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2 Councilmember Kathy Patterson

Councilmember Sharon Ambrose

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5 A BILL
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10 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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15 Councilmembers Kathy Patterson and Sharon Ambrose introduced the following bill, which was
16 referred to the Committee on _____.
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18 To authorize consumers to place a security freeze prohibiting a credit reporting agency from
19 releasing the consumer's credit report without the consumer's express authorization, to
20 establish the procedures for establishing, temporarily lifting, and removing a security
21 freeze, to define certain uses of a consumer credit report to which a security freeze does
22 not apply, to establish that a consumer may not be charged for security freeze services, to
23 require notification to consumers that they have the right to obtain a security freeze, to
24 establish penalties for the violation of a security freeze, to require data collectors to notify
25 affected individuals of a breach of the security of their personal information, to establish
26 the methods by which a data collector may provide notification of a security breach, and
27 to provide remedies for a violation of the requirement to provide notification of a security
28 breach.

29
30 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
31 act may be cited as the "Identity Theft Prevention and Consumer Protection Act of 2005".

32 TITLE I. SECURITY FREEZE ON CONSUMER CREDIT REPORTS.

33 Sec. 101. Definitions.

34 For the purposes of this title, the term:

35 (1) "Account review" or "reviewing the account" means activities related to
36 account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

37 (2) "Consumer report" or "credit report" means an written, oral, or other
38 communication of any information by a consumer reporting agency bearing on a consumer's

1 credit worthiness, credit standing, credit capacity, character, general reputation, personal
2 characteristics, or mode of living which is used or expected to be used or collected, in whole or
3 in part, to establish the consumer's eligibility for credit or insurance to be used primarily for
4 personal family or household purposes, employment purposes, or any other purpose authorized
5 by section 15 U.S.C. § 1681b.

6 (3) "Consumer reporting agency" means any person who regularly engages, in
7 whole or in part, in the practice of assembling or evaluating consumer credit information or other
8 information on consumers for the purpose of furnishing consumer reports to third parties, for
9 monetary fees, dues, or on a cooperative, non-profit basis.

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

12 (5) "Security freeze" means a notice requested by a consumer that prohibits the
13 consumer reporting agency from releasing all or any part of the consumer's credit report or any
14 information derived from it without the express authorization of the consumer, subject to certain
15 exceptions.

16 Sec. 102. Timing, covered entities, and cost.

17 (a) A consumer may elect to place a security freeze on his or her credit report by:

18 (1) making a request by certified mail;

19 (2) making a request by telephone and providing certain personal identification;

20 or

21 (3) making a request directly to the consumer reporting agency through a secure
22 electronic mail connection if the connection is made available by the consumer reporting agency.

1 (b) If a security freeze is in place, a credit report or any information derived from a credit
2 report may not be released without prior express authorization from the consumer.

3 (c) A consumer reporting agency shall place a security freeze on a consumer's credit
4 report no later than five business days after receiving a written or telephone request from the
5 consumer or three business days after receiving a secure electronic mail request.

6 (d) A consumer reporting agency shall send a written confirmation of the security freeze
7 to the consumer within five business days of placing the freeze and at the same time shall
8 provide the consumer with a unique personal identification number or password to be used by
9 the consumer when authorizing the release of his or her credit to a specific party or for a specific
10 period of time.

11 (e) If the consumer wishes to allow his or her credit report to be accessed by a specific
12 party or for a specific period of time while a freeze is in place, he or she shall contact the
13 consumer reporting agency via telephone, certified mail, or secure electronic mail, request that
14 the freeze be temporarily lifted, and provide the following:

15 (1) personal identification;

16 (2) the unique personal identification number or password provided by the
17 consumer reporting agency pursuant to subsection (d) of this section; and

18 (3) information regarding the third party who is to receive the credit report or the
19 time period for which the report shall be available to users of the credit report.

20 (f) A consumer reporting agency that receives a request from a consumer to lift
21 temporarily a freeze on a credit report pursuant to subsection (e) of this section shall comply with
22 the request no later than three business days after receiving the request.

1 (g) A consumer reporting agency may develop procedures involving the use of telephone
2 or facsimile to receive and process a request from a consumer to lift temporarily a freeze on a
3 credit report pursuant to subsection (e) of this section in an expedited manner. Upon the consent
4 of the consumer in the manner required by the Electronic Signatures in Global and National
5 Commerce Act for legally required notices, a consumer reporting agency may develop
6 procedures involving the use of the Internet, electronic mail, or other electronic media, to receive
7 and process a request from a consumer to lift temporarily a freeze on a credit report pursuant to
8 subsection (e) of this section in an expedited manner.

9 (h) A consumer reporting agency shall remove or lift temporarily a freeze placed on a
10 consumer's credit report only in the following cases:

11 (1) Upon the consumer's request, pursuant to subsection (e) of this section or
12 subsection (k) of this section; or

13 (2) If the consumer's credit report was frozen due to a material misrepresentation
14 of fact by the consumer. If a consumer reporting agency intends to remove a freeze on a
15 consumer's credit report pursuant to this paragraph, the consumer reporting agency shall notify
16 the consumer in writing five business days before removing the freeze on the consumer's credit
17 report.

18 (i) If a third party requests access to a consumer credit report on which a security freeze
19 is in effect, and this request is in connection with an application for credit or any other use, and
20 the consumer does not allow his or her credit report to be accessed for that specific party or
21 period of time, the third party may treat the application as incomplete. This section does not
22 prevent a consumer reporting agency from advising a third party that a security freeze is in effect
23 with respect to the consumer's credit report.

1 (j) If a third party requests access to a consumer credit report on which a security freeze
2 is in effect for the purpose of receiving, extending, or otherwise utilizing credit, and not for the
3 sole purpose of account review, the consumer credit report agency must notify the consumer that
4 an attempt has been made to access the credit report.

5 (k) A security freeze shall remain in place until the consumer requests that the security
6 freeze be removed. A consumer reporting agency shall remove a security freeze within three
7 business days of receiving a request for removal from the consumer who provides both of the
8 following:

9 (1) personal identification; and

10 (2) the unique personal identification number or password provided by the
11 consumer reporting agency pursuant to subsection (d) of this section.

12 (l) A consumer reporting agency shall require proper identification of the person making
13 a request to place or remove a security freeze.

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

16 (n) The provisions of this section do not apply to the use of a consumer credit report by
17 any of the following:

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

1 (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to
2 whom access has been granted under subsection (e) of this section for the purpose of facilitating
3 the extension of credit or other permissible use;

4 (3) Any person acting pursuant to a court order, warrant, or subpoena;

5 (4) A state or local agency that administers a program for establishing and
6 enforcing child support obligations;

7 (5) The Department of Health or its agents acting to investigate fraud;

8 (6) The Office of the Chief Financial Officer or its agents acting to investigate or
9 collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory
10 responsibilities;

11 (7) A person for the purposes of pre-screening as defined by the federal Fair
12 Credit Reporting Act;

13 (8) Any person or entity administering a credit file monitoring a subscription
14 service to which the consumer has subscribed; and

15 (9) Any person or entity for the purpose of providing a consumer with a copy of
16 his or her credit report upon the consumer's request.

17 (o) A consumer may not be charged for any security freeze services, including but not
18 limited to the placement or lifting of a security freeze. If the consumer fails to retain the original
19 personal identification number provided by the consumer reporting agency, the consumer may
20 not be charged for a one-time reissue of the same or a new personal identification number, but
21 the consumer may be charged no more than \$5 for subsequent instances of loss of the personal
22 identification number.

23 Sec. 103. Notice of rights.

1 Any time that a consumer is required to receive a summary of rights required under
2 Section 609 of the federal Fair Credit Reporting Act (84 Stat. 1128; 15 U.S.C. sec. 1681-1681t),
3 the following notice shall be included:

4 “DISTRICT OF COLUMBIA CONSUMERS HAVE THE RIGHT TO OBTAIN A
5 SECURITY FREEZE

6 You may obtain a “security freeze” on your credit report at no charge to protect your
7 privacy and ensure that credit is not granted in your name without your knowledge. You have a
8 right to place a security freeze on your credit report pursuant to District of Columbia law.

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

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

- 18 1. The unique personal identification number or password provided by the
19 consumer reporting agency.
- 20 2. Proper identification to verify your identity.
- 21 3. The proper information regarding the third party or parties who are to receive
22 the credit report or the period of time for which the report shall be available to users of the credit
23 report.

1 A consumer reporting agency that receives a request from a consumer to lift temporarily
2 a freeze on a credit report must comply with the request no later than three business days after
3 receiving the request.

4 A security freeze does not apply if you have an existing account relationship and a copy
5 of your report is requested by your existing creditor or its agents or affiliates for certain types of
6 account review, collection, fraud control or similar activities.

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

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

14 Sec. 104. Violations and penalties.

15 If a consumer reporting agency, whether by accident or design, violates the security
16 freeze by releasing credit information that has been placed under a security freeze, the affected
17 consumer is entitled to:

18 (1) Receive notification within five business days of the release of the
19 information, including specificity as to the information released and the third-party recipient of
20 the information;

21 (2) File a complaint with the Federal Trade Commission, the Office of the
22 Attorney General, and the Department of Consumer and Regulatory Affairs.

23 (3) In a civil action against the consumer reporting agency, recover:

1 (A) Injunctive relief to prevent or restrain further violation of the security
2 freeze;

3 (B) A civil penalty in an amount not to exceed \$10,000 for each violation
4 plus any damages available under other civil laws; and

5 (C) Reasonable expenses, court costs, investigative costs, and attorney's
6 fees.

7 (2) Each violation of the security freeze shall be counted as a separate incident for the
8 purpose of imposing penalties under this title.

9 TITLE II. PROTECTION FROM SECURITY BREACHES.

10 Sec. 201. Definitions.

11 For the purposes of this section, the following terms shall have the following meanings:

12 (1) "Credit card" has the same meaning as in section 103 of the Truth in Lending Act (15
13 U.S.C. § 1601 *et seq.*).

14 (2) "Debit card" means any card or device issued by a financial institution to a consumer
15 for use in initiating an electronic fund transfer from the account holding assets of the consumer at
16 the financial institution, for the purpose of transferring money between accounts or obtaining
17 money, property, labor, or services.

18 (3) "Data collector" may include but is not limited to government agencies, public and
19 private universities, privately and publicly held corporations, financial institutions, retail
20 operators, and any other entity which handles, collects, disseminates, or otherwise deals with
21 personal information.

22 (4) "Identity theft" means:

1 (A) Using personal information belonging to or pertaining to another person to
2 obtain, or attempt to obtain, property fraudulently and without the person’s consent;

3 (B) Obtaining, creating, possessing personal information belonging to or
4 pertaining to another person with the intent to use the information to obtain, or attempt to obtain,
5 property fraudulently and without that person’s consent; and

6 (C) Obtaining, creating, possessing personal information belonging to or
7 pertaining to another person with the intent to give, sell, transmit, or transfer the information to a
8 third person to facilitate the use of the information by the other person to obtain, or attempt to
9 obtain, property fraudulently and without that person’s consent.

10 (5) “Person” means any individual, partnership, corporation, trust, estate, cooperative,
11 association, government or governmental subdivision or agency, or other entity.

12 (6) “Personal information” means an individual’s first name or first initial and last name
13 in combination with any one or more of the following data elements, when either the name or the
14 data elements are not encrypted or redacted:

15 (A) Social Security number;

16 (B) Driver’s license number or state identification card number;

17 (C) Account number, credit card, or debit card number, if such a number could be
18 used without additional identifying information, access codes, or passwords;

19 (D) Account passwords or personal identification numbers (PINs) or other access
20 codes; and

21 (E) Any item listed in paragraphs (A) through (D) when not in connection with
22 the individual’s first name or first initial and last name, if the information compromised would be

1 sufficient to perform or attempt to perform identity theft against the person whose information
2 was compromised.

3 “Personal information” does not include publicly available information that is lawfully
4 made available to the general public from federal, state, or local government records, provided
5 that such publicly available information has not been aggregated or consolidated into an
6 electronic database or similar system by the governmental agency or by another person.

7 (7) “Security breach” or “Breach of the security of the data” means unauthorized
8 acquisition of computerized or non-computerized data that compromises the security,
9 confidentiality, or integrity of personal information maintained by the data collector. Good-faith
10 acquisition of personal information by an employee or agent of the data collector for a legitimate
11 purpose of the data collector is not a breach of the security of the data, provided that the personal
12 information is not used for a purpose unrelated to the data collector or subject to further
13 unauthorized disclosure. Breach of the security of non-computerized data may include but is not
14 limited to unauthorized photocopies, facsimiles, or other paper-based transmittal of documents.

15 Sec. 202. Notice of security breach.

16 (a) Except as provided in subsection (b) of this section, any data collector that owns or
17 uses personal information in any form that includes personal information concerning a District of
18 Columbia resident, shall notify the resident that there has been a breach of the security of the
19 data following discovery or notification of the security breach, regardless of whether the data has
20 or has not been accessed by an unauthorized third party for legal or illegal purposes. The
21 notification shall be made in the most expedient time possible and without unreasonable delay,
22 consistent with the legitimate needs of law enforcement, as provided in subsection (b) of this

1 section, or with any measures necessary to determine the scope of the security breach and restore
2 the reasonable integrity, security and confidentiality of the data system.

3 (b) The notification required by this section may be delayed if a law enforcement agency
4 determines that the notification may impede a criminal investigation.

5 (c) For the purpose of this section, “notice” to consumers may be provided by one of
6 the following methods:

7 (1) Written notice;

8 (2) Electronic notice, if the notice provided is consistent with the provisions
9 regarding electronic records and signatures, for notices legally required to be in writing, set forth
10 in Section 7001 of Title 15 of the United States Code;

11 (3) Substitute notice, if the agency demonstrates that the cost of providing notice
12 would exceed two hundred fifty thousand dollars (\$250,000) or that the affected class of subject
13 persons to be notified exceeds 500,000, or the agency does not have sufficient contact
14 information. Substitute notice shall consist of electronic mail notice when the agency has an
15 electronic mail address for the affected individuals, or notification to major local media.

16 Sec. 203. Waiver.

17 Any waiver of the provisions of this title is contrary to public policy, and is void and
18 unenforceable.

19 Sec. 204. Remedies.

20 (a) Any individual injured by a violation of this section may institute a civil action to
21 recover damages.

22 (b) Any business that violates, proposes to violate, or has violated this section may be
23 enjoined.

1 (c) The rights and remedies available under this section are cumulative to each other and
2 to any other rights and remedies available under law.

3 TITLE III. FISCAL IMPACT STATEMENT.

4 The Council adopts the fiscal impact statement in the committee report as the fiscal
5 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
6 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

7 TITLE IV. EFFECTIVE DATE.

8 This act shall take effect following approval by the Mayor (or in the event of veto by the
9 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
10 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
11 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
12 Columbia Register.