

NEW YORK STATE GENERAL BUSINESS LAW
ARTICLE 25
FAIR CREDIT REPORTING ACT

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§ 380. Short title. This article may be cited as the "fair credit reporting act".

§ 380-a. Definitions. As used in this article:

(a) The term "person" means any individual, partnership, corporation, trust, estate, co-operative, association, government or governmental subdivision, agency or other entity.

(b) The term "consumer" means an individual.

(c) (1) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or part for the purpose of serving as a factor in establishing the consumer's eligibility for (i) credit or insurance to be used primarily for personal, family, or household purposes, (ii) employment purposes, or (iii) other purposes authorized under section three hundred eighty-b of this article.

(2) The term "consumer report" does not include (i) any report containing information solely as to transactions or experiences between the consumer and the person making the report, (ii) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, or (iii) any report in which a person who has been requested by a third party to make a specific

extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section three hundred eighty-i of this article.

(d) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(e) The term "consumer reporting agency" 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 or investigative consumer reports to third parties.

(f) The term "file" when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(g) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(h) The term "adverse information" means information that is likely to have a negative effect upon the ability or eligibility of a consumer to obtain credit, insurance, employment, or other benefits, goods or services or information that is either wholly or partially responsible for increases in charges for credit or insurance.

(i) The term "user" when discussed in connection with the use of a consumer report means any person receiving or requesting a consumer report or an investigative consumer report other than the subject thereof.

(j) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(k) The term "consumer credit reporting agency" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing consumer credit reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business.

(l) The term "consumer credit report" means a consumer report assembled, evaluated or maintained by a consumer credit reporting agency, bearing on a consumer's credit worthiness, credit standing, or credit capacity.

(m) The term "security freeze" or "freeze" means a notice placed in the consumer credit report of or relating to a consumer, at the request of such consumer and subject to certain exceptions, that prohibits the

consumer credit reporting agency from releasing the consumer credit report, the contents of such report or the credit score of such consumer.

(n) The term "proper identification" means information generally deemed sufficient to identify a person.

§ 380-b. Permissible dissemination of reports. (a) A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or

(2) In accordance with the written instructions of the consumer to whom it relates, or

(3) To a person whom it has reason to believe intends to use the information (i) in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer, or (ii) for employment purposes, or (iii) in connection with the underwriting of insurance involving the consumer, or (iv) in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status, or (v) to a person in connection with a business transaction involving the consumer where the user has a legitimate business need for such information, or (vi) in connection with the rental or lease of a residence.

(b) No person shall request a consumer report, other than an investigative consumer report, in connection with an application made after the effective date of this article, for credit, employment, insurance, or rental or lease of residences, unless the applicant is first informed in writing or in the same manner in which the application is made that (i) a consumer report may be requested in connection with such application, and (ii) the applicant upon request will be informed whether or not a consumer report was requested, and if such report was requested, informed of the name and address of the consumer reporting agency that furnished the report.

(c) Where the notice provided pursuant to subdivision (b) of this section further indicates that subsequent consumer reports, other than investigative consumer reports, may be requested or utilized in connection with an update, renewal, or extension of the credit, employment, insurance, or rental or lease of residences for which application was made, no additional notice to the consumer shall be required at the time such subsequent report is requested.

(d) The notice requirements of this section shall not be applicable to the update, renewal, or extension of credit, employment, insurance, or rental or lease of residences for which initial application was made prior to the effective date of this article.

§ 380-c. Preparation and/or procurement of investigative consumer reports. (a) No person may procure or cause to be prepared an investigative consumer report on any consumer unless such person:

(1) has first provided the consumer with notice of the procurement or preparation as described in subdivision (b) of this section, and

(2) has first received from the consumer an authorization for preparation or procurement of such investigative consumer report as described in subdivision (c) of this section.

(b) The notice required by this section shall be in writing if a

written application is made by the consumer, or may be in writing or oral in all other circumstances. Such notice shall inform the consumer that:

(1) an investigative consumer report may be requested on the consumer, and

(2) the consumer upon written request will be informed whether or not an investigative consumer report was requested, and if such report was requested, the name and address of the consumer reporting agency to whom the request was made. Upon the furnishing to the consumer of the name and address of the consumer reporting agency to whom the request was made the consumer shall also be informed he may inspect and receive a copy of such report by contacting such agency. Additionally, if such report was requested with respect to an offer of employment the person, firm, partnership, corporation or other entity requesting such report shall in such notice also provide the subject of such report with a copy of article twenty-three-A of the correction law governing the licensure and employment of persons previously convicted of one or more criminal offenses.

(c) The authorization required by this section shall be given in writing or in the same manner as the notice pursuant to this section is required to be given.

(d) If a person applying for credit, insurance, or employment refuses to authorize the procurement or preparation of an investigative consumer report, the prospective creditor, insurer or employer may decline to grant credit, insurance or employment on the grounds that the applicant refused to execute such authorization.

(e) Where a parent applies for insurance on behalf of or to cover his child, or an adult applies for insurance on behalf of or to cover a minor, the execution of an authorization and receipt of notice pursuant to this section by the parent or adult shall also be deemed to be receipt of notice and execution of an authorization by the child or minor.

(f) The notice and authorization requirements of this section shall not be applicable to investigative consumer reports procured or prepared in connection with the renewal of a casualty insurance policy where the initial application for such policy preceded the effective date of this article.

§ 380-d. Disclosure to consumers. (a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) all information in its files at the time of the request concerning such consumer; and

(2) the sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed; provided, however, that in the event an action is brought under section three hundred eighty-n of this article, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought; and

(3) the recipients of any consumer report on the consumer which it has furnished;

(i) for employment purposes within the two-year period preceding the request, and

(ii) for any other purpose within the six month period preceding the request.

(b) The requirements of subdivision (a) of this section respecting the

disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this article except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

(c) Notwithstanding any other provision of this article, every consumer reporting agency, upon contact by a consumer by phone, mail or in person regarding information which may be contained in the agency's files which has been or may be used for the purpose of providing a consumer report regarding that consumer, shall promptly advise the consumer of the obligation of the agency to provide disclosure of the files in person, by mail or by telephone pursuant to this section, including the obligation of the agency to provide a decoded written version of the file or a written copy of the file with an explanation of any code used, if the consumer so requests. The disclosure shall be provided in the manner selected by the consumer. All consumers shall be specifically advised that if they have been denied credit in the past thirty days they are entitled to receive a written copy of their complete file, at no charge whatsoever, should they choose to request such a copy.

§ 380-e. Methods and conditions of disclosure to consumers. (a) A consumer reporting agency shall make the disclosures required under section three hundred eighty-d of this article during normal business hours and on reasonable notice.

(b) The disclosure required under section three hundred eighty-d of this article shall be made to the consumer by one or more of the following methods:

(1) in person if he appears in person and furnishes proper identification, in which case the consumer shall be permitted a personal visual inspection of his file and, if he so requests, shall be furnished a copy of his entire file or any part thereof,

(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer, and at the time of the disclosure by telephone the consumer shall be advised of the right to receive a complete written disclosure of the information pertaining to him, or

(3) by mailing a copy or transcription of all information in the consumer's file to him, if he has made a written request with proper identification.

(c) Every consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him either by personal interview or telephone communication, and information furnished by mail must be accompanied by an explanation of such information if provided in code or trade terminology.

(d) The consumer who seeks disclosure by means of a personal interview pursuant to paragraph one of subdivision (b) of this section shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such other person's presence.

(e) (1) A consumer reporting agency shall make all disclosures authorized under section three hundred eighty-d of this article without charge to any person who receives a notification of adverse action

pursuant to section three hundred eighty-i of this article, or receives notification from a debt collection agency affiliated with such consumer reporting agency stating the consumer's credit rating may be or has been adversely affected if, within thirty days of receipt of such notification, the consumer makes a request for such disclosure. A written statement by a consumer indicating that he has been denied credit in the past thirty days or has been contacted by a debt collection agency as described in this paragraph is sufficient to require the disclosure without charge.

(2) In all other cases where such disclosure is requested, the consumer reporting agency may impose a reasonable charge for such disclosure, provided that such charges are indicated to the consumer prior to making disclosure.

(3) Notwithstanding any provision of paragraph two of this subdivision, the charge imposed for the furnishing of information shall not exceed the charge the consumer reporting agency would impose for providing such information to its regular customers.

(4) No charge may be made for notifying any person of the deletion of information which is found to be in error or which can no longer be verified.

(f) In addition to the disclosure provided by this section and any disclosures received by the consumer, the consumer shall be advised of the right to request and receive a decoded written version of the file or a written copy of the file, with an explanation of any code used, without charge as subject to subdivision (e) of this section.

§ 380-f. Procedure for resolving disputes. (a) If a consumer disputes any item of information contained in his file, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall promptly re-investigate and record the current status of such information, unless it has reasonable grounds to believe that the dispute by the consumer is frivolous, and it shall promptly notify the consumer of the result of its investigation, its decision on the status of the information and his rights pursuant to this section. The presence of contradictory information in a consumer's file shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous.

(b) If, after conducting the re-investigation required by subdivision (a) of this section, the consumer reporting agency finds that an item is in error or that it can no longer be verified, it shall:

(1) promptly expunge the item and otherwise correct the file,

(2) refrain from reporting the item in subsequent consumer reports,

(3) clearly and conspicuously disclose to the consumer his rights to make a request for notification and upon request of the consumer, promptly notify any person designated by the consumer who has received information regarding the item during the previous year that an error existed, and shall furnish such person with the corrected information, and

(4) where applicable forward a copy of the consumer's statement pursuant to subdivision (c) of this section.

(c) If, after conducting a re-investigation pursuant to this section, the consumer reporting agency is unable to resolve any remaining differences between the statements made by its sources and the consumer, it shall:

(1) promptly indicate in the file that the item is disputed,

(2) permit the consumer to file a statement concerning the nature of

the dispute, which statement may be limited by the agency to not more than one hundred words if such agency provides the consumer with assistance in writing a clear summary of the dispute,

(3) include the consumer's statement of the dispute in all subsequent credit reports containing the information in question, and

(4) clearly note in all subsequent consumer reports that the item is disputed by the consumer.

(d) Notwithstanding any other provision of this section, if any item disputed and reinvestigated is found to be in error or can no longer be verified, upon completion of the reinvestigation of all items disputed, the agency shall promptly mail the consumer a corrected written copy of the file, reflecting any changes, with an explanation of any code used, at no charge to the consumer.

§ 380-g. Public record information. A consumer reporting agency which compiles and reports items of information on consumers which are matters of public record shall:

(a) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(b) maintain reasonable procedures designed to insure that whenever public record information is reported it is complete and up to date to the extent practicable. It shall be deemed a reasonable procedure for a consumer reporting agency to accurately report the status of public record information as of the date recorded in its files provided such information is updated on a regular basis.

(c) When conducting a reinvestigation as required by subdivision (a) of section three hundred eighty-f of this article, a consumer reporting agency shall promptly record and report the current status of the public record.

(d) When a consumer reporting agency provides a consumer report that contains criminal conviction information, permitted by paragraph one of subdivision (a) of section three hundred eighty-j of this article, to a user, the person, firm, corporation or other entity requesting such report shall provide the subject of such report a printed or electronic copy of article twenty-three-A of the correction law governing the licensure and employment of persons previously convicted of one or more criminal offenses.

§ 380-h. Restrictions on investigative consumer reports. (a) Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in such report, other than information which is a matter of public record, may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, unless the adverse information was received within the three month period preceding the date upon which the subsequent report is furnished.

(b) Each investigative consumer report shall be in writing, and a copy thereof shall be retained by the consumer reporting agency for at least one year after it is issued.

§ 380-i. Requirements on users of consumer reports. (a) Whenever credit or insurance for personal, family or household purposes is

denied, or whenever a residential rental or lease is denied, or the charge for such credit or insurance, or rental or lease is increased, either wholly or partly because of information contained in a consumer report, the user of the report shall:

(1) advise the consumer against whom such adverse action has been taken of such action,

(2) supply the name and address of the consumer reporting agency making the report, and

(3) inform the consumer of his right to inspect and receive a copy of such report by contacting the consumer reporting agency.

(b) In addition to the requirements of subdivision (a) of this section, the user of any such report for purpose of evaluating an application for credit shall furnish to the consumer the reasons for any adverse action in relation to such application in conformance with the requirements of the federal equal credit opportunity act (P.L.93-435, 15 USC 1691 et seq) as that statute may from time to time be amended.

(c) Every user of a consumer report or an investigative consumer report shall be prohibited from disseminating any such report to any other person unless such other person has a legitimate business need for the information in connection with a business transaction involving the consumer.

§ 380-j. Prohibited information. (a) No consumer reporting agency shall report or maintain in the file on a consumer, information:

(1) relative to an arrest or a criminal charge unless there has been a criminal conviction for such offense, or unless such charges are still pending,

(2) relative to a consumer's race, religion, color, ancestry or ethnic origin, or

(3) which it has reason to know is inaccurate.

(b) Notwithstanding the provisions of paragraph one of subdivision (a) of this section, a consumer reporting agency may collect, evaluate, prepare, use or report information relative to a detention of an individual by a retail mercantile establishment, provided that:

(1) the individual has executed an uncoerced admission of wrongdoing;

(2) with respect to a detention made on or after the effective date of this article the retail mercantile establishment has, prior to transmitting to a consumer reporting agency information concerning such detention, delivered to the individual a written notice containing:

(i) a statement that the information may be furnished to a consumer reporting agency, and that such information may be reported to a retail mercantile establishment for employment purposes,

(ii) a statement that the individual may request disclosure by the consumer reporting agency of information in the agency's file on such individual, and that the completeness or accuracy of such information may be disputed by the individual, and

(iii) the name and address of such consumer reporting agency; and

(3) the user of such information certifies to the consumer reporting agency that such information will be used only in connection with employment purposes.

(c) In the event that a criminal charge is filed subsequent to the detention described in subdivision (b) of this section, the disposition of such charge shall be recorded by the consumer reporting agency in the file on such individual upon the request of such individual and upon his furnishing proof of such disposition.

(d) No consumer reporting agency shall issue a consumer report which

lists a person as having been denied credit if the sole reason for such denial is lack of sufficient information to grant credit, unless the report states that the denial was for such reason.

(e) Consumer reporting agencies shall maintain reasonable procedures designed to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(f) (1) Except as authorized under paragraph two of this subdivision, no consumer reporting agency may make any consumer report containing any of the following items of information. (i) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years;

(ii) judgements which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period; or judgments which, from date of entry, having been satisfied within a five year period from such entry date, shall be removed from the report five years after such entry date;

(iii) paid tax liens which, from date of payment, antedate the report by more than seven years or, a paid, satisfied or vacated tax lien involving a purchaser, transferee or assignee in a bulk sale transaction who has been deemed liable by the state tax commission for sales taxes due from a seller, transferrer or assignor under subdivision (c) of section eleven hundred forty-one of the tax law, where the receipt by a credit reporting agency from such purchaser, transferee or assignee of a notice, or true copy thereof, from the state tax commission to such purchaser, transferee or assignee that his liability has been wholly paid or satisfied or no longer exists, antedates the report by more than thirty days;

(iv) accounts placed for collection or charged to profit and loss which antedate the report by more than seven years; or accounts placed for collection or charged to profit and loss, which have been paid and which antedate the report by more than five years;

(v) records of conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years;

(vi) information regarding drug or alcoholic addiction where the last reported incident relating to such addiction antedates the consumer report or investigative consumer report by more than seven years;

(vii) information relating to past confinement in a mental institution where the date of last confinement antedates the report by more than seven years; or

(viii) any other adverse information which antedates the report by more than seven years.

(2) The provisions of this subdivision shall not apply to:

(i) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of fifty thousand dollars or more;

(ii) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of fifty thousand dollars or more; or

(iii) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal twenty-five thousand dollars, or more.

(g) No consumer reporting agency shall collect, evaluate, report, or maintain in the file on a consumer any results, opinions, analyses, transcripts or information of any nature concerning, related to, or derived from a polygraph examination, an examination by any device or instrument of any type used to test or question individuals for the

purpose of detecting deception, verifying truthfulness, or measuring deceptive tendencies, or the questioning or interviewing of an individual by the examiner prior to or after such an examination.

§ 380-k. Compliance procedures. Every consumer or reporting agency shall maintain reasonable procedures designed to avoid violations of sections three hundred eighty-b, three hundred eighty-j and three hundred eighty-t of this article and to limit the furnishing of consumer reports to the purposes listed under said section three hundred eighty-b. These procedures shall require all prospective users of the information to identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section three hundred eighty-b of this article.

§ 380-l. Civil liability for willful noncompliance. Any person, firm, partnership, corporation, or association whose knowing and willful violation of section three hundred eighty-s of this article resulted in the transmission or provision to a consumer reporting agency of information that would otherwise not have been transmitted or provided, and any consumer reporting agency or user of information who or which willfully and knowingly fails to comply with any requirement imposed under this article with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) Any actual damages sustained by the consumer as a result of such failure or as a result of a violation of section three hundred eighty-s of this article;

(b) Such amount of punitive damages as the court may allow; and

(c) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 380-m. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information who or which is negligent in failing to comply with any requirement imposed under this article, other than a violation of section three hundred eighty-t of this article, with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) Any actual damages sustained by the consumer as a result of the failure;

(b) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 380-n. Jurisdiction of courts; limitation of actions. An action to enforce any liability, created under this article may be brought in any court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this article to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this article, the action may be brought at any time

within two years after the discovery by the individual of the misrepresentation.

§ 380-o. Obtaining or introducing information under false pretenses; penalty. 1. Any person who knowingly and willfully obtains information concerning a consumer from a consumer reporting agency under false pretenses shall, upon conviction, be fined not more than five thousand dollars or imprisoned not more than one year, or both.

2. Any person who knowingly and willfully introduces, attempts to introduce or causes to be introduced, false information into a consumer reporting agency's files for the purpose of wrongfully damaging or wrongfully enhancing the credit information of any individual shall, upon conviction, be fined not more than five thousand dollars or imprisoned not more than one year, or both.

3. This section shall not apply to statements filed pursuant to paragraph two of subdivision (c) of section three hundred eighty-f of this chapter.

§ 380-p. Unauthorized disclosures by officers or employees; penalty. Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall, upon conviction, be fined not more than five thousand dollars or imprisoned not more than one year, or both.

§ 380-q. Disclosure of medical information. Whenever any provision of this article requires disclosure of medical information, or the disclosure of a reason for adverse action which involves medical information, such information or reason shall be disclosed only to a physician designated by the consumer for such purpose.

§ 380-r. Disclosures to governmental agencies. Notwithstanding the provisions of section three hundred eighty-b of this article, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment to a governmental agency.

§ 380-s. Theft of identity. No person, firm, partnership, corporation, or association or employee thereof shall knowingly and with the intent to defraud, obtain, possess, transfer, use, or attempt to obtain, possess, transfer, or use credit, goods, services or anything else of value in the name of another person without his or her consent.

§ 380-t. Security freeze. (a) A consumer may request that a security freeze be placed on his or her consumer credit report by sending a request in writing with confirmation of delivery requested or via telephone, secure electronic means, or other methods developed by the consumer credit reporting agency to a consumer credit reporting agency at an address, telephone number or secure website designated by such agency to receive such requests. Consumer credit reporting agencies shall have a secure website and a separately dedicated toll-free number to offer information, to process requests and deliver the services provided for under this section.

(b) A consumer credit reporting agency that receives from a consumer a request in accordance with subdivision (a) of this section shall, provided such request is accompanied by proper identification and payment of any applicable fee, place a security freeze on the consumer

credit report of or relating to such consumer no later than four business days after receiving such request, provided further, however, that for requests received on or after January first, two thousand nine, such consumer credit reporting agency shall place a security freeze on the consumer credit report of or relating to such consumer no later than three business days after receiving such request and for requests received on or after January first, two thousand ten, such consumer credit reporting agency shall place a security freeze on the consumer credit report of or relating to such consumer no later than one business day after receiving such request. Nothing in this subdivision shall be construed to prevent a consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer credit report of or relating to such consumer. No consumer credit reporting agency shall advise in any manner a third party, of the fact that the consumer requesting the freeze is alleging to be the victim of domestic violence or identity theft, without the written authorization of the consumer.

(c) The consumer credit reporting agency shall send a written confirmation of the placement of a security freeze to the consumer within five business days of placing such freeze. Upon placing the security freeze on the consumer credit report of or relating to such consumer, the consumer credit reporting agency shall provide the consumer with a unique personal identification number or password, or other device which shall only be used by the consumer when providing authorization for the release of his or her consumer credit report for a specific party or specific period of time. The unique personal identification number or password, or other device to be used by the consumer shall not be a social security number or a sequential portion thereof. Any use of the unique personal identification number or password or other device other than provided for in this section is prohibited.

(d) If the consumer wishes to allow his or her consumer credit report to be accessed for a specific party or a specific period of time while a freeze is in place, he or she shall contact the consumer credit reporting agency via mail with confirmation of delivery, telephone, secure electronic means or other method developed by such consumer credit reporting agency pursuant to subdivision (f) of this section using a point of contact designated by such consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) proper identification;

(2) the unique personal identification number or password provided by the consumer credit reporting agency pursuant to subdivision (c) of this section;

(3) the proper information regarding the party to which the consumer credit report should be available or the time period for which the consumer credit report shall be available to users of such report; and

(4) payment of any applicable fee.

(e) (1) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer credit report pursuant to subdivision (d) of this section, shall comply with the request: (i) no later than three business days after receiving such request; (ii) as of September first, two thousand nine, a consumer credit reporting agency that receives a request via the use of a telephone or secure electronic method provided by the agency, pursuant to subdivision (d) of this section, shall release a consumer's credit report as requested by the consumer within fifteen minutes after the

request is received by the consumer credit reporting agency.

(2) A consumer credit reporting agency is not required to temporarily lift a security freeze within the time provided in subparagraph (ii) of paragraph one of this subdivision if:

(i) the consumer fails to meet the requirements of subdivision (b) of this section; or

(ii) the consumer credit reporting agency's ability to temporarily lift the security freeze within fifteen minutes is prevented by:

(A) an act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena;

(B) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;

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

(D) governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

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

(F) commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.

(f) A consumer credit reporting agency may develop procedures involving other secure methods of communication, including the use of the internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer credit report pursuant to subdivision (d) of this section in an expedited manner.

(g) The consumer protection board shall monitor the state of technology relating to the means available to process requests for the lifting or removal of a security freeze, and shall report to the legislature when it is determined that the technology to process requests for the lifting or removal of a security freeze in a shorter period of time than that set forth in subdivision (e) of this section is available.

(h) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on the consumer credit report of or relating to a consumer only in the following cases:

(1) upon consumer request, pursuant to subdivision (d) or (k) of this section; or

(2) if the consumer credit report of or relating to such consumer was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer credit report pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing, by first class mail, within three business days prior to removing the freeze on such consumer credit report.

(i) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her consumer credit report to be accessed for that period of time, the third party may treat the application as incomplete.

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

(k) (1) A security freeze shall remain in place until the consumer requests, using a point of contact designated by the consumer credit reporting agency, that the security freeze be removed and provides the following:

(i) proper identification;

(ii) the unique personal identification number or password or similar device provided by the consumer credit reporting agency pursuant to subdivision (c) of this section; and

(iii) a fee, if applicable.

(2) A consumer credit reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer pursuant to paragraph one of this subdivision.

(1) A consumer credit reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(m) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

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

(2) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;

(3) any state or local agency, law enforcement agency, court, private collection agency, or person acting pursuant to a court order, warrant, or subpoena;

(4) a child support agency acting pursuant to title iv-d of the social security act (42 U.S.C. et seq.);

(5) the state or its political subdivisions or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities provided such responsibilities are consistent with a permissible purpose under 15 U.S.C. section 1681b;

(6) the use of credit information for the purposes of prescreening as provided for by the federal fair credit reporting act;

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

(8) any person or entity for the purpose of providing a consumer with a copy of his or her consumer credit report or score upon the request of such consumer.

(n) (1) (i) No consumer credit reporting agency shall charge a fee to a victim of identity theft who submits a copy of a signed federal trade commission ID theft victim's affidavit, or a report of ID theft from a law enforcement agency to such consumer credit reporting agency.

(ii) No consumer credit reporting agency shall charge a fee to a domestic violence victim who has submitted to such consumer credit reporting agency:

(A) a valid domestic violence incident report form as such term is defined in subdivision fifteen of section eight hundred thirty-seven of the executive law;

(B) a valid police report;

(C) a valid order of protection; or

(D) a signed affidavit from a licensed medical or mental health care provider, employee of a court acting within the scope of his or her employment, social worker, a rape crisis counselor as defined in section forty-five hundred ten of the civil practice law and rules, or advocate acting on behalf of an agency that assists domestic violence victims.

For the purposes of this subdivision, the term "domestic violence victim" means an individual who is a victim of a family offense, as described in subdivision one of section 530.11 of the criminal procedure law, or an offense committed by a member of such individual's immediate family, as defined in subdivision four of section 120.40 of the penal law.

(2) No consumer credit reporting agency shall charge a fee to a consumer requesting the placement of a security freeze when such consumer has not previously requested the placement of a security freeze from such consumer credit reporting agency. Except as provided for in paragraph one of this subdivision, a consumer credit reporting agency may charge a consumer a fee not to exceed five dollars for the placement of a second or subsequent freeze or for the removal of a freeze or the temporary lift of a freeze for a specific party or period of time or for the issuance of a replacement personal identification number or password when the consumer fails to retain the personal identification number or password provided to such consumer by such consumer credit reporting agency pursuant to subdivision (c) of this section.

(o) 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 file of or relating to such consumer: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of the official information of or relating to such consumer, 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.

(p) The following entities are not required to place a security freeze on a consumer credit report:

(1) a consumer credit reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer credit reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced. However, a consumer credit reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer credit reporting agency;

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

(3) a deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in

reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(q) (1) Any time a consumer credit reporting agency is required to send a summary of rights required under 15 U.S.C. section 1681g, to a consumer residing in this state the following notice shall be included with such summary of rights:

"NEW YORK 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 DELIVERY CONFIRMATION REQUESTED OR VIA TELEPHONE, SECURE ELECTRONIC MEANS, OR OTHER METHODS DEVELOPED BY THE CONSUMER CREDIT REPORTING AGENCY. 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, INSURANCE, 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 TO A SPECIFIC PARTY OR 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 PARTY OR PARTIES WHO ARE TO RECEIVE THE CREDIT REPORT OR THE PERIOD OF TIME FOR WHICH THE REPORT SHALL BE AVAILABLE TO USERS OF THE CREDIT REPORT; AND
- (4) PAYMENT OF ANY APPLICABLE FEE.

A CONSUMER CREDIT REPORTING AGENCY MUST AUTHORIZE THE RELEASE OF YOUR CREDIT REPORT NO LATER THAN THREE BUSINESS DAYS AFTER RECEIVING THE ABOVE INFORMATION. EFFECTIVE SEPTEMBER FIRST, TWO THOUSAND NINE, A CONSUMER CREDIT REPORTING AGENCY THAT RECEIVES A REQUEST VIA TELEPHONE OR SECURE ELECTRONIC METHOD SHALL RELEASE A CONSUMER'S CREDIT REPORT WITHIN FIFTEEN MINUTES WHEN THE REQUEST IS RECEIVED.

A SECURITY FREEZE DOES NOT APPLY TO CIRCUMSTANCES IN WHICH YOU HAVE AN EXISTING ACCOUNT RELATIONSHIP AND A COPY OF YOUR REPORT IS REQUESTED BY YOUR EXISTING CREDITOR OR ITS AGENTS OR AFFILIATES FOR CERTAIN TYPES OF ACCOUNT REVIEW, COLLECTION, FRAUD CONTROL OR SIMILAR ACTIVITIES.

IF YOU ARE ACTIVELY SEEKING CREDIT, YOU SHOULD UNDERSTAND THAT THE PROCEDURES INVOLVED IN LIFTING A SECURITY FREEZE MAY SLOW YOUR APPLICATION FOR CREDIT. YOU SHOULD PLAN AHEAD AND LIFT A FREEZE, EITHER COMPLETELY IF YOU ARE SHOPPING AROUND, OR SPECIFICALLY FOR A CERTAIN CREDITOR, BEFORE APPLYING FOR NEW CREDIT. WHEN SEEKING CREDIT OR PURSUING ANOTHER TRANSACTION REQUIRING ACCESS TO YOUR CREDIT REPORT, IT IS NOT NECESSARY TO RELINQUISH YOUR PIN OR PASSWORD TO THE CREDITOR OR BUSINESS; YOU CAN CONTACT THE CONSUMER CREDIT REPORTING AGENCY DIRECTLY. IF YOU CHOOSE TO GIVE OUT YOUR PIN OR PASSWORD TO THE CREDITOR OR BUSINESS, IT IS RECOMMENDED THAT YOU OBTAIN A NEW PIN OR PASSWORD FROM THE CONSUMER CREDIT REPORTING AGENCY."

- (2) If a consumer requests information about a security freeze, such

consumer shall be provided with the notice set forth in paragraph one of this subdivision and with any other information necessary to place, temporarily lift or permanently lift a security freeze, including but not limited to the address, telephone number or point of contact at which the consumer credit reporting agency receives such requests.

(r) When a consumer credit reporting agency erroneously releases a consumer credit report subject to a security freeze or any information contained in such consumer credit report, the consumer credit reporting agency shall send written notification to the affected consumer within three business days following discovery or notification of such erroneous release. Such notification shall also inform the consumer of the nature of the information released and identify and provide contact information for the recipient of such information or consumer credit report.

(s) Whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 380-u. Severability. If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.