

**FIRST ENGROSSMENT
with Senate Amendments**

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1417

Introduced by

Representatives Koppelman, Gulleson, Thoreson

Senators Dever, Triplett

1 A BILL for an Act to create and enact chapter 51-33 of the North Dakota Century Code, relating
2 to security freezes on consumer credit reports; to provide a penalty; to provide an effective
3 date; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 51-33 of the North Dakota Century Code is created and enacted
6 as follows:

7 **51-33-01. Definitions.** In this chapter, unless the context or subject matter otherwise
8 requires:

- 9 1. "Consumer report" has the same meaning as provided in 15 U.S.C. 1681(a)(d).
- 10 2. "Consumer reporting agency" means any person that for monetary fees or dues, or
11 on a cooperative nonprofit basis, regularly engages in the practice of assembling
12 or evaluating consumer credit information or other information on consumers for
13 the purpose of furnishing consumer reports to third parties, and which uses any
14 means or facility of interstate commerce for the purpose of preparing or furnishing
15 consumer reports.
- 16 3. "Proper identification" means information sufficient to verify identity. Only if the
17 consumer is unable to sufficiently provide self-identifying information may a
18 consumer reporting agency require additional information concerning the
19 consumer's employment and personal or family history in order to verify the
20 consumer's identity.
- 21 4. "Security freeze" means a notice placed in a consumer's consumer report, at the
22 request of the consumer and subject to certain exceptions, that prohibits the
23 consumer reporting agency from releasing the consumer credit file or any
24 information derived from it, without the express authorization of the consumer. If a

1 security freeze is in place, information from a consumer's consumer credit file may
2 not be released to a third party without prior express authorization from the
3 consumer. A security freeze does not prevent a consumer reporting agency from
4 advising a third party that a security freeze is in effect with respect to the consumer
5 report.

- 6 5. "Victim of identity theft" means a consumer who has a copy of a valid police report,
7 investigative report, or complaint to law enforcement evidencing that the consumer
8 has alleged to be a victim of identity theft.

9 **51-33-02. Right to obtain security freeze.** A consumer may elect to place a security
10 freeze on the consumer's consumer credit file by making a request to a consumer reporting
11 agency. The consumer may make the request:

- 12 1. By mail;
13 2. By telephone by providing proper identification or certain personal identification
14 required by the consumer reporting agency; or
15 3. Directly to the consumer reporting agency through a secure electronic mail
16 connection if the connection is made available by the consumer reporting agency.

17 **51-33-03. Response of consumer reporting agency.**

- 18 1. A consumer reporting agency shall place a security freeze on a consumer's
19 consumer credit file no later than three business days after receiving from the
20 consumer a request under section 51-33-02 which includes proper identification. If
21 a victim of identity theft requests a security freeze, a consumer reporting agency
22 shall place a security freeze on the consumer's credit report no later than
23 forty-eight hours after receiving:
24 a. A notice under section 51-33-02; and
25 b. A copy of a valid police report, investigative report, or complaint to law
26 enforcement evidencing the identity theft victim has alleged being a victim of
27 identity theft. The copy may be transmitted to the consumer reporting agency
28 by mail, facsimile, or secure electronic mail connection, if the connection is
29 made available by the consumer reporting agency.

- 1 2. Effective August 1, 2009, if a victim of identity theft requests a security freeze, a
2 consumer reporting agency shall place a security freeze on the consumer's credit
3 report no later than twenty-four hours after receiving:
 - 4 a. A notice under section 51-33-02; and
 - 5 b. A copy of a valid police report, investigative report, or complaint to law
6 enforcement evidencing the identity theft victim has alleged being a victim of
7 identity theft. The copy may be transmitted to the consumer reporting agency
8 by mail, facsimile, or secure electronic mail connection, if the connection is
9 made available by the consumer reporting agency.
- 10 3. The consumer reporting agency, within five business days after receiving the
11 request, shall send a written confirmation of the security freeze to the consumer
12 and provide the consumer with a unique personal identification number or
13 password to be used by the consumer when providing authorization for the release
14 of the consumer's consumer report for a specific party or period of time.
- 15 4. When a consumer requests a security freeze, the consumer reporting agency shall
16 disclose the process of placing and temporarily lifting a freeze, including the
17 process for allowing access to information from the consumer's consumer report
18 for a specific party or period of time while the freeze is in place.

19 **51-33-04. Temporary lifting or permanent removal of the freeze.**

- 20 1. If the consumer wishes to allow the consumer's consumer credit file to be
21 accessed for a specific party or period of time while a freeze is in place, the
22 consumer shall contact the consumer reporting agency, request that the freeze be
23 temporarily lifted, and provide the following:
 - 24 a. Proper identification;
 - 25 b. The unique personal identification number or password provided by the credit
26 reporting agency under section 51-33-03;
 - 27 c. The proper information regarding the third party who is to receive the
28 consumer report or access the credit file or the time period for which the
29 report or credit file is to be available to users of the consumer credit file; and
30 d. A fee if applicable.

- 1 2. A consumer reporting agency that receives a request from a consumer to
2 temporarily lift a freeze on a consumer credit file under this section shall comply
3 with the request no later than three business days after receiving the request.
- 4 3. A consumer reporting agency may develop procedures involving the use of
5 telephone, fax, internet, or other electronic media to receive and process a request
6 from a consumer to temporarily lift a freeze on a consumer report under this
7 section in an expedited manner, with the goal of processing a request within fifteen
8 minutes after the request.
- 9 4. A consumer reporting agency shall remove or temporarily lift a freeze placed on a
10 consumer report only in the following cases:
- 11 a. Upon consumer request under this section; or
12 b. When the consumer credit file was frozen due to a material misrepresentation
13 of fact by the consumer. When a consumer reporting agency intends to
14 remove a freeze on a consumer credit file under this section, the consumer
15 reporting agency shall notify the consumer in writing at least three business
16 days prior to removing the freeze on the consumer credit file.
- 17 5. A security freeze remains in place until the consumer requests that the security
18 freeze be removed. A consumer reporting agency shall remove a security freeze
19 within three business days of receiving a request for removal from the consumer,
20 who provides both of the following:
- 21 a. Proper identification; and
22 b. The unique personal identification number or password provided by the credit
23 reporting agency under section 51-33-03.

24 **51-33-05. Response by third party to denial of access.** When a third party requests
25 access to a consumer report on which a security freeze is in effect, and this request is in
26 connection with an application for credit or the opening of an account and the consumer does
27 not allow the consumer's consumer report to be accessed for that specific party or period of
28 time, the third party may treat the application as incomplete.

29 **51-33-06. Nonapplicability.** Sections 51-33-01 through 51-33-05 do not apply to the
30 use of a consumer report by any of the following:

- 1 1. A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an
2 assignee of a financial obligation owing by the consumer to that person or entity, or
3 a prospective assignee of a financial obligation owing by the consumer to that
4 person or entity in conjunction with the proposed purchase of the financial
5 obligation, with which the consumer has or had prior to assignment an account or
6 contract, including a demand deposit account, or to whom the consumer issued a
7 negotiable instrument, for the purposes of reviewing the account or collecting the
8 financial obligation owing for the account, contract, or negotiable instrument. For
9 purposes of this subsection, "reviewing the account" includes activities related to
10 account maintenance, monitoring, credit line increases, and account upgrades and
11 enhancements;
- 12 2. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to
13 whom access has been granted under section 51-33-04 for purposes of facilitating
14 the extension of credit or other permissible use;
- 15 3. Any federal, state, or local governmental entity, including a law enforcement
16 agency, court, or its agents or assigns;
- 17 4. A private collection agency acting under a court order, warrant, or subpoena;
- 18 5. Any person or entity for the purposes of prescreening as provided for by the Fair
19 Credit Reporting Act, 15 U.S.C. 1681 et seq.;
- 20 6. Any person or entity administering a credit file monitoring subscription service to
21 which the consumer has subscribed;
- 22 7. Any person or entity for the purpose of providing a consumer with a copy of the
23 consumer's consumer report upon the consumer's request;
- 24 8. Any person or entity for use in setting or adjusting a rate, adjusting a claim, or
25 underwriting for insurance purposes. This exemption does not determine or affect
26 whether these uses are permitted under other law; and
- 27 9. A consumer reporting agency for its data base or file that consists entirely of
28 information concerning, and used solely for, one or more of the following:
 - 29 a. Criminal record information;
 - 30 b. Tenant screening;
 - 31 c. Employment screening; and

d. Fraud prevention or detection.

51-33-07. Information to government agencies not affected. Sections 51-33-01 through 51-33-06 do not prohibit a consumer reporting agency from furnishing to a governmental agency a consumer's name, address, former address, places of employment, or former places of employment.

51-33-08. Fees.

1. A consumer reporting agency may charge a fee not to exceed five dollars for placing or temporarily lifting a security freeze unless:

a. The consumer is a victim of identity theft; and

b. The consumer provides, or has already provided in connection with the security freeze, the consumer reporting agency with a valid copy of a police report or a police case number documenting the identity theft, investigative report, or complaint to a law enforcement agency.

2. In addition to the charge, if any, permitted under this section, a consumer may be charged no more than five dollars if the consumer fails to retain the original personal identification number given to the consumer by the agency, but the consumer may not be charged for a one-time reissue of the same or a new personal identification number. The consumer may be charged no more than five dollars for subsequent instances of loss of the personal identification number. No other fees may be imposed in connection with the security freeze.

51-33-09. Changes to information - Written confirmation required. If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a consumer 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.

51-33-10. Security freeze not applicable to certain consumer reporting agencies. A consumer reporting agency is not required to place a security freeze in a consumer credit file under this chapter if it acts only as a reseller of credit information by assembling and merging

information contained in the data base of another consumer reporting agency or multiple consumer reporting agencies and does not maintain a permanent data base of credit information from which new consumer reports are produced. However, a consumer reporting agency must honor any security freeze placed on a consumer credit file by another consumer reporting agency.

51-33-11. Exempt entities. The following entities are not required to place a security freeze on a consumer credit file under this chapter:

1. A check services or fraud prevention services company that 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; and
2. A deposit account information service company that 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's request for a deposit account at the inquiring bank or financial institution.

51-33-12. Notice of rights. At any time that a consumer is required to receive a summary of rights required under 15 U.S.C. 1681g or under North Dakota law, the following notice shall be included:

North Dakota Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your consumer credit file at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your consumer credit file pursuant to North Dakota law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your consumer credit file without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit file, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit file or to temporarily authorize the release of your credit report or credit score for a specific party, parties, or period of time after

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

- 3 1. The unique personal identification number or password provided by the consumer
4 reporting agency.
- 5 2. Proper identification to verify your identity.
- 6 3. The proper information regarding the third party or parties who are to receive the
7 credit report or the period of time for which the report shall be available to users of
8 the credit report.

9 A consumer reporting agency that receives a request from a consumer to lift temporarily
10 a freeze shall comply with the request no later than three business days after receiving the
11 request.

12 A consumer reporting agency may charge you up to five dollars each time you freeze or
13 temporarily lift the freeze, except a consumer reporting agency may not charge any amount to
14 a victim of identity theft who has submitted a copy of a valid investigative report or complaint to
15 a law enforcement agency about the unlawful use of the victim's information by another person.

16 A security freeze does not apply to circumstances where you have an existing account
17 relationship and a copy of your report is requested by your existing creditor or its agents or
18 affiliates for certain types of account review, collection, fraud control, or similar activities.

19 If you are actively seeking a new credit, loan, utility, or telephone account, you should
20 understand that the procedures involved in lifting a security freeze may slow your own
21 applications for credit. You should plan ahead and lift a freeze - either completely if you are
22 shopping around, or specifically for a certain creditor - with enough advance notice before you
23 apply for new credit for the lifting to take effect.

24 You have a right to bring a civil action against someone who violates your rights under
25 the credit reporting laws. The action can be brought against a consumer reporting agency or a
26 user of your credit report.

27 **51-33-13. Private enforcement.**

- 28 1. If a consumer reporting agency erroneously releases a consumer's credit file or
29 any information derived from the file, the consumer reporting agency shall send
30 written notification to the affected consumer within five business days following
31 discovery or notification of the erroneous release, including specificity as to the

1 information released and the third-party recipient of the information. In addition,
2 the affected consumer in a civil action against the consumer reporting agency may
3 recover:

4 a. Injunctive relief to prevent or restrain further violation of the security freeze;
5 b. The greater of actual damages or two thousand dollars in civil penalties for
6 each violation; and

7 c. Reasonable expenses, court costs, investigative costs, and attorney's fees.

8 2. Each violation of the security freeze shall be counted as a separate incident for
9 purposes of imposing penalties under this section.

10 **51-33-14. Enforcement by attorney general - Powers - Remedies - Separate**

11 **violations - Venue.** The attorney general may enforce this chapter. In enforcing this chapter,
12 the attorney general has all the powers provided in chapter 51-15 and may seek all the
13 remedies in chapter 51-15. A violation of this chapter is a violation of chapter 51-15. Each
14 violation of the security freeze shall be counted as a separate violation. The remedies, duties,
15 prohibitions, and penalties of this chapter are not exclusive and are in addition to all other
16 causes of action, remedies, and penalties under chapter 51-15 and as otherwise provided by
17 law. The attorney general may bring an action pursuant to this section in either the county of
18 the consumer's residence or Burleigh County.

19 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on June 1, 2007.

20 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.