice to consumers affected by breaches of consumer
3 information databases as specified; authorizing consumers
4 to prohibit release of information maintained by credit
5 rating agencies as specified; providing definitions;
6 providing exceptions; and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 40-12-501 through 40-12-509 are
11 created to read:

12

13

ARTICLE 5

14

CREDIT FREEZE REPORTS

15

16 **40-12-501. Definitions.**

1

2 (a) As used in this act:

3

4 (i) "Breach of the security of the data system"
5 means unauthorized acquisition of computerized data that
6 materially compromises the security, confidentiality or
7 integrity of personal identifying information maintained by
8 a person or business and causes or is reasonably believed
9 to cause loss or injury to a resident of this state. Good
10 faith acquisition of personal identifying information by an
11 employee or agent of a person or business for the purposes
12 of the person or business is not a breach of the security
13 of the data system, provided that the personal identifying
14 information is not used or subject to further unauthorized
15 disclosure;

16

17 (ii) "Consumer" means any person who is
18 utilizing or seeking credit for personal, family or
19 household purposes;

20

21 (iii) "Consumer reporting agency" means any
22 person whose business is the assembling and evaluating of
23 information as to the credit standing and credit worthiness

1 of a consumer, for the purposes of furnishing credit
2 reports, for monetary fees and dues to third parties;

3

4 (iv) "Credit report" means any written or oral
5 report, recommendation or representation of a consumer
6 reporting agency as to the credit worthiness, credit
7 standing or credit capacity of any consumer and includes
8 any information which is sought or given for the purpose of
9 serving as the basis for determining eligibility for credit
10 to be used primarily for personal, family or household
11 purposes;

12

13 (v) "Creditor" means the lender of money or
14 vendor of goods, services or property, including a lessor
15 under a lease intended as a security, rights or privileges,
16 for which payment is arranged through a credit transaction,
17 or any successor to the right, title or interest of any
18 such lender or vendor, and an affiliate, associate or
19 subsidiary of any of them or any director, officer or
20 employee of any of them or any other person in any way
21 associated with any of them;

22

23 (vi) "Personal identifying information" means
24 the name, address, telephone number, driver's license

1 number, social security number, place of employment,
2 employee identification number, tribal identification card
3 number, mother's maiden name, demand deposit account
4 number, savings account number or credit card number of an
5 individual person;

6

7 (vii) "Security freeze" means a notice placed in
8 a consumer's credit report, at the request of the consumer,
9 that prohibits the credit rating agency from releasing the
10 consumer's credit report or any information from it without
11 the express authorization of the consumer;

12

13 (viii) "Substitute notice" means:

14

15 (A) An electronic mail notice when the
16 person or business has an electronic mail address for the
17 subject persons;

18

19 (B) Conspicuous posting of the notice on
20 the website page of the person or business if the person or
21 business maintains one; or

22

23 (C) Publication in applicable local or
24 statewide media.

1

2 (ix) "This act" means W.S. 40-12-501 through
3 40-12-511.

4

5 **40-12-502. Computer security breach; notice to**
6 **affected persons.**

7

8 (a) Except as provided in subsection (b) of this
9 section, any person that owns or uses personal information
10 for commercial or governmental purposes, in any form,
11 whether computerized, paper or otherwise, that includes
12 personal information concerning a Wyoming resident shall
13 notify the resident that there has been a breach of the
14 security of the data following discovery or notification of
15 the breach. The disclosure notification shall be made
16 within one (1) business day, consistent with the legitimate
17 needs of law enforcement, as provided in subsection (b) of
18 this section or with any measures necessary to determine
19 the scope of the breach and restore the reasonable
20 integrity, security and confidentiality of the data system.

21

22 (b) The notification required by this section may be
23 delayed if a law enforcement agency determines in writing

1 that the notification may seriously impede a criminal
2 investigation.

3

4 (c) For purposes of this section, notice to consumers
5 may be provided by one (1) of the following methods:

6

7 (i) Written notice;

8

9 (ii) Electronic notice, if the notice provided
10 is consistent with the provisions regarding electronic
11 records and signatures, for notices legally required to be
12 in writing, set forth in 15 U.S.C. § 7001;

13

14 (iii) Substitute notice, if the person
15 demonstrates that the cost of providing notice would exceed
16 ten thousand dollars (\$10,000.00) for Wyoming-based persons
17 or businesses, and two hundred fifty thousand dollars
18 (\$250,000.00) for all other businesses operating but not
19 based in Wyoming or that the affected class of subject
20 persons to be notified exceeds ten thousand (10,000) for
21 Wyoming-based persons or businesses and five hundred
22 thousand (500,000) for all other businesses operating but
23 not based in Wyoming or the person does not have sufficient

1 contact information. Substitute notice shall consist of
2 all of the following:

3

4 (A) Conspicuous posting of the notice on
5 the Internet, the World Wide Web or a similar proprietary
6 or common carrier electronic system site of the person
7 collecting the data, if the person maintains a public
8 Internet, the World Wide Web or a similar proprietary or
9 common carrier electronic system site; and

10

11 (B) Notification to major statewide media.
12 The notice to media shall include a toll-free phone number
13 where an individual can learn whether or not that
14 individual's personal data is included in the security
15 breach.

16

17 (d) Notice required under subsection (a) of this
18 section shall include:

19

20 (i) To the extent possible, a description of the
21 categories of information that was, or is reasonably
22 believed to have been, acquired by an unauthorized person,
23 including social security numbers, driver's license or
24 state identification numbers and financial data;

1

2 (ii) A toll-free number:

3

4 (A) That the individual may use to contact
5 the person collecting the data, or his agent; and

6

7 (B) From which the individual may learn:

8

9 (I) What types of information the
10 person collecting the data maintained about that individual
11 or about individuals in general;

12

13 (II) Whether or not the person
14 collecting the data maintained information about that
15 individual; and

16

17 (III) The toll-free contact telephone
18 numbers and addresses for the major credit reporting
19 agencies.

20

21 (e) A person required to provide notification under
22 subsection (a) of this section who fails to provide
23 notification under this section may be liable in a civil
24 action for:

1

2 (i) A civil penalty in an amount not to exceed
3 five thousand dollars (\$5,000.00) for each violation plus
4 any damages available under other civil laws; and

5

6 (ii) Reasonable expenses, court costs,
7 investigative costs and attorney's fees.

8

9 **40-12-503. Security freeze.**

10

11 (a) Except as provided in W.S. 40-12-505, a consumer
12 may place a security freeze on the consumer's credit report
13 by:

14

15 (i) Making a request to a consumer reporting
16 agency in writing by certified mail; and

17

18 (ii) Providing proper identification.

19

20 (b) If a security freeze is in place, a consumer
21 reporting agency may not release a consumer's credit report
22 or information from the credit report to a third party that
23 intends to use the information to determine a consumer's

1 eligibility for credit without prior authorization from the
2 consumer.

3

4 (c) Notwithstanding subsection (b) of this section, a
5 consumer reporting agency may communicate to a third party
6 requesting a consumer's credit report that a security
7 freeze is in effect on the consumer's credit report. If a
8 third party requesting a consumer's credit report in
9 connection with the consumer's application for credit is
10 notified of the existence of a security freeze under this
11 subsection, the third party may treat the consumer's
12 application as incomplete.

13

14 (d) Upon receiving a request from a consumer under
15 subsection (a) of this section, the consumer reporting
16 agency shall:

17

18 (i) Place a security freeze on the consumer's
19 credit report within five (5) business days after receiving
20 the consumer's request;

21

22 (ii) Send a written confirmation of the security
23 freeze to the consumer within ten (10) business days after
24 placing the security freeze; and

1

2 (iii) Provide the consumer with a unique
3 personal identification number or password to be used by
4 the consumer when providing authorizations for removal or
5 temporary removal of the security freeze.

6

7 (e) A consumer reporting agency shall require proper
8 identification of the consumer requesting to place, remove,
9 or temporarily remove a security freeze.

10

11 (f) A consumer reporting agency shall develop a
12 contact method to receive and process a consumer's request
13 to place, remove or temporarily remove a security freeze.
14 The contact method shall include:

15

16 (i) A postal address;

17

18 (ii) An electronic contact method chosen by the
19 consumer reporting agency, which may include the use of
20 fax, Internet or other electronic means; and

21

22 (iii) The use of telephone in a manner that is
23 consistent with any federal requirements placed on the
24 consumer reporting agency.

1

2 (g) A security freeze placed under this section may
3 be removed only in accordance with W.S. 40-12-504.

4

5 **40-12-504. Removal of security freeze; requirements**
6 **and timing.**

7

8 (a) A consumer reporting agency may remove a security
9 freeze from a consumer's credit report only if:

10

11 (i) The consumer makes a material
12 misrepresentation of fact in connection with the placement
13 of the security freeze and the consumer reporting agency
14 notifies the consumer in writing before removing the
15 security freeze; or

16

17 (ii) The consumer reporting agency receives the
18 consumer's request through a contact method established and
19 required in accordance with section, the consumer reporting
20 agency receives the consumer's proper identification and:

21

22 (A) Other information sufficient to
23 identify the consumer; or

24

1 (B) The consumer provides the consumer's
2 personal identification number or password.

3

4 (b) A consumer reporting agency shall temporarily
5 remove a security freeze upon receipt of:

6

7 (i) The consumer's request through the contact
8 method established by the consumer reporting agency;

9

10 (ii) The consumer's proper identification and
11 other information sufficient to identify the consumer or
12 the consumer's personal identification number or password;

13

14 (iii) A specific designation of the period of
15 time for which the security freeze is to be removed; and

16

17 (iv) The consumer reporting agency receives the
18 payment of any fee required under W.S. 40-12-506.

19

20 (c) A consumer reporting agency shall remove a
21 security freeze from a consumer's credit report within:

22

23 (i) Three (3) business days after the business
24 day on which the consumer's written request to remove the

1 security freeze is received by the consumer reporting
2 agency at the postal address chosen by the consumer
3 reporting agency; or

4

5 (ii) Fifteen (15) minutes after the consumer's
6 request is received by the consumer reporting agency
7 through the electronic contact method chosen by the
8 consumer reporting agency or the use of telephone, during
9 normal business hours and includes the consumer's proper
10 identification and correct personal identification number
11 or password.

12

13 (d) A consumer reporting agency need not remove a
14 security freeze within the time provided in subsection (c)
15 of this section if:

16

17 (i) The consumer fails to meet the requirements
18 of subsection (b) of this section; or

19

20 (ii) The consumer reporting agency's ability to
21 remove the security freeze within fifteen (15) minutes is
22 prevented by:

23

1 (A) An act of God, including fire,
2 earthquakes, hurricanes, storms or similar natural disaster
3 or phenomena;

4
5 (B) Unauthorized or illegal acts by a third
6 party, including terrorism, sabotage, riot, vandalism,
7 labor strikes or disputes disrupting operations or similar
8 occurrence;

9
10 (C) Operational interruption, including
11 electrical failure, unanticipated delay in equipment or
12 replacement part delivery, computer hardware or software
13 failures inhibiting response time or similar disruption;

14
15 (D) Governmental action, including
16 emergency orders or regulations, judicial or law
17 enforcement action or similar directives;

18
19 (E) Regularly scheduled maintenance, during
20 other than normal business hours, of, or updates to, the
21 consumer reporting agency's systems;

22

1 (F) Commercially reasonable maintenance of,
2 or repair to, the consumer reporting agency's systems that
3 is unexpected or unscheduled; or

4

5 (G) Receipt of a removal request outside of
6 normal business hours.

7

8 **40-12-505. Exceptions.**

9

10 (a) Notwithstanding W.S. 40-12-503, a consumer
11 reporting agency may furnish a consumer's credit report to
12 a third party if:

13

14 (i) The purpose of the credit report is to:

15

16 (A) Use the credit report for purposes
17 permitted under 15 U.S.C. § 1681b(c);

18

19 (B) Review the consumer's account with the
20 third party, including for account maintenance or
21 monitoring, credit line increases or other upgrades or
22 enhancements;

23

1 (C) Collect on a financial obligation owed
2 by the consumer to the third party requesting the credit
3 report;

4
5 (D) Review the consumer's account with
6 another person;

7
8 (E) Collect on a financial obligation owed
9 by the consumer to another person; or

10

11 (F) The third party requesting the credit
12 report is a subsidiary, affiliate, agent, assignee or
13 prospective assignee of the person holding the consumer's
14 account or to whom the consumer owes a financial
15 obligation.

16

17 (b) The consumer's request for a security freeze does
18 not prohibit the consumer reporting agency from disclosing
19 the consumer's credit report for other than credit related
20 purposes consistent with the definition of credit report in
21 W.S. 40-12-501(a).

22

1 (c) The following types of credit report disclosures
2 by consumer reporting agencies to third parties are not
3 prohibited by a security freeze:

4

5 (i) The third party does not use the credit
6 report for the purpose of serving as a factor in
7 establishing a consumer's eligibility for credit;

8

9 (ii) The release is pursuant to a court order,
10 warrant or subpoena requiring release of the credit report
11 by the consumer reporting agency;

12

13 (iii) The third party is a child support agency,
14 or its agent or assignee, acting under Part D, Title IV of
15 the Social Security Act or a similar state law;

16

17 (iv) The third party is the federal department
18 of health and human services or a similar state agency, or
19 its agent or assignee, investigating Medicare or Medicaid
20 fraud;

21

22 (v) The purpose of the credit report is to
23 investigate or collect delinquent taxes, assessments or
24 unpaid court orders and the third party is:

1

2

(A) The federal internal revenue service;

3

4

(B) A state taxing authority;

5

6

(C) The department of transportation,
7 division of motor vehicles;

8

9

(D) A county, municipality, or other entity
10 with taxing authority;

11

12

(E) A federal, state or local law
13 enforcement agency; or

14

15

(F) The agent or assignee of any entity
16 listed in this paragraph.

17

18

(vi) The third party is administering a credit
19 file monitoring subscription to which the consumer has
20 subscribed; or

21

22

(vii) The third party requests the credit report
23 for the sole purpose of providing the consumer with a copy

1 of the consumer's credit report or credit score upon the
2 consumer's request.

3

4 (d) The security freeze provisions of W.S. 40-12-503
5 do not apply to:

6

7 (i) A consumer reporting agency, the sole
8 purpose of which is to resell credit information by
9 assembling and merging information contained in the
10 database of another consumer reporting agency and that does
11 not maintain a permanent database of credit information
12 from which a consumer's credit report is produced;

13

14 (ii) A deposit account information service
15 company that issues reports concerning account closures
16 based on fraud, substantial overdrafts, automated teller
17 machine abuse or similar information concerning a consumer
18 to a requesting financial institution for the purpose of
19 evaluating a consumer's request to create a deposit
20 account; or

21

22 (iii) A check services or fraud prevention
23 services company that issues:

24

1 (A) Reports on incidents of fraud; or

2

3 (B) Authorizations for the purpose of
4 approving or processing negotiable instruments, electronic
5 funds transfers or similar methods of payment.

6

7 (iv) A consumer reporting agency, with respect
8 to its database of files that consist entirely of public
9 records and is used solely for one (1) or more of the
10 following:

11

12 (A) Criminal record information;

13

14 (B) Tenant screening;

15

16 (C) Employment screening; or

17

18 (D) Fraud prevention or detection.

19

20 (e) Nothing in this article prohibits a person from
21 obtaining, aggregating or using information lawfully
22 obtained from public records in a manner that does not
23 otherwise violate this article.

24

1 **40-12-506. Fees for security freeze.**

2

3 (a) Except as provided in subsection (b) of this
4 section, a consumer reporting agency may charge a
5 reasonable fee not to exceed five dollars (\$5.00) to a
6 consumer for placing and removing a security freeze.

7

8 (b) A consumer reporting agency may not charge a fee
9 for placing or removing a security freeze if:

10

11 (i) The consumer is a victim of identity theft
12 as defined by W.S. 6-3-901; and

13

14 (ii) The consumer provides the consumer
15 reporting agency with a valid copy of a police report or
16 police case number documenting the identity fraud.

17

18 **40-12-507. Changes to information in a credit report**
19 **subject to a security freeze.**

20

21 (a) If a credit report is subject to a security
22 freeze, a consumer reporting agency shall notify the
23 consumer who is the subject of the credit report within

1 thirty (30) days if the consumer reporting agency changes
2 their information concerning the consumer's:

3

4 (i) Name;

5

6 (ii) Date of birth;

7

8 (iii) Social security number; or

9

10 (iv) Address.

11

12 (b) Notwithstanding subsection (a) of this section, a
13 consumer reporting agency may make technical modifications
14 to information in a credit report that is subject to a
15 security freeze without providing notification to the
16 consumer. Technical modifications under this subsection
17 include:

18

19 (i) The addition or subtraction of abbreviations
20 to names and addresses; and

21

22 (ii) Transpositions or corrections of incorrect
23 numbering or spelling.

24

1 (c) When providing notice of a change of address
2 under subsection (a) of this section, the consumer
3 reporting agency shall provide notice to the consumer at
4 both the new address and the former address.

5

6 **40-12-508. Violations; penalties.**

7

8 (a) If a consumer reporting agency erroneously,
9 whether by accident or design, violates a valid security
10 freeze by releasing credit information that has been placed
11 under a security freeze, the affected consumer is entitled
12 to:

13

14 (i) Notification within five (5) business days
15 of the release of the information, including specificity as
16 to the information released and the third party recipient
17 of the information;

18

19 (ii) Notification that the consumer may file a
20 complaint with the federal trade commission and the state
21 attorney general.

22

23 (b) If a consumer reporting agency erroneously,
24 whether by accident or design, violates a valid security

1 freeze by releasing credit information that has been placed
2 under a security freeze and fails to take steps to correct
3 the release and fails to give the notification required
4 under subsection (a) of this section, the affected consumer
5 is entitled to, in a civil action against the consumer
6 reporting agency, recover:

7

8 (i) Injunctive relief to prevent or restrain
9 further violation of the security freeze;

10

11 (ii) A civil penalty in an amount not to exceed
12 five thousand dollars (\$5,000.00) for each violation plus
13 any damages available under other civil laws; and

14

15 (iii) Reasonable expenses, court costs,
16 investigative costs and attorney's fees.

17

18 (c) Each violation of the security freeze shall be
19 counted as a separate incident for purposes of imposing
20 penalties under this section.

21

22 **40-12-509. Factual declaration of innocence after**
23 **identity theft.**

24

1 (a) A person who reasonably believes that he or she
2 is the victim of identity theft as defined by W.S. 6-3-901
3 may petition a court, or the court, on its own motion or
4 upon application of the prosecuting attorney, may move for
5 an expedited judicial determination of his or her factual
6 innocence, where the perpetrator of the identity theft was
7 arrested for, cited for or convicted of a crime under the
8 victim's identity, or where a criminal complaint has been
9 filed against the perpetrator in the victim's name, or
10 where the victim's identity has been mistakenly associated
11 with a record of criminal conviction. Any judicial
12 determination of factual innocence made pursuant to this
13 section may be heard and determined upon declarations,
14 affidavits, police reports or other material, relevant and
15 reliable information submitted by the parties or ordered to
16 be part of the record by the court. Where the court
17 determines that the petition or motion is meritorious and
18 that there is no reasonable cause to believe that the
19 victim committed the offense for which the perpetrator of
20 the identity theft was arrested, cited, convicted or
21 subject to a criminal complaint in the victim's name, or
22 that the victim's identity has been mistakenly associated
23 with a record of criminal conviction, the court shall find
24 the victim factually innocent of that offense. If the

1 victim is found factually innocent, the court shall issue
2 an order certifying this determination.

3

4 (b) After a court has issued a determination of
5 factual innocence pursuant to subsection (a) of this
6 section, the court may order the name and associated
7 personal identifying information contained in court
8 records, files and indexes accessible by the public
9 deleted, sealed or labeled to show that the data is
10 impersonated and does not reflect the defendant's identity.

11

12 (c) Upon making a determination of factual innocence,
13 the court shall provide the consumer written documentation
14 of the order.

15

16 (d) A court that has issued a determination of
17 factual innocence pursuant to this section may at any time
18 vacate that determination if the petition, or any
19 information submitted in support of the petition, is found
20 to contain any material misrepresentation or fraud.

21

22 (e) The supreme court shall develop a form for use in
23 issuing an order pursuant to this section.

24

1 (f) The attorney general shall establish and maintain
2 a data base of individuals who have been victims of
3 identity theft and that have received determinations of
4 factual innocence. The attorney general shall provide a
5 victim of identity theft or his authorized representative
6 access to the database in order to establish that the
7 individual has been a victim of identity theft. Access to
8 the database shall be limited to criminal justice agencies,
9 victims of identity theft and individuals and agencies
10 authorized by the victims.

11

12 (g) The attorney general shall establish and maintain
13 a toll free number to provide access to information under
14 subsection (f) of this section.

15

16 (h) In order for a victim of identity theft to be
17 included in the database established pursuant to subsection
18 (f) of this section, he shall submit to the attorney
19 general a court order obtained pursuant to this section, a
20 full set of fingerprints and any other information
21 prescribed by the attorney general.

22

23 (j) Upon receiving information pursuant to subsection
24 (h) of this section, the attorney general shall verify the

1 identity of the victim against any driver's license or
2 other identification record maintained by the department of
3 transportation, division of motor vehicles.

4

5 **Section 2.** This act is effective July 1, 2007.

6

7

(END)