

LEGISLATIVE BILL 757

Approved by the Governor February 28, 2018

Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to consumer protection; to amend sections 87-801 and 87-806, Reissue Revised Statutes of Nebraska, and sections 8-2602, 8-2603.01, 8-2608.02, 8-2609, and 8-2609.01, Revised Statutes Cumulative Supplement, 2016; to prohibit certain fees under the Credit Report Protection Act; to change provisions relating to the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006; to require additional reasonable security procedures and practices regarding personal information; to provide applicability for certain provisions; to harmonize provisions; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 8-2602, Revised Statutes Cumulative Supplement, 2016, is amended to read:

8-2602 For purposes of the Credit Report Protection Act:

(1) Consumer reporting agency means any person which, for monetary fees, for dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

(2) Credit report has the same meaning as consumer report as defined in 15 U.S.C. 1681a(d);

(3) File, when used in connection with information on any consumer or protected consumer, means all of the information on that consumer or protected consumer recorded and retained by a consumer reporting agency regardless of how the information is stored. File does not include a record;

(4) Protected consumer means an individual who is (a) under sixteen years of age at the time a request for the placement of a security freeze is made or (b) an incapacitated person for whom a guardian or guardian ad litem has been appointed;

(5) Record means a compilation of information that (a) identifies a protected consumer, (b) is created by a consumer reporting agency solely for the purpose of complying with section 8-2603.01, and (c) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

(6) Representative means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer;

(7) Security freeze means:

(a) A notice placed in a consumer's file as provided in section 8-2603 that prohibits the consumer reporting agency from releasing a credit report, or any other information derived from the file, in connection with the extension of credit or the opening of a new account, without the express authorization of the consumer;

(b) If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that:

(i) Is placed on the protected consumer's record in accordance with section 8-2603.01; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in the Credit Report Protection Act; or

(c) If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that:

(i) Is placed on the protected consumer's credit report in accordance with section 8-2603.01; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report except as provided in section 8-2608.01;

(8) Substantially similar type of security product means any product that provides the same level of protection to a consumer's or protected consumer's credit report as that provided under the Credit Report Protection Act regardless of the contact method used by a consumer or protected consumer to request, temporarily lift, or remove a restriction placed on the consumer's or protected consumer's credit report;

(9) ~~(8)~~ Sufficient proof of authority means documentation that shows a representative has authority to act on behalf of a protected consumer. Sufficient proof of authority includes, but is not limited to, an order issued by a court of law, a lawfully executed and valid power of attorney, or a written notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer. A representative who is a parent may establish sufficient proof of authority by providing a certified or official copy of the protected consumer's birth certificate;

(10) (9) Sufficient proof of identification means information or

documentation that identifies a consumer, a protected consumer, or a representative of a protected consumer. Sufficient proof of identification includes, but is not limited to, a social security number or a copy of a social security card, a certified or official copy of a birth certificate, a copy of a valid driver's license, or any other government-issued identification; and

(11) ~~(10)~~ Victim of identity theft means a consumer or protected consumer who has a copy of an official police report evidencing that the consumer or protected consumer has alleged to be a victim of identity theft.

Sec. 2. Section 8-2603.01, Revised Statutes Cumulative Supplement, 2016, is amended to read:

8-2603.01 (1) A consumer reporting agency shall place a security freeze for a protected consumer if:

(a) The consumer reporting agency receives a request from the representative for the placement of the security freeze under this section; and

(b) The representative:

(i) Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency; and

(ii) Provides to the consumer reporting agency:

(A) Sufficient proof of identification of the protected consumer and the representative; and

(B) Sufficient proof of authority to act on behalf of the protected consumer. ~~;~~ and

~~(iii) Pays to the consumer reporting agency a fee as provided in section 8-2609.01.~~

(2) If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request described in subdivision (1)(a) of this section, the consumer reporting agency shall create a record for the protected consumer.

(3) Within thirty days after receiving a request that meets the requirements of this section, a consumer reporting agency shall place a security freeze for the protected consumer.

Sec. 3. Section 8-2608.02, Revised Statutes Cumulative Supplement, 2016, is amended to read:

8-2608.02 If a protected consumer or the representative wishes to remove a security freeze placed under section 8-2603.01 for the protected consumer, the protected consumer or the representative shall:

(1) Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency; and

(2) Provide to the consumer reporting agency:

(a) ~~(a)(i)~~ In the case of a request by the protected consumer:

(i) ~~(A)~~ Proof that the sufficient proof of authority for the representative to act on behalf of the protected consumer is no longer valid; and

(ii) ~~(B)~~ Sufficient proof of identification of the protected consumer; or

(b) ~~(ii)~~ In the case of a request by the representative:

(i) ~~(A)~~ Sufficient proof of identification of the protected consumer and the representative; and

(ii) ~~(B)~~ Sufficient proof of authority to act on behalf of the protected consumer. ~~;~~ and

~~(b) Payment of a fee as provided in section 8-2609.01.~~

Within thirty days after receiving a request that meets the requirements of this section, the consumer reporting agency shall remove the security freeze for the protected consumer.

Sec. 4. Section 8-2609, Revised Statutes Cumulative Supplement, 2016, is amended to read:

8-2609 (1) A consumer reporting agency shall not ~~may~~ charge any ~~any~~ a fee of three dollars ~~three dollars~~ for placing, temporarily lifting, or removing a security freeze placed under section 8-2603 or for placing, temporarily lifting, or removing any other substantially similar type of security product. This subsection does not apply if the substantially similar type of security product, alone or in combination with another product, provides greater protection to the consumer than a security freeze, unless:

~~(a) The consumer is a victim of identity theft; and~~

~~(b) The consumer provides the consumer reporting agency with a copy of an official police report documenting the identity theft.~~

(2) A consumer reporting agency shall reissue the same or a new personal identification number or password required under section 8-2605 one time without charge and may charge a fee of no more than five dollars for subsequent reissuance of the personal identification number or password.

Sec. 5. Section 8-2609.01, Revised Statutes Cumulative Supplement, 2016, is amended to read:

8-2609.01 ~~(1)~~ A consumer reporting agency shall not ~~may~~ charge any ~~any~~ a fee of three dollars ~~three dollars~~ for each placement or removal of a security freeze or for placement or removal of any other substantially similar type of security product ~~or for placement or removal of any other substantially similar type of security product. This section does not apply if the substantially similar type of security product, alone or in combination with another product, provides greater protection to the protected consumer than a security freeze.~~

~~(2) A consumer reporting agency shall not charge any fee under this section if:~~

~~(a)(i) The protected consumer is a victim of identity theft; and~~

~~(ii) The protected consumer's representative provides the consumer reporting agency with a copy of an official police report documenting the identity theft; or~~

~~(b)(i) A request for the placement or removal of a security freeze is for a protected consumer who is under the age of sixteen years at the time of the request; and~~

~~(ii) The consumer reporting agency has a credit report pertaining to the protected consumer.~~

Sec. 6. Section 87-801, Reissue Revised Statutes of Nebraska, is amended to read:

87-801 Sections 87-801 to 87-807 and section 7 of this act shall be known and may be cited as the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006.

Sec. 7. (1) To protect personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure, an individual or a commercial entity that conducts business in Nebraska and owns, licenses, or maintains computerized data that includes personal information about a resident of Nebraska shall implement and maintain reasonable security procedures and practices that are appropriate to the nature and sensitivity of the personal information owned, licensed, or maintained and the nature and size of, and the resources available to, the business and its operations, including safeguards that protect the personal information when the individual or commercial entity disposes of the personal information.

(2)(a) An individual or commercial entity that discloses computerized data that includes personal information about a Nebraska resident to a nonaffiliated, third-party service provider shall require by contract that the service provider implement and maintain reasonable security procedures and practices that:

(i) Are appropriate to the nature of the personal information disclosed to the service provider; and

(ii) Are reasonably designed to help protect the personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure.

(b) This subsection does not apply to any contract entered into before the effective date of this act. Any such contract renewed on or after the effective date of this act shall comply with the requirements of this subsection.

(3) An individual or a commercial entity complies with subsections (1) and (2) of this section if the individual or commercial entity:

(a) Complies with a state or federal law that provides greater protection to personal information than the protections that this section provides; or

(b) Complies with the regulations promulgated under Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., or the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d to 1320d-9, as such acts and sections existed on January 1, 2018, if the individual or commercial entity is subject to either or both of such acts or sections.

Sec. 8. Section 87-806, Reissue Revised Statutes of Nebraska, is amended to read:

87-806 (1) For purposes of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006, the Attorney General may issue subpoenas and seek and recover direct economic damages for each affected Nebraska resident injured by a violation of section 87-803 the act.

(2) A violation of section 7 of this act shall be considered a violation of section 59-1602 and be subject to the Consumer Protection Act and any other law which provides for the implementation and enforcement of section 59-1602. A violation of section 7 of this act does not give rise to a private cause of action.

Sec. 9. Original sections 87-801 and 87-806, Reissue Revised Statutes of Nebraska, and sections 8-2602, 8-2603.01, 8-2608.02, 8-2609, and 8-2609.01, Revised Statutes Cumulative Supplement, 2016, are repealed.