

LC03289

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

**RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -
SECURITY FREEZES**

Introduced By: Senators Doyle, Tassoni, Walaska, DaPonte, and Connors

Date Introduced: May 18, 2005

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 6 of the General Laws entitled "Commercial Law-General Regulatory
2 Provisions" is hereby amended by adding thereto the following chapter:

3 CHAPTER 13.4

4 SECURITY FREEZE ACT

5 **6-13.4-1. Short title.** -- This chapter may be cited as the "Security Freeze Act".

6 **6-13.4-2. Definitions.** -- As used in this chapter: (a) "Adverse action" includes:

7 (1) Denial of, increase in any charge for, or reduction in the amount of insurance for
8 personal, family, or household purposes;

9 (2) Denial of employment or any other decision for employment purposes that adversely
10 affects a current or prospective employee;

11 (3) Action or determination with respect to a consumer's application for credit that is
12 adverse to the interests of the consumer; and

13 (4) Action or determination with respect to a consumer's application for the rental or
14 leasing of residential real estate that is adverse to the interests of the consumer.

15 (b) "Adverse action" does not include:

16 (1) A refusal to extend additional credit under an existing credit arrangement if:

17 (A) The applicant is delinquent or otherwise in default with respect to the arrangement; or

18 (B) The additional credit would exceed a previously established credit limit.

- 1 (2) A refusal or failure to authorize an account transaction at a point of sale.
- 2 (b) "Attorney general" means the office of the attorney general.
- 3 (c) "Consumer" means an individual.
- 4 (d) "Consumer report" means a written, oral, or other communication of information by a
5 consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit
6 capacity, character, general reputation, personal characteristics, or mode of living that is used or
7 expected to be used or collected in whole or in part for:
- 8 (1) The purpose of serving as a factor in establishing the consumer's eligibility for credit
9 or insurance to be used primarily for personal, family, or household purposes; or
- 10 (2) Employment purposes.
- 11 (e) "Consumer report" does not include:
- 12 (1) A report containing information solely as to transactions or experiences between the
13 consumer and the person making the report;
- 14 (2) An authorization or approval of a specific extension of credit directly or indirectly by
15 the issuer of a credit card or similar device;
- 16 (3) A report in which a person who has been requested by a third-party to make a specific
17 extension of credit directly or indirectly to a consumer conveys his or her decision with respect to
18 the request, if the third-party advises the consumer of the name and address of the person to
19 whom the request was made.
- 20 (4) A list compiled by a consumer reporting agency to be used by its client for direct
21 marketing of goods or services not involving an offer of credit;
- 22 (5) A report solely conveying a decision whether to guarantee a check in response to a
23 request by a third-party; or
- 24 (6) A report furnished for use in connection with a transaction that consists of an
25 extension of credit to be used for a commercial purpose.
- 26 (f) "Consumer reporting agency" means a person who, for monetary fees, dues, or on a
27 cooperative nonprofit basis, regularly engages in whole or in part in the business of assembling or
28 evaluating consumer credit information or other information on consumers for the purpose of
29 furnishing consumer reports to third-parties, and who uses any means or facility of commerce for
30 the purpose of preparing or furnishing consumer reports. "Consumer reporting agency" does not
31 include a person solely by reason of conveying a decision whether to guarantee a check in
32 response to a request by a third-party or a person who obtains a consumer report and provides the
33 report or information contained in it to a subsidiary or affiliate of the person.
- 34 (g) "Credit transaction that is not initiated by the consumer" does not include the use of a

1 consumer report by an assignee for collection or by a person with which the consumer has an
2 account, for purposes of: (a) reviewing the account; or (b) collecting the account. For purposes of:
3 this subsection "reviewing the account" includes activities related to account maintenance and
4 monitoring, credit line increases, and account upgrades and enhancements.

5 (h) "Direct solicitation" means the process in which the consumer reporting agency
6 compiles or edits for a client a list of consumers who meet specific criteria and provides this list
7 to the client or a third-party on behalf of the client for use in soliciting those consumers for an
8 offer of a product or service.

9 (i) "Employment purposes" when used in connection with a consumer report, means a
10 report used for the purpose of evaluating a consumer for employment, promotion, reassignment,
11 or retention as an employee.

12 (j) "File" when used in connection with information on any consumer, means all of the
13 information on that consumer recorded and retained by a consumer reporting agency regardless of
14 how the information is stored.

15 (k) "Investigative consumer report" means a consumer report or portion of it in which
16 information on a consumer's character, general reputation, personal characteristics, or mode of
17 living is obtained through personal interviews with neighbors, friends, or associates of the
18 consumer reported on or with others with whom the consumer is acquainted or who may have
19 knowledge concerning any items of information. However, the information does not include
20 specific factual information on a consumer's credit record obtained directly from a creditor of the
21 consumer or from a consumer reporting agency when the information was obtained directly from
22 a creditor of the consumer or from the consumer.

23 (l) "Medical information" means information or records obtained, with the consent of the
24 individual to whom it relates, from a licensed physician or medical practitioner, hospital, clinic,
25 or other medical or medically related facility.

26 (m) "Person" includes an individual, corporation, government or governmental
27 subdivision or agency, business trust, estate, trust, partnership, association, and any other legal or
28 commercial entity.

29 (n) "Prescreening" means the process in which the consumer reporting agency compiles
30 or edits for a client a list of consumers who meet specific credit criteria and provides this list to
31 the client or a third-party on behalf of the client for use in soliciting those consumers for an offer
32 of credit.

33 (o) "Security freeze" means a notice placed in a consumer's credit report, at the request of
34 the consumer, that prohibits a consumer reporting agency from releasing the consumer's credit

1 report or any information from it, except in accordance with specified exceptions, without the
2 express authorization of the consumer.

3 **6-13.4-3. Consumer elected security freeze.** -- (a) A consumer may elect to place a
4 security freeze on his or her credit report by making a request in writing by certified mail to a
5 consumer reporting agency. If a security freeze is in place, information from a consumer's credit
6 report may not be released to a third-party without prior express authorization from the consumer.
7 This subsection does not prohibit a consumer reporting agency from advising a third-party that a
8 security freeze is in effect with respect to the consumer's credit report.

9 (b) A consumer reporting agency shall place a security freeze on a consumer's credit
10 report no later than five (5) business day after receiving a written request from the consumer.

11 (c) The consumer reporting agency shall send a written confirmation of the security
12 freeze to the consumer within ten (10) business days and shall provide the consumer with a
13 unique personal identification number or password to be used by the consumer when providing
14 authorization for the release of his or her credit for a specific party or period of time.

15 (d) If a consumer wishes to allow his or her credit report to be accessed for a specific
16 party of period of time while a freeze is in place, he or she shall contact the consumer reporting
17 agency, request that the freeze be temporarily lifted, and provide the following:

18 (1) Proper identification, which shall consist of information generally deemed sufficient
19 to identify a person. If the consumer is unable to reasonably identify himself or herself with this
20 information, a consumer reporting agency may require additional information concerning the
21 consumer's employment and personal or family history in order to verify his or her identity;

22 (2) The unique personal identification number or password provided by the consumer
23 reporting agency under subsection (c) of this section; and

24 (3) Information adequate for the identification of the third-party who is to receive the
25 credit report and/or the time period during which the report shall be available to users of the
26 credit report.

27 (e) A consumer reporting agency that receives a request from a consumer to temporarily
28 lift a freeze on a credit report under subsection (d) of this section shall comply with the request no
29 later than three (3) business days after receiving the request.

30 (f) A consumer reporting agency may develop procedures involving the use of telephone,
31 fax, internet, or other electronic media to receive and process a request from a consumer to
32 temporarily lift a freeze on a credit report under subsection (d) of this section in an expedited
33 manner.

34 (g) A consumer reporting agency shall remove or temporarily lift a freeze placed on a

1 consumer's credit report only in the following cases:

2 (1) Upon consumer request, under subsection (d) or (j) of this section; or

3 (2) If the consumer's credit report was frozen due to a material misrepresentation of fact
4 by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's
5 credit report under this subsection, the consumer reporting agency shall notify the consumer in
6 writing prior to removing the freeze on the consumer's credit report.

7 (h) If a third-party requests access to a consumer credit report that is subject to a security
8 freeze, and this request is in connection with an application for credit or any other use, and the
9 consumer does not allow his or her credit report to be accessed by that specific party or during
10 that period of time, the third-party may treat the application as incomplete.

11 (i) If a consumer requests a security freeze, the consumer reporting agency shall disclose
12 to the consumer the process of placing and temporarily lifting a freeze, and the process for
13 allowing access to information from the consumer's credit report for a specific party or period of
14 time while the freeze is in place.

15 (j) A security freeze shall remain in place until the consumer requests that the security
16 freeze be removed. A consumer reporting agency shall remove a security freeze within three (3)
17 business days of receiving a request for removal from the consumer, who provides both of the
18 following:

19 (1) Proper identification, as described under subsection (d)(1) of this section; and

20 (2) The unique personal identification number or password provided by the consumer
21 reporting agency under subsection (c) of this section.

22 (k) A consumer reporting agency shall require proper identification from the person
23 making a request to place or remove a security freeze, as described under subsection (d)(1) of this
24 section.

25 (l) This section does not apply to the use of a consumer report by any of the following:

26 (1) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an
27 assignee of a financial obligation owing by the consumer to that person or entity, or a prospective
28 assignee of a financial obligation owing by the consumer to that person or entity in conjunction
29 with the proposed purchase of the financial obligation, with which the consumer has or had prior
30 to assignment an account or contract, including a demand deposit account, or to whom the
31 consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting
32 the financial obligation owing for the account, contract, or negotiable instrument. For purposes
33 of this subsection, "reviewing the account" includes activities related to account maintenance,
34 monitoring, credit line increases, and account upgrades and enhancements;

1 (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom
2 access has been granted under subsection (4) of this section for purposes of facilitating the
3 extension of credit or other permissible use;

4 (3) Any state or local agency, law enforcement agency, trial court, or private collection
5 agency acting under a court order, warrant, or subpoena;

6 (4) The department of human services or other designated public agency acting pursuant
7 to title IV-D of the Social Security Act (42 U.S.C. et seq.) or with respect to the collection of
8 child support;

9 (5) The division of taxation or its agents or assigns acting to investigate or collect
10 delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

11 (6) The use of credit information for the purpose of prescreening;

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

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

16 (m) This section does not prevent a consumer reporting agency from charging a
17 reasonable fee, not to exceed ten dollars (\$10.00), to a consumer who elects to impose a security
18 freeze, remove a security freeze, or temporarily lift a security freeze. A consumer reporting
19 agency may not charge a fee for the imposition of a security freeze with respect to the victim of
20 the crime of identity theft, who has reported such crime to a law enforcement agency and who
21 provides proof of such report to the consumer reporting agency.

22 **6-13.4-4. Change of personal information by consumer reporting agency. --** If a
23 security freeze is in place, a consumer reporting agency shall not change any of the following
24 official information in a consumer report without sending a written confirmation of the change to
25 the consumer within thirty (30) days of the change being posted to the consumer's file: name, date
26 of birth, social security number, and address. Written confirmation is not required for technical
27 modifications of a consumer's official information, including name and street abbreviations,
28 complete spellings, or transposition of numbers or letters. In the case of an address change, the
29 written confirmation shall be sent to both the new address and to the former address.

30 **6-13.4-5. Entities exempt from placing security freeze. --** The following entities are
31 not required to place a security freeze on a consumer report:

32 (a) A check services or fraud prevention services company, which issues reports on
33 incidents of fraud or authorizations for the purpose of approving or processing negotiable
34 instruments, electronic funds transfers, or similar methods of payments; or

1 (b) A demand deposit account information service company, which issues reports
2 regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative
3 information regarding a consumer, to inquiring banks or other financial institutions for use only
4 in reviewing a consumer request for a demand deposit account at the inquiring bank or financial
5 institution.

6 **6-13.4-6. Violations -- Remedies. --** (a) Any consumer who suffers damages as a result
7 of a violation of this chapter by any person may bring an action in a court of appropriate
8 jurisdiction against that person to recover the following:

9 (1) In the case of a negligent violation, actual damages, including court costs, loss of
10 wages, attorneys' fees and, when applicable, pain and suffering.

11 (2) In the case of a willful violation:

12 (i) Actual damages as set forth in subsection (1) of this section;

13 (ii) Punitive damages of not less than one hundred dollars (\$100) nor more than five
14 thousand dollars (\$5,000) for each violation; and

15 (iii) Any other relief that the court deems proper.

16 (3) With respect to a person who obtains a consumer report under false pretenses or for a
17 purpose other than those allowed under this chapter, an award of actual damages pursuant to
18 subsection (1) or (2)(i) of this section shall be in an amount of not less than two thousand five
19 hundred dollars (\$2,500).

20 (b) Injunctive relief shall be available to any consumer aggrieved by a violation or a
21 threatened violation of this chapter whether or not the consumer seeks any other remedy under
22 this section.

23 (c) Notwithstanding any other provision of this section, any person who willfully violates
24 any requirement imposed under this chapter may be liable for punitive damages in the case of a
25 class action, in an amount that the court may allow. In determining the amount of award in any
26 class action, the court shall consider, among other relevant factors, the amount of any actual
27 damages awarded, the frequency of the violations, the resources of the violator, and the number
28 of persons adversely affected.

29 (d) The prevailing plaintiffs in any action commenced under this section shall be entitled
30 to recover court costs and reasonable attorneys' fees.

31 **6-13.4-7. Statute of limitations. --** An action to enforce any liability created under this
32 chapter may be brought in an appropriate court of competent jurisdiction within two (2) years
33 from the date the plaintiff knew of, or should have known of, the violation of this chapter, but not
34 more than seven (7) years from the earliest date on which liability could have arisen, except that

1 where a defendant has materially and willfully misrepresented any information required under
2 this chapter to be disclosed to a consumer and the information so misrepresented is material to the
3 establishment of the defendant's liability to the consumer under this chapter, the action may be
4 brought at any time within two (2) years after the discovery by the consumer of the
5 misrepresentation.

6 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -
SECURITY FREEZES

- 1 This act would create a credit freeze on a consumer's credit report which would restrict
- 2 the release of a consumer's credit report or information therefrom at the consumer's request.
- 3 This act would take effect upon passage.

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