

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) "Financial institution" means any person
24 licensed or chartered under the laws of any state or the

1 United States as a bank holding company, bank, savings and
2 loan association, credit union, trust company or subsidiary
3 thereof doing business in this state;

4

5 (vii) "Personal identifying information" means
6 the first name or first initial and last name of a person
7 in combination with one (1) or more of the following data
8 elements when either the name or the data elements are not
9 encrypted nor redacted:

10

11 (A) Social security number;

12

13 (B) Driver's license number or Wyoming
14 identification card number;

15

16 (C) Account number, credit card number or
17 debit card number in combination with any security code,
18 access code or password that would allow access to a
19 financial account of the person;

20

21 (D) Tribal identification card; or

22

23 (E) Federal or state government issued
24 identification card.

1

2 (viii) "Redact" means alteration or truncation
3 of data such that no more than the last four (4) digits of
4 the data elements provided in subparagraphs (vii)(A)
5 through (D) of this subsection are accessible as part of
6 the personal information;

7

8 (ix) "Security freeze" means a notice placed in
9 a consumer's credit report, at the request of the consumer,
10 that prohibits the credit rating agency from releasing the
11 consumer's credit report or any information from it
12 relating to an extension of credit or the opening of a new
13 account, without the express authorization of the consumer;

14

15 (x) "Substitute notice" means:

16

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

20

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

24

1 (C) Publication in applicable local or
2 statewide media.

3

4 (xi) "This act" means W.S. 40-12-501 through
5 40-12-511.

6

7 (b) "Personal identifying information" as defined in
8 paragraph (a)(vii) of this section does not include
9 information, regardless of its source, contained in any
10 federal, state or local government records or in widely
11 distributed media that are lawfully made available to the
12 general public.

13

14 **40-12-502. Computer security breach; notice to**
15 **affected persons.**

16

17 (a) An individual or commercial entity that conducts
18 business in Wyoming and that owns or licenses computerized
19 data that includes personal identifying information about a
20 resident of Wyoming shall, when it becomes aware of a
21 breach of the security of the system, conduct in good faith
22 a reasonable and prompt investigation to determine the
23 likelihood that personal identifying information has been
24 or will be misused. If the investigation determines that

1 the misuse of personal identifying information about a
2 Wyoming resident has occurred or is reasonably likely to
3 occur, the individual or the commercial entity shall give
4 notice as soon as possible to the affected Wyoming
5 resident. Notice shall be made in the most expedient time
6 possible and without unreasonable delay, consistent with
7 the legitimate needs of law enforcement and consistent with
8 any measures necessary to determine the scope of the breach
9 and to restore the reasonable integrity of the computerized
10 data system.

11

12 (b) The notification required by this section may be
13 delayed if a law enforcement agency determines in writing
14 that the notification may seriously impede a criminal
15 investigation.

16

17 (c) Any financial institution as defined in 15 U.S.C.
18 6809 or federal credit union as defined by 12 U.S.C. 1752
19 that maintains notification procedures subject to the
20 requirements of 15 U.S.C. 6801(b)(3) and 12 C.F.R. Part 364
21 Appendix B or Part 748 Appendix B, is deemed to be in
22 compliance with this section if the financial institution
23 notifies affected Wyoming customers in compliance with the

1 requirements of 15 U.S.C. 6801 through 6809 and 12 C.F.R.
2 Part 364 Appendix B or Part 748 Appendix B.

3

4 (d) 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 mail notice;

10

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

23

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

7

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

13

14 (e) Notice required under subsection (a) of this
15 section shall include:

16

17 (i) A toll-free number:

18

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

21

22 (B) From which the individual may learn the
23 toll-free contact telephone numbers and addresses for the
24 major credit reporting agencies.

1

2 (f) The attorney general may bring an action in law
3 or equity to address any violation of this act and for
4 other relief that may be appropriate to ensure proper
5 compliance with this act, to recover damages, or both. The
6 provisions of this act are not exclusive and do not relieve
7 an individual or a commercial entity subject to this act
8 from compliance with all other applicable provisions of
9 law.

10

11 (g) Any person who maintains computerized data that
12 includes personal information on behalf of another business
13 entity shall disclose to the business entity for which the
14 information is maintained any breach of the security of the
15 system as soon as practicable following the determination
16 that personal information was, or is reasonably believed to
17 have been, acquired by an unauthorized person. The person
18 who maintains the data on behalf of another business entity
19 and the business entity on whose behalf the data is
20 maintained may agree who will provide the notice, if any is
21 required, as provided in subsection (a) of this section,
22 provided only a single notice for each breach of the
23 security of the system shall be required. If agreement
24 regarding notification cannot be reached, the person who

1 has the direct business relationship with the resident of
2 this state shall provide notice subject to the provisions
3 of subsection (a) of this section.

4

5 **40-12-503. Security freeze.**

6

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

10

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

13

14 (ii) Providing proper identification.

15

16 (b) If a security freeze is in place, a consumer
17 reporting agency may not release a consumer's credit report
18 or information derived from the credit report to a third
19 party that intends to use the information to determine a
20 consumer's eligibility for credit without prior
21 authorization from the consumer.

22

23 (c) Notwithstanding subsection (b) of this section, a
24 consumer reporting agency may communicate to a third party

1 requesting a consumer's credit report that a security
2 freeze is in effect on the consumer's credit report. If a
3 third party requesting a consumer's credit report in
4 connection with the consumer's application for credit is
5 notified of the existence of a security freeze under this
6 subsection, the third party may treat the consumer's
7 application as incomplete.

8

9 (d) Upon receiving a request from a consumer under
10 subsection (a) of this section, the consumer reporting
11 agency shall:

12

13 (i) Place a security freeze on the consumer's
14 credit report within five (5) business days after receiving
15 the consumer's request;

16

17 (ii) Send a written confirmation of the security
18 freeze to the consumer within ten (10) business days after
19 placing the security freeze; and

20

21 (iii) Provide the consumer with a unique
22 personal identification number or password to be used by
23 the consumer when providing authorizations for removal or
24 temporary removal of the security freeze.

1

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

5

6 (f) A consumer reporting agency shall develop a
7 contact method to receive and process a consumer's request
8 to place, remove or temporarily remove a security freeze.
9 The contact method shall include:

10

11 (i) A postal address;

12

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

16

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

20

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

23

1 **740-12-504. Removal of security freeze; requirements**
2 **and timing.**

3

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

6

7 (i) The consumer makes a material
8 misrepresentation of fact in connection with the placement
9 of the security freeze and the consumer reporting agency
10 notifies the consumer in writing before removing the
11 security freeze; or

12

13 (ii) The consumer reporting agency receives the
14 consumer's request through a contact method established and
15 required in accordance with W.S. 40-12-503(f) and the
16 consumer reporting agency receives the consumer's proper
17 identification and other information sufficient to identify
18 the consumer including the consumer's personal
19 identification number or password.

20

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

23

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

3

4 (ii) The consumer's proper identification and
5 other information sufficient to identify the consumer or
6 the consumer's personal identification number or password;

7

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

10

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

13

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

16

17 (i) Three (3) business days after the business
18 day on which the consumer's written request to remove the
19 security freeze is received by the consumer reporting
20 agency at the postal address chosen by the consumer
21 reporting agency; or

22

23 (ii) On or after January 1, 2008, within one (1)
24 day after the consumer's request is received by the

1 consumer reporting agency through the electronic contact
2 method chosen by the consumer reporting agency or the use
3 of telephone, during normal business hours and includes the
4 consumer's proper identification and correct personal
5 identification number or password.

6

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

10

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

13

14 (ii) The consumer reporting agency's ability to
15 remove the security freeze within one (1) day is prevented
16 by:

17

18 (A) An act of God, including fire,
19 earthquakes, hurricanes, storms or similar natural disaster
20 or phenomena;

21

22 (B) Unauthorized or illegal acts by a third
23 party, including terrorism, sabotage, riot, vandalism,

1 labor strikes or disputes disrupting operations or similar
2 occurrence;

3

4 (C) Operational interruption, including
5 electrical failure, unanticipated delay in equipment or
6 replacement part delivery, computer hardware or software
7 failures inhibiting response time or similar disruption;

8

9 (D) Governmental action, including
10 emergency orders or regulations, judicial or law
11 enforcement action or similar directives;

12

13 (E) Regularly scheduled maintenance, during
14 other than normal business hours, of, or updates to, the
15 consumer reporting agency's systems;

16

17 (F) Commercially reasonable maintenance of,
18 or repair to, the consumer reporting agency's systems that
19 is unexpected or unscheduled; or

20

21 (G) Receipt of a removal request outside of
22 normal business hours.

23

24 **40-12-505. Exceptions.**

1

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

5

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

7

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

10

11 (B) Review the consumer's account with the
12 third party, including for account maintenance or
13 monitoring, credit line increases or other upgrades or
14 enhancements;

15

16 (C) Collect on a financial obligation owed
17 by the consumer to the third party requesting the credit
18 report;

19

20 (D) Review the consumer's account with
21 another person;

22

23 (E) Collect on a financial obligation owed
24 by the consumer to another person; or

1

2 (F) The third party requesting the credit
3 report is a subsidiary, affiliate, agent, assignee or
4 prospective assignee of the person holding the consumer's
5 account or to whom the consumer owes a financial
6 obligation.

7

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

13

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

17

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

21

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

1

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

5

6 (iv) The third party is the federal department
7 of health and human services or a similar state agency, or
8 its agent or assignee, investigating Medicare or Medicaid
9 fraud;

10

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

14

15 (A) The federal internal revenue service;

16

17 (B) A state taxing authority;

18

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

21

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

24

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

3

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

6

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

10

11 (vii) The third party requests the credit report
12 for the sole purpose of providing the consumer with a copy
13 of the consumer's credit report or credit score upon the
14 consumer's request.

15

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

18

19 (i) A consumer reporting agency, the sole
20 purpose of which is to resell credit information by
21 assembling and merging information contained in the
22 database of another consumer reporting agency and that does
23 not maintain a permanent database of credit information
24 from which a consumer's credit report is produced;

1

2 (ii) A deposit account information service
3 company that issues reports concerning account closures
4 based on fraud, substantial overdrafts, automated teller
5 machine abuse or similar information concerning a consumer
6 to a requesting financial institution for the purpose of
7 evaluating a consumer's request to create a deposit
8 account;

9

10 (iii) A check services or fraud prevention
11 services company that issues:

12

13 (A) Reports on incidents of fraud; or

14

15 (B) Authorizations for the purpose of
16 approving or processing negotiable instruments, electronic
17 funds transfers or similar methods of payment.

18

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

23

24 (A) Criminal record information;

1

2

(B) Tenant screening;

3

4

(C) Employment screening; or

5

6

(D) Fraud prevention or detection.

7

8

(v) A database or file which consists solely of information adverse to the interests of the consumer including, but not limited to, criminal record information which is used for fraud prevention or detection, tenant screening, employment screening or any purpose permitted by the Fair Credit Reporting Act, 15 U.S.C. 1681b;

14

15

(vi) A person to the extent the person offers fraud prevention services which provide reports on incidents of fraud or reports used primarily in the detection or prevention of fraud; or

19

20

(vii) Setting or adjusting of a rate, adjusting a claim or underwriting for insurance purposes.

22

23

(e) Nothing in this article prohibits a person from obtaining, aggregating or using information lawfully

24

1 obtained from public records in a manner that does not
2 otherwise violate this article.

3

4 **40-12-506. Fees for security freeze.**

5

6 (a) Except as provided in subsection (b) of this
7 section, a consumer reporting agency may charge a
8 reasonable fee not to exceed ten dollars (\$10.00) to a
9 consumer for each placing, lifting or removing of a
10 security freeze.

11

12 (b) A consumer reporting agency may not charge a fee
13 for placing, lifting or removing a security freeze if:

14

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

17

18 (ii) The consumer provides the consumer
19 reporting agency with a valid copy of a police report or
20 police case number documenting the identity fraud.

21

22 **40-12-507. Changes to information in a credit report**
23 **subject to a security freeze.**

24

1 (a) If a credit report is subject to a security
2 freeze, a consumer reporting agency shall notify the
3 consumer who is the subject of the credit report within
4 thirty (30) days if the consumer reporting agency changes
5 their information concerning the consumer's:

6
7 (i) Name;

8
9 (ii) Date of birth;

10
11 (iii) Social security number; or

12
13 (iv) Address.

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

21
22 (i) The addition or subtraction of abbreviations
23 to names and addresses; and

24

1 (ii) Transpositions or corrections of incorrect
2 numbering or spelling.

3

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

8

9 **40-12-508. Violations; penalties.**

10

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

16

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

21

22 (ii) Notification that the consumer may file a
23 complaint with the federal trade commission and the state
24 attorney general.

1

2 (b) If a consumer reporting agency erroneously,
3 whether by accident or design, violates a valid security
4 freeze by releasing credit information that has been placed
5 under a security freeze and fails to take steps to correct
6 the release and fails to give the notification required
7 under subsection (a) of this section, the affected consumer
8 is entitled to, in a civil action against the consumer
9 reporting agency, recover:

10

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

13

14 (ii) A civil penalty in an amount not to exceed
15 one thousand dollars (\$1,000.00) for the first violation,
16 two thousand five hundred dollars (\$2,500.00) for the
17 second violation and not to exceed five thousand dollars
18 (\$5,000.00) for each subsequent violation plus any damages
19 available under other civil laws; and

20

21 (iii) Reasonable expenses, court costs,
22 investigative costs and attorney's fees.

23

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

4

5 **40-12-509. Factual declaration of innocence after**
6 **identity theft.**

7

8 (a) A person who reasonably believes that he or she
9 is the victim of identity theft as defined by W.S. 6-3-901
10 may petition a court, or the court, on its own motion or
11 upon application of the prosecuting attorney, may move for
12 an expedited judicial determination of his or her factual
13 innocence, where the perpetrator of the identity theft was
14 arrested for, cited for or convicted of a crime under the
15 victim's identity, or where a criminal complaint has been
16 filed against the perpetrator in the victim's name, or
17 where the victim's identity has been mistakenly associated
18 with a record of criminal conviction. Any judicial
19 determination of factual innocence made pursuant to this
20 section may be heard and determined upon declarations,
21 affidavits, police reports or other material, relevant and
22 reliable information submitted by the parties or ordered to
23 be part of the record by the court. Where the court
24 determines that the petition or motion is meritorious and

1 that there is no reasonable cause to believe that the
2 victim committed the offense for which the perpetrator of
3 the identity theft was arrested, cited, convicted or
4 subject to a criminal complaint in the victim's name, or
5 that the victim's identity has been mistakenly associated
6 with a record of criminal conviction, the court shall find
7 the victim factually innocent of that offense. If the
8 victim is found factually innocent, the court shall issue
9 an order certifying this determination.

10

11 (b) After a court has issued a determination of
12 factual innocence pursuant to subsection (a) of this
13 section, the court may order the name and associated
14 personal identifying information contained in court
15 records, files and indexes accessible by the public
16 deleted, sealed or labeled to show that the data is
17 impersonated and does not reflect the defendant's identity.

18

19 (c) Upon making a determination of factual innocence,
20 the court shall provide the consumer written documentation
21 of the order.

22

23 (d) A court that has issued a determination of
24 factual innocence pursuant to this section may at any time

1 vacate that determination if the petition, or any
2 information submitted in support of the petition, is found
3 to contain any material misrepresentation or fraud.

4

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

7

8 (f) The attorney general shall establish and maintain
9 a data base of individuals who have been victims of
10 identity theft and that have received determinations of
11 factual innocence. The attorney general shall provide a
12 victim of identity theft or his authorized representative
13 access to the database in order to establish that the
14 individual has been a victim of identity theft. Access to
15 the database shall be limited to criminal justice agencies,
16 victims of identity theft and individuals and agencies
17 authorized by the victims.

18

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

22

23 (h) In order for a victim of identity theft to be
24 included in the database established pursuant to subsection

1 (f) of this section, he shall submit to the attorney
2 general a court order obtained pursuant to this section, a
3 full set of fingerprints and any other information
4 prescribed by the attorney general.

5

6 (j) Upon receiving information pursuant to subsection
7 (h) of this section, the attorney general shall verify the
8 identity of the victim against any driver's license or
9 other identification record maintained by the department of
10 transportation, division of motor vehicles.

11

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

13

14

(END)