

Regular Session, 2014

HOUSE BILL NO. 844

BY REPRESENTATIVE PONTI

BANKS/BANKING: Provides relative to security freezes

1 AN ACT

2 To enact R.S. 9:3571.3, relative to credit reports of protected persons; to provide for
3 prohibitions on the release of credit information of protected persons; to provide for
4 definitions; to provide for exceptions; to provide for damages; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:3571.3 is hereby enacted to read as follows:

8 §3571.3. Security freezes for protected persons

9 A. In this Section, the following words have the meanings indicated:

10 (1) "Credit report" has the same meaning as in R.S. 9:3571.1(H)(2).

11 (2) "Credit reporting agency" has the same meaning as in R.S.
12 9:3571.1(H)(3).

13 (3) "Protected person" means an individual who is either of the following:

14 (a) Under the age of sixteen years at the time a request for the placement of
15 a security freeze is made.

16 (b) An interdicted person for whom a curator has been appointed, or an
17 incapacitated person or a protected person for whom a guardian or conservator has
18 been appointed.

19 (4) "Protected person security freeze" means either of the following:

20 (a) If a credit reporting agency does not have a credit report pertaining to a
21 protected person, a restriction that meets each of the following criteria:

22 (i) Is placed on the protected person's record in accordance with this Section.

1 (ii) Prohibits the credit reporting agency from releasing the protected
2 person's record except as provided in this Section.

3 (b) If a credit reporting agency has a credit report pertaining to the protected
4 person, a restriction that meets each of the following criteria:

5 (i) Is placed on the protected person's credit report in accordance with this
6 Section.

7 (ii) Prohibits the credit reporting agency from releasing the protected
8 person's credit report or any information derived from the protected person's credit
9 report, except as provided in this Section.

10 (5) "Record" means a compilation of information that meets all of the
11 following:

12 (a) Identifies a protected consumer.

13 (b) Is created by a credit reporting agency solely for the purpose of
14 complying with this Section.

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

18 (6) "Representative" means a person who provides to a credit reporting
19 agency sufficient proof of authority to act on behalf of a protected person.

20 (7) "Sufficient proof of authority" means documentation that shows a
21 representative has authority to act on behalf of a protected person. "Sufficient proof
22 of authority" includes any of the following:

23 (a) An order issued by a court of law.

24 (b) A lawfully executed and valid power of attorney.

25 (c) A written, notarized statement signed by a representative that expressly
26 describes the authority of the representative to act on behalf of a protected person.

27 (8) "Sufficient proof of identification" means information or documentation
28 that identifies a protected person or a representative of a protected person. "Sufficient
29 proof of identification" includes any of the following:

1 (a) A social security number or a copy of a social security card issued by the
2 Social Security Administration.

3 (b) A certified or official copy of a birth certificate issued by the entity
4 authorized to issue the birth certificate.

5 (c) A copy of a driver's license, an identification card issued by the office of
6 motor vehicles, or any other government-issued identification.

7 (d) A copy of a bill, including a bill for telephone, sewer, septic tank, water,
8 electric, oil, or natural gas services, that shows a name and home address.

9 B. This Section shall not apply to the use of a protected person's credit report
10 or record by any of the following:

11 (1) A person administering a credit report monitoring subscription service
12 to which:

13 (a) The protected person has subscribed.

14 (b) The representative of the protected person has subscribed on behalf of
15 the protected person.

16 (2) A person providing the protected person or the protected person's
17 representative with a copy of the protected person's credit report on request of the
18 protected person or the protected person's representative.

19 (3) An entity or person listed in R.S. 9:3571.1(L).

20 C. A credit reporting agency shall place a protected person security freeze
21 on the credit report of a protected person if the protected person's representative does
22 all of the following to request a protected person security freeze pursuant to this
23 Section:

24 (1) Submits the request for a protected person security freeze to the credit
25 reporting agency at the address or other point of contact in the manner specified by
26 the credit reporting agency.

27 (2) Provides to the credit reporting agency sufficient proof of identification
28 of the protected person and the representative.

1 (3) Provides to the credit reporting agency sufficient proof of authority to act
2 on behalf of the protected person.

3 (4) Pays to the credit reporting agency a fee as provided in Subsection I of
4 this Section.

5 D. If a credit reporting agency does not have a credit report pertaining to a
6 protected person when the credit reporting agency receives a request for a protected
7 person security freeze under Subsection C of this Section, the credit reporting agency
8 shall create a record for the protected person.

9 E.(1) Within thirty days after receiving a request for a protected person
10 security freeze that meets the requirements of Subsection C of this Section, a credit
11 reporting agency shall place a protected person security freeze on the protected
12 person's credit report.

13 (2) A protected person security freeze placed pursuant to this Subsection
14 shall remain in effect until either of the following:

15 (a) The protected person or the protected person's representative requests the
16 credit reporting agency to remove the protected person security freeze in accordance
17 with Subsection G of this Section.

18 (b) The protected person security freeze is removed in accordance with
19 Subsection J of this Section.

20 F. Unless a protected person security freeze is removed in accordance with
21 Subsection G or J of this Section, a credit reporting agency may not release the
22 protected person's credit report, any information derived from the protected person's
23 credit report, or any record created for the protected person.

24 G. If a protected person or a protected person's representative wishes to
25 remove a protected person security freeze, the protected person or the protected
26 person's representative shall submit a request for the removal of the protected person
27 security freeze to the credit reporting agency at the address or other point of contact
28 in the manner specified by the credit reporting agency.

1 (1) In the case of a request by the protected person, the protected person shall
2 provide both of the following:

3 (a) Documentaton that the sufficient proof of authority for the protected
4 person's representative to act on behalf of the protected person is no longer valid,
5 including documentation that the protected person has reached the age of sixteen
6 years or is no longer incapacitated.

7 (b) Sufficient proof of identification of the protected person.

8 (2) In the case of a request by the representative of a protected person, the
9 representative of the protected person shall provide all of the following:

10 (a) Sufficient proof of identification of the protected person and the
11 representative.

12 (b) Sufficient proof of authority to act on behalf of the protected person.

13 (c) Payment to the credit reporting agency a fee as provided in Subsection
14 I of this Section.

15 H. Within thirty days after receiving a request that meets the requirements
16 of Subsection G of this Section, the credit reporting agency shall remove the
17 protected person security freeze.

18 I.(1) A credit reporting agency may charge a reasonable fee, not exceeding
19 ten dollars, for each placement or removal of a protected person security freeze
20 pursuant to this Section.

21 (2) Notwithstanding Paragraph (1) of this Subsection, a credit reporting
22 agency may not charge any fee pursuant to this Section if either of the following
23 apply:

24 (a) The protected person's representative does both of the following:

25 (i) Obtains a report of alleged identity fraud against the protected person.

26 (ii) Provides a copy of the report to the credit reporting agency.

27 (b) A request for the placement or removal of a protected person security
28 freeze is for a protected person who is under the age of sixteen years at the time of

1 the request and the credit reporting agency has a credit report pertaining to the
2 protected person.

3 J. A credit reporting agency may remove a protected person security freeze
4 or delete a record of a protected person if the protected person security freeze was
5 placed or the record was created based on a material misrepresentation of fact by the
6 protected person or the protected person's representative.

7 K. Any consumer damaged by an intentional or negligent violation of this
8 Section may bring an action for and shall be entitled to recovery of actual damages,
9 plus reasonable attorney fees, court costs, and other reasonable costs of prosecution
10 of the suit.

11 Section 2. This Act shall take effect January 1, 2015.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Ponti

HB No. 844

Abstract: Provides for security freezes for protected persons.

Proposed law provides for credit reporting agencies to place a security freeze on protected persons' credit reports.

Proposed law provides that "credit report" has the same meaning as the definition of credit report under present law, which is any written, oral, or other communication of any credit information by a credit reporting agency, as defined in the federal Fair Credit Reporting Act, which operates or maintains a database of consumer credit information bearing on a consumer's credit worthiness, credit standing, or credit capacity. (R.S. 9:3571.1(H)(2))

Proposed law provides that "credit reporting agency" has the same meaning as the definition of credit report agency under present law, which means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. Further provides that "credit reporting agency" shall not mean a check acceptance service which provides check approval and guarantees services to merchants. (R.S. 9:3571.1(H)(3))

Proposed law defines "protected person" as an individual who is either of the following:

- (1) Under the age of 16 years at the time a request for the placement of a security freeze is made.

- (2) An interdicted person for whom a curator has been appointed, or an incapacitated person or a protected person for whom a guardian or conservator has been appointed.

Proposed law provides that "protected person security freeze" is a restriction that may have two different meanings:

- (1) If a credit report agency does not have a credit report pertaining to a protected person, a restriction that meets each of the following criteria:
 - (a) Is placed on the protected person's record in accordance with the provisions of proposed law.
 - (b) Prohibits the credit reporting agency from releasing the protected person's record, except as provided under proposed law.
- (2) If a credit reporting agency has a credit report pertaining to the protected person, a restriction that meets each of the following criteria:
 - (a) Is placed on the protected person's record in accordance with the provisions of proposed law.
 - (b) Prohibits the credit reporting agency from releasing the protected person's credit report or any information derived from the protected person's credit report, except as provided under proposed law.

Proposed law defines "record" as a compilation of information that meets all of the following criteria:

- (1) Identifies a protected consumer.
- (2) Is created by a credit reporting agency solely for the purpose of complying with proposed law.
- (3) Is not created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Proposed law defines "representative" as a person who provides to a credit reporting agency sufficient proof of authority to act on behalf of a protected person.

Proposed law defines "sufficient proof of authority" as documentation that shows a representative's authority to act on behalf of a protected person. Each of the following meets the definition:

- (1) An order issued by a court of law.
- (2) A lawfully executed and valid power of attorney.
- (3) A written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected person.

Proposed law defines "sufficient proof of identification" as information or documentation that identifies a protected person or a representative of a protected person. Each of the following meets the definition:

- (1) A social security number or a copy of a social security card issued by the Social Security Administration.

- (2) A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate.
- (3) A copy of a driver's license, an identification card issued by the office of motor vehicles, or any other government-issued identification.
- (4) A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

Proposed law does not apply to the use of a protected person's credit report or record by a person administering a credit report monitoring subscription to which:

- (1) The protected person has subscribed.
- (2) The representative of the protected person has subscribed on behalf of the protected person.

Proposed law does not apply to the use of a protected person's credit or record by a person providing the protected person or the protected person's representative with a copy of the protected person's credit report on request of the protected person or the protected person's representative.

Proposed law does not apply to entities or persons, such as banks, fraud detection services, and databases listed under present law. (R.S. 9:3571.1(L))

Proposed law provides that a credit reporting agency shall place a protected person security freeze for a protected person if the credit reporting agency receives a request from the protected person's representative for the placement of the security freeze pursuant to proposed law. To place the security freeze, the protected person's representative shall do all of the following:

- (1) Submit the request to the credit reporting agency at the address or other point of contact in the manner specified by the credit reporting agency.
- (2) Provide the credit reporting agency sufficient proof of identification of the protected person and the representative.
- (3) Provide the credit reporting agency sufficient proof of authority to act on behalf of the protected person.
- (4) Pay to the credit reporting agency a \$10 fee as applicable under proposed law.

Proposed law provides that a credit reporting agency shall create a record for the protected person if the credit reporting agency does not have a credit report pertaining to a person when the credit reporting agency receives a request pursuant to proposed law.

Proposed law further provides that a protected person security freeze shall be made within 30 days of receipt of the request.

Unless a protected person security freeze is removed pursuant to proposed law, a credit reporting agency may not release the protected person's credit report, any information derived from the protected person's credit report, or any record created for the protected person.

Proposed law provides that a protected person security freeze shall remain in effect until the protected person or the protected person's representative requests the credit reporting agency to remove the protected person security freeze pursuant to proposed law.

Proposed law provides if a protected person or a protected person's representative wishes to remove a protected person security freeze, the protected person or representative shall:

- (1) Submit a request of removal to the credit reporting agency at the address or other point of contact in the manner specified by the credit reporting agency and provide the following to the credit reporting agency, in the case of the request made by the protected person:
 - (a) Documentation that the sufficient proof of authority for the protected person's representative to act on behalf of the protected person is no longer valid, including documentation that the protected person has reached the age of 16 years or is no longer incapacitated.
 - (b) Sufficient proof of identification of the protected person.
- (2) In case the request is made by the representative of the protected person, the representative shall provide all of the following:
 - (a) Sufficient proof of identification of the protected person and representative.
 - (b) Sufficient proof of authority to act on behalf of the protected person.
 - (c) Payment to the credit reporting agency a \$10 fee as applicable under proposed law.

Proposed law provides that a protected person security freeze shall be removed within 30 days of receipt of the request that meets the requirements of proposed law.

Proposed law provides that a credit reporting agency may charge a reasonable fee, not to exceed \$10, for each placement or removal of a protected person security freeze. Proposed law prohibits any other fee applicable to the placement or removal of a protected person security freeze. Proposed law further provides that a credit reporting agency may not charge a fee if the protected person's representative does both of the following:

- (1) Obtains a report of alleged identity fraud against the protected person.
- (2) Provides a copy of the report to the credit reporting agency.

Proposed law provides that a credit reporting agency may not charge a fee if a request for the placement or removal of a protected person security freeze is for a protected person aged 16 years or less at the time of the request and the credit reporting agency has a credit report pertaining to the protected person.

Proposed law provides that a credit report agency may remove a protected person security freeze or delete a record of a protected person, if the protected person security freeze was placed or the record was created based on a material misrepresentation of fact by the protected person or the protected person's representative.

Any consumer damaged by an intentional or negligent violation of proposed law may bring an action for and shall be entitled to recovery of actual damages, in addition to reasonable attorney fees, court costs, and other reasonable costs of prosecuting the suit.

Effective Jan. 1, 2015.

(Adds R.S. 9:3571.3)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Made technical changes to proposed law.
2. Clarified the criteria necessary to create a "protected person security freeze" when the credit reporting agency does not have a credit report pertaining to a protected person and when the credit reporting agency does have a credit report pertaining to a protected person.
3. Specified that any provision listed under the definition of "sufficient proof of authority" is an acceptable form of documentation to show a representative's authority to act on behalf of a protected person.
4. Specified that any provision listed under the definition of "sufficient proof of identification" is an acceptable form of information or documentation to identify a protected person or representative of a protected person.

House Floor Amendments to the engrossed bill.

1. Made technical changes.
2. Amended proposed law to specify that a protected person may remove a protected person security freeze pursuant to the requirements of proposed law if the protected person has reached the age of 16 years, rather than the age of majority.