

SECOND REGULAR SESSION

[CORRECTED]

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1384

AND

HOUSE BILL NO. 2157

94TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 17, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3562S.03C

AN ACT

To amend chapters 407 and 570, RSMo, by adding thereto eleven new sections relating to protecting consumers against fraudulent practices, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapters 407 and 570, RSMo, is amended by adding thereto eleven new sections, to be known as sections 407.1380, 407.1382, 407.1384, 407.1385, 407.2050, 407.2056, 407.2059, 407.2062, 407.2063, 570.222, and 570.380, to read as follows:

407.1380. As used in sections 407.1380 to 407.1384, the following terms shall mean:

(1) "Account review", activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) "Consumer", any individual;

(3) "Consumer credit reporting agency", any entity that, 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 credit reports to third parties. The term "consumer credit reporting agency" shall not include an entity that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer credit reporting agency and who does not maintain a permanent database of credit information from which consumer reports are produced and who does not furnish consumer reports to third parties;

(4) "Credit report", any written or electronic communication of any information by a consumer credit reporting agency that in any way bears upon a person's credit worthiness, credit capacity, or credit standing;

(5) "Security freeze", a notice placed in a consumer's credit report, at the request of the consumer, that prohibits the consumer credit reporting agency from releasing the consumer's credit report, credit score, or any information contained in the report without the express authorization of the consumer.

407.1382. 1. A consumer may request that a consumer credit reporting agency place a security freeze on that consumer's credit report, if that request is made:

(1) In writing by certified mail or personal delivery; or

(2) By other reliable means, including, but not limited to, Internet, telephone, or facsimile; and

(3) Proper identification is presented to adequately identify the requestor as the consumer subject to the credit report.

2. A consumer credit reporting agency shall honor a consumer's request for a security freeze within five days of receipt of such request. No consumer credit reporting agency shall assess a fee to a consumer for the consumer's first request for a security freeze, but a consumer credit reporting agency may

assess a fee up to ten dollars for any subsequent request for a security freeze made by the same consumer.

3. A consumer credit reporting agency shall, within ten days of placing a security freeze on the consumer's credit report, send the consumer:

(1) Written confirmation of compliance with the consumer's request;

(2) Instructions explaining the process of placing, removing, and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific requestor;

(3) A unique personal identification number or password to be used by the consumer to remove temporarily or permanently the security freeze or designate a specific requestor for receipt of the credit report despite the security freeze.

4. A consumer credit reporting agency shall not furnish a credit report to any person if the consumer who is subject to the credit report has requested a security freeze be placed on that report unless the credit report:

(1) Is requested by the consumer who is subject to the report;

(2) Is furnished under a court order;

(3) Is furnished during a period in which the consumer has temporarily removed the freeze;

(4) Is requested for the purposes of prescreening as provided by the Fair Credit Reporting Act under 15 U.S.C. 1681, et seq.;

(5) Is requested by a child support enforcement agency;

(6) Is requested for use in setting or adjusting a rate, issuing or underwriting a policy, adjusting a claim or servicing a policy for underwriting for property and casualty insurance

purposes;

(7) Is requested by a specific person, or the subsidiary, affiliate, agent, or assignee of such person, whom the consumer has identified as eligible for receipt of the credit report under subsection 6 of this section, despite the consumer's request for a security freeze;

(8) Is furnished to a person, or the subsidiary, affiliate, agent, or assignee of such person, with whom the consumer has a debtor-creditor relationship for the purpose of account review or collecting the financial obligation owing for the account contract or debt;

(9) Is requested by the state or its agents or assigns for the purpose of investigating fraud or investigating or collecting delinquent taxes to the extent consistent with a permissible purpose under 15 U.S.C. 1681; or

(10) Is requested by a person or entity administering a credit file monitoring service or similar service to which the consumer has subscribed.

5. If a security freeze is in place, a consumer credit reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

6. A consumer may request that the consumer credit reporting agency furnish a credit report to a designated person

despite the consumer request for a security freeze under subsection 1 of this section, if that request is made:

- (1) In writing by certified mail or personal delivery; or
- (2) By other reliable means, including, but not limited to, Internet, telephone, or facsimile; and
- (3) Proper identification is presented to adequately identify the requestor as the consumer subject to the credit report, which shall include the unique personal identification number or password issued to the consumer under subsection 3 of this section.

7. A consumer credit reporting agency shall temporarily or permanently remove a security freeze within fifteen minutes of receiving a request for removal from a consumer, if that request is made during normal business hours:

- (1) By personal delivery of a written request; or
- (2) By other reliable means, including, but not limited to, Internet, telephone, or facsimile; and
- (3) Proper identification is presented to adequately identify the requestor as the consumer subject to the credit report, which shall include the unique personal identification number or password issued to the consumer under subsection 3 of this section; and

(4) In the case of a request for temporary removal, the time period is specified for which the freeze shall be temporarily removed;
except that the time frame in which a consumer credit reporting agency shall remove a security freeze may be extended in the event of an act of God, an unauthorized or illegal act by a third party, operational interruption due to electrical failure or hardware or software failure, government action, or reasonable unexpected maintenance of the agency's systems, provided that the

removal of a security freeze shall occur within a reasonable time after resumption of normal business operations which in no case shall be longer than two days after resumption of normal business operations. If a removal request is received outside of normal business hours, the consumer credit reporting agency shall remove the security freeze within fifteen minutes of the start of the next normal business day.

8. At any time a consumer is required to receive a summary of rights under 15 U.S.C. Section 1681g(d), the following notice shall be included:

"Missouri Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer credit reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail or via other approved methods. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a period of time

after the freeze is in place. To provide that authorization you must contact the consumer credit reporting agency and provide all of the following:

- (1) The personal identification number or password;
- (2) Proper identification to verify your identity;
- (3) The proper information regarding the period of time for which the report shall be available.

A consumer credit reporting agency must authorize the release of your credit report no later than fifteen minutes after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring civil action against anyone, including a consumer credit reporting agency, who improperly obtains access to a file, knowingly misuses file data, or fails to correct inaccurate file data."

407.1384. 1. Any consumer credit reporting agency that knowingly fails to comply with the provisions of sections 407.1380 to 407.1384 shall be liable to the consumer who is subject to the credit report in an amount equal to:

- (1) Any actual damages sustained by the consumer due to such failure; and
- (2) Any court costs and fees assessed in maintaining the action, as well as reasonable attorney's fees.

2. In addition to the foregoing monetary sums, a court, upon request of the damaged consumer, shall award such equitable

relief as may be necessary to restore the damaged consumer's credit and to discourage future violations of sections 407.1380 to 407.1384 by the consumer credit reporting agency.

407.1385. It shall not be considered a violation of any law that requires an application for credit to be processed within a specified time frame if a creditor is unable to meet this time frame because of inability to access a credit report due to a security freeze.

407.2050. As used in sections 407.2050 to 407.2062, the following terms shall mean:

(1) "Advertisement", the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise;

(2) "Mail-in rebate", a rebate involving a return to the consumer of any portion of the price paid for merchandise which occurs after the consumer purchases the merchandise and usually involves the consumer submitting proof of purchase;

(3) "Merchandise", any objects, wares, goods, commodities, intangibles, real estate, or services;

(4) "Person", any natural person or his or her legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or cestui que trust thereof;

(5) "Rebate", a deduction from the amount charged to the consumer for merchandise or a return to the consumer of any portion of the amount paid by the consumer for the purchase of merchandise;

(6) "Sale", any sale, lease, offer for sale or lease, or

attempt to sell or lease merchandise for cash or on credit.

407.2056. 1. A person shall not require a consumer to provide more than the following as proof of purchase for purposes of redeeming a rebate:

(1) A receipt for the purchase of the merchandise;

(2) A universal product code, packing slip, or packaging element that is clearly and conspicuously marked as the necessary proof of purchase for the rebate offer;

(3) The name of the consumer;

(4) The address of the consumer;

(5) The consumer's telephone number;

(6) The consumer's membership number, if applicable;

(7) The consumer's signature; and

(8) In the event that the eligibility for the rebate is triggered by an electronic transaction, a valid proof of the electronic transaction.

2. For purposes of subdivision (1) of subsection 1 of this section, a copy of the receipt shall be sufficient unless the consumer is provided with a duplicate original receipt for each item of merchandise associated with a rebate, in which case the duplicate original may be required.

3. In addition to the information permitted to be requested under subsection 1 of this section, a person may require:

(1) The consumer to write the model number or other identifying number on a rebate claim form only if the receipt does not reveal the product name, type, model, or other identifying number;

(2) Instead of a telephone number, a consumer's email address with respect to merchandise purchased over the Internet, Internet-based services, or Internet rebate redemptions, but it shall not be cause for a person to reject a consumer's rebate

claim request if the consumer declines to provide his or her email address; or

(3) If the rebate offer is contingent upon ownership of another item of merchandise, reasonable proof of ownership of such other item.

4. A person offering a rebate shall not require personal information about the consumer other than the information permitted under subsections 1 and 3 of this section. It shall not be considered a violation of this section for a person to request the email address of any consumer in conjunction with a rebate offer, however no consumer shall be obligated to provide his or her email address in order to receive a rebate.

5. Notwithstanding subsection 1 of this section, a person has the right to reject a consumer rebate claim or to request reasonable additional documentation to verify a claim if the person has reason to believe that the consumer submitting the rebate request is attempting to commit fraud, has already received the offered rebate, or that the proof of purchase is not from a legitimate item of merchandise.

407.2059. 1. A person offering a mail-in rebate shall provide the rebate claim form directly with the merchandise, or at the same location and at the same time that the consumer purchases the merchandise.

2. If a person sells merchandise on which another person offers a mail-in rebate, the person offering the rebate shall supply the person selling the merchandise with rebate claim forms either by providing:

(1) A sufficient quantity of rebate claim forms based on reasonably anticipated sales;

(2) The means for the person selling the merchandise to create a rebate claim form at the time and place of sale; or

(3) A rebate claim form enclosed within the packaging of each item of merchandise.

3. For purposes of Internet sales, a generally accessible web page, including a rebate claim form thereon, shall comply with this section. For purposes of telephone sales, directing consumers to a generally accessible web page, including the rebate claim form, and, upon request, sending the rebate claim form via the consumer's choice of regular or electronic mail or facsimile shall comply with this section.

4. Except as provided in subsection 5 of this section, any mail-in rebate claim form under this section shall conspicuously disclose a telephone number on the form that a consumer may call to check the status of his or her rebate claim.

5. For purchases of merchandise that occur over a website operated or maintained by that person, a website or other electronic means may be provided instead of the telephone number required in subsection 4 of this section to check the status of a rebate claim.

407.2062. 1. A person that offers a mail-in rebate shall allow a minimum of thirty days from the date the consumer purchases the merchandise, or becomes eligible for the rebate pursuant to subdivision (2) of subsection 2 of this section, for the consumer to submit the rebate claim.

2. A person shall mail the rebate payment or transmit the rebate funds to the consumer, or otherwise fulfill the terms of the mail-in rebate offer, within thirty days from either of the following events as applicable:

(1) Upon receipt of a consumer rebate claim meeting the terms and conditions of the rebate offer, to the extent permitted by sections 407.2050 to 407.2062, and as disclosed at the time of purchase; or

(2) If the consumer rebate offer is conditioned upon a consumer staying with a service contract for a minimum length of time, then upon completion of this term of the rebate offer and receipt of a rebate claim meeting the terms and conditions for the rebate offer, to the extent permitted by sections 407.2050 to 407.2062 and as disclosed at the time of purchase.

3. If an advertisement for a mail-in rebate does not specify the monetary form in which the rebate shall be awarded, then the rebate shall be awarded in cash, check, or an equivalent method of payment. Reward cards shall not qualify as an equivalent method of payment. For purposes of this section, a "reward card" is a card that:

- (1) Requires activation; or
- (2) Has an expiration date; or
- (3) Is not redeemable for cash; or
- (4) Is not universally accepted as a form of payment.

407.2063. The provisions of sections 407.2056 to 407.2062 shall not apply to merchandise manufactured prior to January 1, 2009.

570.222. 1. Notwithstanding that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, victims of identity theft have the right to contact the local law enforcement agency where the victim is domiciled and request that an incident report about the identity theft be prepared and filed. The victim may also request from the local law enforcement agency to receive a copy of the incident report. The law enforcement agency may share the incident report with law enforcement agencies located in other jurisdictions.

2. As used in this section "incident report" means a loss or other similar report prepared and filed by a local law

enforcement agency.

3. Nothing in this section shall interfere with the discretion of a local law enforcement agency to allocate resources for investigations of crimes or to provide an incident report as permitted in this section. An incident report prepared and filed under this section shall not be an open case for purposes of compiling open case statistics.

570.380. Any person who manufactures or possesses five or more fictitious or forged means of identification, as defined in section 570.223, with the intent to distribute to others for the purpose of committing a crime shall be guilty of a class C felony.