

House Bill 4114

Sponsored by Representative CLEM (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes ability of consumer reporting agency to charge fee for placing, temporarily lifting or removing security freeze on consumer report, for creating or deleting protective record or for placing or removing security freeze on protective record for protected consumer or for replacing lost personal identification number, password or similar device for consumer.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fees for securing a consumer's credit information; creating new provisions; amending
3 ORS 646A.606, 646A.608 and 646A.610; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2018 Act is added to and made a part of ORS 646A.600 to**
6 **646A.628.**

7 **SECTION 2. (1) A person violates ORS 646A.610 and is liable to a consumer for the**
8 **greater of \$500 or the amount of the consumer's actual damages if the person charges the**
9 **consumer a fee or collects from the consumer any money or item of value for:**

10 (a) **Placing, temporarily lifting or removing a security freeze on the consumer's con-**
11 **sumer report;**

12 (b) **Creating or deleting a protective record or placing or removing a security freeze on**
13 **a protected consumer's protective record; or**

14 (c) **Replacing a personal identification number, password or similar device the person**
15 **previously provided to the consumer under ORS 646A.608.**

16 (2) **A consumer who is injured by a person's violation under subsection (1) of this section**
17 **may bring an action in a court of this state to seek damages for the violation. The consumer**
18 **may not recover more than \$6,000 in damages, except that in addition to the damages de-**
19 **scribed in subsection (1) of this section the court may award a prevailing consumer punitive**
20 **damages, the costs of bringing the action and reasonable attorney fees.**

21 (3) **An award of damages, costs or fees under this section is in addition to and not in lieu**
22 **of any other penalty to which a person is subject under ORS 646A.600 to 646A.628.**

23 **SECTION 3. ORS 646A.606 is amended to read:**

24 646A.606. (1) A consumer may elect to place a security freeze on the consumer's consumer re-
25 port or, if the consumer is a representative, on a protected consumer's consumer report or protec-
26 tive record by sending a written request to a consumer reporting agency at an address the agency
27 designates to receive [*such*] requests, or a secure electronic request at a website the agency desig-
28 nates to receive [*such*] requests if the consumer reporting agency, at the agency's discretion, makes
29 a secure electronic method available.

30 (2) If the consumer or protected consumer is the victim of identity theft or has reported a theft

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 of personal information to a law enforcement agency, the consumer or representative may include
 2 a copy of the police report, incident report or identity theft declaration.

3 (3)(a) The consumer or representative must provide proper identification [*and any fee authorized*
 4 *by ORS 646A.610*].

5 (b)(A) In addition to the information [*and fee*] described in paragraph (a) of this subsection, a
 6 representative who seeks to place a security freeze on a protected consumer's consumer report or
 7 protective record shall provide sufficient proof of the representative's authority to act on the pro-
 8 tected consumer's behalf.

9 (B) For purposes of subparagraph (A) of this paragraph, sufficient proof of authority consists of:

10 (i) A court order that identifies or describes the relationship between the representative and the
 11 protected consumer;

12 (ii) A valid and lawfully executed power of attorney that permits the representative to act on
 13 the protected consumer's behalf; or

14 (iii) A written affidavit that the representative signs and has notarized in which the represen-
 15 tative expressly describes the relationship between the representative and the protected consumer
 16 and the representative's authority to act on the protected consumer's behalf.

17 (4)(a) Except as provided in ORS 646A.614, if a security freeze is in place for a consumer report,
 18 information from the consumer report may not be released without prior express authorization from
 19 the consumer.

20 (b) Information from a protective record may not be released until the protected consumer for
 21 whom the consumer reporting agency created the protective record, or a representative of the pro-
 22 tected consumer, removes the security freeze.

23 (5) This section does not prevent a consumer reporting agency from advising a third party that
 24 a security freeze is in effect with respect to the consumer report or protective record.

25 **SECTION 4.** ORS 646A.608 is amended to read:

26 646A.608. (1)(a) A consumer reporting agency shall place a security freeze on a consumer report
 27 not later than five business days after receiving from a consumer:

28 (A) The request described in ORS 646A.606 (1); **and**

29 (B) Proper identification[; *and*].

30 [(C) A *fee, if applicable.*]

31 (b) If a consumer report does not exist for a protected consumer on behalf of whom a repre-
 32 sentative seeks to place a security freeze, a consumer reporting agency shall create a protective
 33 record after receiving from the representative the request described in ORS 646A.606 (1), proper
 34 identification for both the representative and the protected consumer and sufficient proof of au-
 35 thority, as described in ORS 646A.606 (3)(b). After creating a protective record for a protected con-
 36 sumer under this paragraph, the consumer reporting agency shall place the security freeze that the
 37 representative requested on the protected consumer's protective record.

38 (c) The protective record that the consumer reporting agency creates under paragraph (b) of this
 39 subsection does not need to contain any information other than the protected consumer's personal
 40 information, if other information for the protected consumer is not available. Except as provided in
 41 ORS 646A.614, a consumer reporting agency may not use or release to another person the informa-
 42 tion in a protective record for the purpose of assessing a protected consumer's eligibility or capacity
 43 for an extension of credit, as a basis for evaluating a protected consumer's character, reputation or
 44 personal characteristics or for other purposes that are not related to protecting the protected con-
 45 sumer from identity theft.

1 (2)(a) *[The]* A consumer reporting agency shall send a written confirmation of a security freeze
 2 on a consumer's consumer report to the consumer at the last known address for the consumer shown
 3 in the consumer report that the consumer reporting agency maintains, within 10 business days after
 4 placing the security freeze and, with the confirmation, shall provide the consumer with a unique
 5 personal identification number or password or similar device the consumer must use to authorize the
 6 consumer reporting agency to release the consumer's consumer report for a specific period of time
 7 or to permanently remove the security freeze. The consumer reporting agency shall include with the
 8 written confirmation information that describes how to remove a security freeze and how to tem-
 9 porarily lift a security freeze on a consumer report, other than a consumer report for a protected
 10 consumer, in order to allow access to information from the consumer's consumer report for a period
 11 of time while the security freeze is in place.

12 (b) This subsection does not require a consumer reporting agency to provide a consumer or
 13 representative with a personal identification number or password for the consumer or representative
 14 to use to authorize the consumer reporting agency to release information from a protective record.

15 (3)(a) If a consumer wishes to allow the consumer's consumer report to be accessed for a specific
 16 period of time while a security freeze is in effect, the consumer shall contact the consumer reporting
 17 agency using a point of contact the consumer reporting agency designates, request that the security
 18 freeze be temporarily lifted and provide the following:

19 (A) Proper identification;

20 (B) The unique personal identification number or password or similar device the consumer re-
 21 porting agency provided under subsection (2) of this section; **and**

22 (C) An indication of the period of time during which the consumer report must be available to
 23 users of the consumer report[; *and*].

24 *[(D) A fee, if applicable.]*

25 (b) A protective record is not subject to a temporary lift of a security freeze.

26 (c) Except as provided in ORS 646A.612 (2)(a), a consumer report for a protected consumer is
 27 not subject to a temporary lift of a security freeze.

28 (4) A consumer reporting agency that receives a request from the consumer to temporarily lift
 29 a security freeze on a consumer report, other than a consumer report for a protected consumer,
 30 under subsection (3) of this section shall comply with the request not later than three business days
 31 after receiving from the consumer:

32 (a) Proper identification;

33 (b) The unique personal identification number or password or similar device the consumer re-
 34 porting agency provided under subsection (2) of this section; **and**

35 (c) An indication of the period of time during which the consumer report must be available to
 36 users of the consumer report[; *and*].

37 *[(d) A fee, if applicable.]*

38 (5)(a) A security freeze for a consumer report must remain in place until the consumer requests,
 39 using a point of contact the consumer reporting agency designates, that the security freeze be re-
 40 moved. A consumer reporting agency shall remove a security freeze within three business days after
 41 receiving a request for removal from the consumer, who provides:

42 (A) Proper identification; **and**

43 (B) The unique personal identification number or password or similar device the consumer re-
 44 porting agency provided under subsection (2) of this section[; *and*].

45 *[(C) A fee, if applicable.]*

1 (b) A security freeze for a protective record must remain in place until the protected consumer
 2 or a representative requests, using a point of contact the consumer reporting agency designates,
 3 that the security freeze be removed or that the protective record be deleted. The consumer reporting
 4 agency does not have an affirmative duty to notify the protected consumer or the representative
 5 that a security freeze is in place or to remove the security freeze or **to** delete the protective record
 6 once the protected consumer is no longer a protected consumer. A protected consumer or a repre-
 7 sentative has the affirmative duty to request that the consumer reporting agency remove the secu-
 8 rity freeze or delete the protective record. A consumer reporting agency shall remove a security
 9 freeze or delete a protective record within 30 business days after receiving a request for removal
 10 or deletion from the protected consumer or a representative, who provides:

11 (A) Proper identification;

12 (B) Sufficient proof of authority, as described in ORS 646A.606 (3)(b), if the representative seeks
 13 to remove the security freeze or **to** delete the protective record; **and**

14 (C) Proof that the representative's authority to act on the protected consumer's behalf is no
 15 longer valid or applicable, if the protected consumer seeks to remove the security freeze or **to** delete
 16 the protective record[; *and*].

17 [(D) A fee, if applicable.]

18 **SECTION 5.** ORS 646A.610 is amended to read:

19 646A.610. [(1) A consumer reporting agency may not charge a fee to a consumer or a protected
 20 consumer who is the victim of identity theft or to a consumer who has reported or a protected consumer
 21 for whom a representative has reported to a law enforcement agency the theft of personal information,
 22 provided the consumer or the representative has submitted to the consumer reporting agency a copy of
 23 a valid police report, incident report or identity theft declaration.]

24 [(2)(a) A consumer reporting agency may charge a reasonable fee of not more than \$10 to a con-
 25 sumer, other than a consumer described in subsection (1) of this section, for each placement of a secu-
 26 rity freeze, temporary lift of the security freeze, removal of the security freeze or replacing a lost
 27 personal identification number or password previously provided to the consumer.]

28 [(b)(A) Except as provided in subsection (1) of this section and in subparagraph (B) of this para-
 29 graph, a consumer reporting agency may charge a reasonable fee of not more than \$10 to place or re-
 30 move a security freeze for a protected consumer's consumer report or protective record or to create or
 31 delete a protective record for a protected consumer.]

32 [(B) A consumer reporting agency may not charge a fee to place or remove a security freeze on an
 33 existing consumer report or protective record for a protected consumer who is under 16 years of age
 34 at the time a representative requests the consumer reporting agency to place or remove the security
 35 freeze.] **A consumer reporting agency may not charge a consumer a fee or collect from a
 36 consumer any money or item of value for placing, temporarily lifting or removing a security
 37 freeze on the consumer's consumer report, for creating or deleting a protective record or for
 38 placing or removing a security freeze on a protective record for a protected consumer or for
 39 replacing a lost personal identification number, password or similar device the consumer
 40 reporting agency previously provided to the consumer.**

41 **SECTION 6.** Section 2 of this 2018 Act and the amendments to ORS 646A.606, 646A.608
 42 and 646A.610 by sections 3 to 5 of this 2018 Act apply to actions that occur on or after the
 43 effective date of this 2018 Act to place, temporarily lift or remove a security freeze on a
 44 consumer report, to create or delete a protective record or to place or remove a security
 45 freeze on a protective record for a protected consumer or to replace a personal identification

1 **number, password or similar device previously provided to the consumer.**

2 **SECTION 7. This 2018 Act being necessary for the immediate preservation of the public**
3 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
4 **on its passage.**

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