

## SB0054S01 compared with SB0054

~~text~~ shows text that was in SB0054 but was deleted in SB0054S01.

text shows text that was not in SB0054 but was inserted into SB0054S01.

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Representative Rich Cunningham proposes the following substitute bill:

### CREDIT MONITORING FOR MINORS

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Aaron Osmond**

House Sponsor: ~~\_\_\_\_\_~~ Rich Cunningham

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#### LONG TITLE

##### General Description:

This bill modifies and enacts provisions of the Consumer Credit Protection Act relating to certain minors, incapacitated adults, and protected persons.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ upon request and in accordance with the provisions of this bill, requires a credit reporting agency to place a security freeze for:
  - an individual who is less than 16 years of age;
  - an incapacitated adult; or
  - a protected person;
- ▶ provides a procedure by which an individual or an individual's representative may

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remove a security freeze;

- ▶ allows, under certain circumstances, a credit reporting agency to charge a reasonable fee for the placement or removal of a security freeze;
- ▶ provides that the attorney general may enforce the provisions of this bill; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

**13-45-102**, as enacted by Laws of Utah 2006, Chapter 344

**13-45-201**, as enacted by Laws of Utah 2006, Chapter 344

**13-45-202**, as enacted by Laws of Utah 2006, Chapter 344

**13-45-401**, as enacted by Laws of Utah 2006, Chapter 344

ENACTS:

**13-45-501**, Utah Code Annotated 1953

**13-45-502**, Utah Code Annotated 1953

**13-45-503**, Utah Code Annotated 1953

**13-45-504**, Utah Code Annotated 1953

**13-45-505**, Utah Code Annotated 1953

**13-45-506**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **13-45-102** is amended to read:

**13-45-102. Definitions.**

As used in this chapter:

(1) "Consumer" means ~~[a natural person]~~ an individual who is not a protected consumer.

(2) "Consumer reporting agency" means a person who, for fees, dues, or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or

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evaluating information concerning a consumer's credit or other information for the purpose of furnishing a credit report to another person.

(3) "Consumer who is subject to a protected consumer security freeze" means an individual:

(a) for whom a credit reporting agency placed a security freeze under Section 13-45-503; and

(b) who, on the day on which a request for the removal of the security freeze is submitted under Section 13-45-504, is not a protected consumer.

~~[(3)]~~ (4) "Credit report" means a consumer report, as defined in 15 U.S.C. Sec. 1681a, that is used or collected in whole or part for the purpose of serving as a factor in establishing a consumer's eligibility for credit for personal, family, or household purposes.

(5) "File" is as defined in 15 U.S.C. Sec. 1681a.

(6) "Incapacitated person" means an individual who is incapacitated, as defined in Section 75-1-201.

~~[(4)]~~ (7) "Normal business hours" means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m., Mountain Standard or Mountain Daylight Time.

~~[(5)]~~ (8) (a) "Personal information" means personally identifiable financial information:

(i) provided by a consumer to another person;

(ii) resulting from any transaction with the consumer or any service performed for the consumer; or

(iii) otherwise obtained by another person.

(b) "Personal information" does not include:

(i) publicly available information, as that term is defined by the regulations prescribed under 15 U.S.C. Sec. 6804; or

(ii) any list, description, or other grouping of consumers, and publicly available information pertaining to the consumers, that is derived without using any nonpublic personal information.

(c) Notwithstanding Subsection ~~[(5)]~~ (8)(b), "personal information" includes any list, description, or other grouping of consumers, and publicly available information pertaining to the consumers, that is derived using any nonpublic personal information other than publicly

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available information.

~~[(6)]~~ (9) "Proper identification" has the same meaning as in 15 U.S.C. Sec.

1681h(a)(1), and includes:

(a) the consumer's full name, including first, last, and middle names and any suffix;

(b) any name the consumer previously used;

(c) the consumer's current and recent full addresses, including street address, any apartment number, city, state, and ZIP code;

(d) the consumer's ~~{social security}~~ Social Security number; and

(e) the consumer's date of birth.

~~[(7) "Security freeze" means a prohibition, consistent with Section 13-45-201, on a consumer reporting agency's furnishing of a consumer's credit report to a third party intending to use the credit report to determine the consumer's eligibility for credit.]~~

(10) "Protected consumer" means an individual who, at the time a request for a security freeze is made, is:

(a) less than 16 years of age;

(b) an incapacitated person; or

(c) a protected person.

(11) "Protected person" means the same as that term is defined in Section 75-5b-102.

(12) "Record" means a compilation of information that:

(a) identifies a protected consumer;

(b) is created by a consumer reporting agency solely for the purpose of complying with this section; and

(c) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(13) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(14) (a) "Sufficient proof of authority" means documentation that shows that a person has authority to act on behalf of a protected consumer.

(b) "Sufficient proof of authority" includes:

(i) a court order;

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(ii) a lawfully executed power of attorney; or

(iii) a written, notarized statement signed by the person that expressly describes the person's authority to act on behalf of the protected consumer.

(15) (a) "Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative.

(b) "Sufficient proof of identification" includes:

(i) a Social Security number or a copy of a Social Security card issued by the United States Social Security Administration;

(ii) a certified or official copy of a birth certificate; or

(iii) a copy of a government issued driver license or identification card.

Section 2. Section **13-45-201** is amended to read:

### **13-45-201. Security freeze.**

(1) As used in this part, "security freeze" means a prohibition, consistent with the provisions of this section, on a consumer reporting agency's furnishing of a consumer's credit report to a third party intending to use the credit report to determine the consumer's eligibility for credit.

~~[(1)]~~ (2) A consumer may place a security freeze on the consumer's credit report by:

(a) making a request to a consumer reporting agency in writing by certified mail;

(b) providing proper identification; and

(c) paying the fee required by the consumer reporting agency in accordance with

Section 13-45-204.

~~[(2)]~~ (3) If a security freeze is in place, a consumer reporting agency may not release a consumer's credit report, or information from the credit report, to a third party that intends to use the information to determine a consumer's eligibility for credit without prior authorization from the consumer.

~~[(3)]~~ (4) (a) Notwithstanding Subsection ~~[(2)]~~ (3), a consumer reporting agency may communicate to a third party requesting a consumer's credit report that a security freeze is in effect on the consumer's credit report.

(b) If a third party requesting a consumer's credit report in connection with the consumer's application for credit is notified of the existence of a security freeze under Subsection ~~[(3)]~~ (4)(a), the third party may treat the consumer's application as incomplete.

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~~[(4)]~~ (5) Upon receiving a request from a consumer under Subsection ~~[(1)]~~ (2), the consumer reporting agency shall:

(a) place a security freeze on the consumer's credit report within five business days after receiving the consumer's request;

(b) send a written confirmation of the security freeze to the consumer within 10 business days after placing the security freeze; and

(c) provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorizations for removal or temporary removal of the security freeze under Section 13-45-202.

~~[(5)]~~ (6) A consumer reporting agency shall require proper identification of the consumer requesting to place, remove, or temporarily remove a security freeze.

~~[(6)]~~ (7) (a) A consumer reporting agency shall develop a contact method to receive and process a consumer's request to place, remove, or temporarily remove a security freeze.

(b) A contact method under Subsection ~~[(6)]~~ (7)(a) shall include:

(i) a postal address;

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

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

~~[(7)]~~ (8) A security freeze placed under this section may be removed only in accordance with Section 13-45-202.

Section 3. Section **13-45-202** is amended to read:

### **13-45-202. Removal of security freeze -- Requirements and timing.**

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

(a) (i) the consumer reporting agency receives the consumer's request through a contact method established and required in accordance with Subsection 13-45-201~~[(6)]~~(7); and

(ii) the consumer reporting agency receives the consumer's proper identification and:

(A) other information sufficient to identify the consumer; or

(B) the consumer provides the consumer's personal identification number or password;

or

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(b) the consumer makes a material misrepresentation of fact in connection with the placement of the security freeze and the consumer reporting agency notifies the consumer in writing before removing the security freeze.

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

(i) the consumer's request through the contact method established by the consumer reporting agency in accordance with Subsection 13-45-201~~(6)~~(7);

(ii) the consumer's proper identification and:

(A) other information sufficient to identify the consumer; or

(B) personal identification number or password;

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

(iv) the consumer reporting agency receives the payment of any fee required under Section 13-45-204.

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

(i) three business days after the business day on which the consumer's written request to remove the security freeze is received by the consumer reporting agency at the postal address chosen by the consumer reporting agency in accordance with Subsection 13-45-201~~(6)~~(7); or

(ii) 15 minutes after the consumer's request is received by the consumer reporting agency through the electronic contact method chosen by the consumer reporting agency in accordance with Subsection 13-45-201~~(6)~~(7), or the use of telephone, during normal business hours and includes the consumer's proper identification and correct personal identification number or password.

(3) A consumer reporting agency need not remove a security freeze within the time provided in Subsection (2)(b)(ii) if:

(a) the consumer fails to meet the requirements of Subsection 13-45-202(1); or

(b) the consumer reporting agency's ability to remove the security freeze within 15 minutes is prevented by:

(i) an act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena;

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

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

(iv) governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

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

(vi) commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or

(vii) receipt of a removal request outside of normal business hours.

Section 4. Section **13-45-401** is amended to read:

### **13-45-401. Enforcement.**

(1) The attorney general may enforce [~~this chapter's provisions~~] the provisions of this chapter.

(2) A person who violates [~~this chapter's provisions~~] a provision of Section 13-45-201, 13-45-202, 13-45-203, 13-45-204, 13-45-205, or 13-45-301 is subject to a civil fine of:

(a) no greater than \$2,500 for a violation or series of violations concerning a specific consumer; and

(b) no greater than \$100,000 in the aggregate for related violations concerning more than one consumer.

(3) In addition to the penalties provided in Subsection (2), the attorney general may seek injunctive relief to prevent future violations of this chapter in:

(a) the district court located in Salt Lake City; or

(b) the district court for the district in which resides a consumer who is the subject of a credit report on which a violation occurs.

Section 5. Section **13-45-501** is enacted to read:

### **Part 5. Credit Report Protection for Minors**

#### **13-45-501. Title.**

This part is known as "Credit Report Protection for Minors."



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Section 6. Section **13-45-502** is enacted to read:

### **13-45-502. Definition.**

As used in this part, "security freeze" means:

(1) if a consumer reporting agency does not have a file that pertains to a protected consumer, a restriction that:

(a) is placed on the protected consumer's record in accordance with this part; and

(b) except as otherwise provided in this part, prohibits the consumer reporting agency from releasing the protected consumer's record; or

(2) if a consumer reporting agency has a file that pertains to the protected consumer, a restriction that:

(a) is placed on the protected consumer's credit report in accordance with this part; and

(b) except as otherwise provided in this part, prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report.

Section 7. Section **13-45-503** is enacted to read:

### **13-45-503. Applicability.**

This part does not apply to the use of a protected consumer's credit report or record by:

(1) a person administering a credit file monitoring subscription service to which:

(a) the protected consumer has subscribed; or

(b) the protected consumer's representative has subscribed on the protected consumer's behalf;

(2) a person who, upon request from the protected consumer or the protected consumer's representative, provides the protected consumer or the protected consumer's representative with a copy of the protected consumer's credit report;

(3) a check services or fraud prevention services company that issues:

(a) reports on incidents of fraud; or

(b) authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods;

(4) a deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar information regarding an individual to inquiring banks or other financial institutions for

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use only in reviewing an individual's request for a deposit account at the inquiring bank or financial institution;

(5) an insurance company for the purpose of conducting the insurance company's ordinary business;

(6) a consumer reporting agency that:

(a) only resells credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

(b) does not maintain a permanent database of credit information from which new credit reports are produced; or

(7) a consumer reporting agency's database or file that consists of information that:

(a) concerns and is used for:

(i) criminal record information;

(ii) fraud prevention or detection;

(iii) personal loss history information; or

(iv) employment, tenant, or individual background screening; and

(b) is not used for credit granting purposes.

Section 8. Section **13-45-504** is enacted to read:

### **13-45-504. Security freeze for protected consumer.**

(1) A consumer reporting agency shall place a security freeze for a protected consumer if:

(a) the consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze; and

(b) the protected consumer's representative:

(i) submits the request described in Subsection (1)(a):

(A) to the address or other point of contact provided by the consumer reporting agency;

and

(B) in the manner specified by the consumer reporting agency;

(ii) submits to the consumer reporting agency:

(A) sufficient proof of identification of the protected consumer;

(B) sufficient proof of identification of the protected consumer's representative; and

(C) sufficient proof of authority to act on behalf of the protected consumer; and

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(iii) if applicable, pays the consumer reporting agency a fee described in Subsection 13-45-506(2).

(2) If a consumer reporting agency does not have a file that pertains to a protected consumer when the consumer reporting agency receives a request described in Subsection (1), the consumer reporting agency shall create a record for the protected consumer.

(3) A consumer reporting agency shall place a security freeze for a protected consumer within 30 days after the day on which the consumer reporting agency receives a request described in Subsection (1).

(4) After a consumer reporting agency places a security freeze under this section, the consumer reporting agency may not release the protected consumer's credit report, any information derived from the protected consumer's credit report, or any record created for the protected consumer, unless the security freeze for the protected consumer is removed in accordance with Section 13-45-505.

(5) A security freeze that is placed in accordance with this section shall remain in effect until:

(a) the protected consumer's representative or the consumer who is subject to a protected consumer security freeze requests the consumer reporting agency remove the security freeze in accordance with Subsection 13-45-505(1); or

(b) the security freeze is removed in accordance with Subsection 13-45-505(3).

Section 9. Section **13-45-505** is enacted to read:

### **13-45-505. Removal of security freeze for protected consumer.**

(1) To remove a security freeze that is placed under this part, the protected consumer's representative or the consumer who is subject to a protected consumer security freeze shall:

(a) submit a request for the removal of the security freeze to the consumer reporting agency:

(i) at the address or other point of contact provided by the consumer reporting agency;  
and

(ii) in the manner specified by the consumer reporting agency;

(b) provide to the consumer reporting agency:

(i) in the case of a request by a protected consumer's representative:

(A) sufficient proof of identification of the protected consumer;

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(B) sufficient proof of identification of the protected consumer's representative; and

(C) sufficient proof of authority to act on behalf of the protected consumer; or

(ii) in the case of a request by the consumer who is subject to a protected consumer security freeze:

(A) sufficient proof of identification of the consumer who is subject to a protected consumer security freeze; and

(B) proof that the consumer who is subject to a protected consumer security freeze is not a protected consumer; and

(c) if applicable, pay the consumer reporting agency a fee described in Subsection 13-45-506(2).

(2) Within 30 days after the day on which a consumer reporting agency receives a request under Subsection (1), the consumer reporting agency shall remove the security freeze.

(3) A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Section 10. Section **13-45-506** is enacted to read:

### **13-45-506. Fees.**

(1) Except as provided in Subsection (2), a consumer reporting agency may not charge a fee for any service performed under this part.

(2) A consumer reporting agency may charge a reasonable fee, which does not exceed \$5, for each placement or removal of a security freeze under this part, unless:

(a) the protected consumer's representative:

(i) has obtained a police report that states the protected consumer is the alleged victim of identity fraud; and

(ii) provides a copy of the report to the consumer reporting agency; or

(b) (i) the protected consumer is less than 16 years of age at the time the request is submitted to the consumer reporting agency; and

(ii) the consumer reporting agency has a file that pertains to the protected consumer.

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**Legislative Review Note**

~~as of 1-6-15 3:05 PM~~

~~Office of Legislative Research and General Counsel~~ Section 11. Effective date.

This bill takes effect on January 1, 2016.