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## **MODEL ACT TO PROTECT MINORS FROM IDENTITY THEFT PASSES NCOIL**

### *Act Empowers Parents to Place a Security Freeze on a Minor's Credit Report*

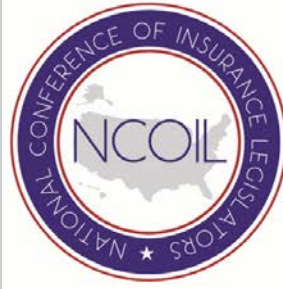
Manasquan, NJ: At the NCOIL Annual Meeting in Las Vegas, NV this past week the NCOIL Financial Services and Investment Products Committee passed a Model Act sponsored by NCOIL President Rep. Steve Riggs of Kentucky that protects minors from the misuse of their personal financial information by those with the intent to defraud them, by allowing parents and legal guardians to place a security freeze on a minor's credit report. Previously, in the instance that a parent discovered a breach of their children's identity, Consumer Reporting Agencies told parents they were not authorized to correct the situation. Riggs said, "identity thieves are establishing credit in the names of minor children and ruining their financial records years before they even apply for a credit card."

"As a legislator, and more importantly, a parent, my primary responsibility is to ensure children are protected" said Rep. Riggs. "This act empowers parents and directs the appropriate agencies to ensure children's identities are protected."

More than twenty states have passed this act. The Model Act, which was also approved by the NCOIL Executive Committee will be transmitted to all the states for consideration to become law. The Credit Report Protection for Minors Model Act language is below.

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*NCOIL is a legislative organization comprised principally of legislators serving on state insurance and financial institutions committees around the nation. NCOIL writes Model Laws in insurance, works to both preserve the state jurisdiction over insurance as established by the McCarran-Ferguson Act seventy years ago and to serve as an educational forum for public policy makers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making state policy when it comes to insurance and educate state legislators on current and perennial insurance issues.*



## **National Conference of Insurance Legislators (NCOIL)**

### **Credit Report Protection for Minors Model Act**

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*To be considered by the NCOIL Financial Services and Investment Products Committee on November 17, 2016.*

**\*Sponsored by Rep. Steve Riggs (KY)**

#### **Section 1 Short Title**

This Act shall be known and cited as the Credit Report Protection for Minors Act.

#### **Section 2 Purpose**

The purpose of this Act is to protect minors from the misuse of their personal financial information by those with the intent to defraud them, by allowing parents and legal guardians to place a security freeze on a minor's credit report.

#### **Section 3 Definitions**

For the purposes of this Act, the following words shall have the following meanings:

(A) "Consumer report" or "credit 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 score, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- a. Credit or insurance to be used primarily for personal, family, or household purposes, except that nothing in this chapter authorizes the use of credit evaluations, credit scoring or insurance scoring in the underwriting of personal lines of property or casualty insurance;
- b. Employment purposes; or
- c. Any other purpose authorized under section 15 U.S.C. § 1681b

(B) "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 furnishing consumer reports.



(C) “Protected consumer” means an individual who is:

- a. Under the age of 16 years at the time a request for the placement of a security freeze is made; or
- b. An incapacitated person or a protected person for whom a guardian or conservator has been appointed.

(D) “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 this section; 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.

(E) “Representative” means an individual who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(F) “Security freeze” means:

- a. If a consumer reporting agency does not have a consumer report pertaining to a protected consumer, a restriction that:
  - i. Is placed on the protected consumer’s record in accordance with this Act; and
  - ii. Prohibits the consumer reporting agency from releasing the protected consumer’s record except as provided in this Act; or
- b. If a consumer reporting agency has a consumer report pertaining to the protected consumer, a restriction that:
  - i. Is placed on the protected consumer’s consumer report in accordance with this Act; and
  - ii. Prohibits the consumer reporting agency from releasing the protected consumer’s consumer report or any information derived from the protected consumer’s consumer report except as provided in this Act.

(G) “Sufficient proof of authority” means documentation that shows a representative has authority to act on behalf of a protected consumer, including but not limited to:



- a. A court order granting custodianship, guardianship, or conservatorship;
- b. A birth certificate;
- c. A lawfully executed and valid power of attorney; or
- d. A written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(H) "Sufficient proof of identification" means documentation identifying a protected consumer or a representative. The term includes, but is not limited to:

- a. A copy of a social security card;
- b. A certified or official copy of a birth certificate; or
- c. A copy of a valid driver's license, or a copy of a government-issued photo identification.

#### **Section 4 Security Freeze for Protected Consumer**

(A) A consumer reporting agency shall place a security freeze for a protected consumer if:

- a. The consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and
- b. The protected consumer's 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;
  - ii. Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;
  - iii. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and
  - iv. Pays to the consumer reporting agency a fee, if any, as provided in this section.

(B) If a consumer reporting agency does not have a consumer report pertaining to a protected consumer when the consumer reporting agency receives a request under this section, the consumer reporting agency shall create a record for the protected consumer.



(C) Within thirty (30) days after receiving a request pursuant to this section, a consumer reporting agency shall place a security freeze on the protected person's record or credit report.

(D) Unless a protected consumer security freeze is removed in accordance with Section 5 of this Act, a consumer reporting agency may not release the protected consumer's consumer report, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

(E) The consumer reporting agency shall send a written confirmation of the security freeze to the representative within 10 business days after instituting the security freeze on the consumer report or record and shall provide the representative with instructions for removing the security freeze.

## **Section 5      Removal of Security Freeze**

(A) A consumer reporting agency shall remove a security freeze from a protected consumer's consumer report or record only under either of the following circumstances:

a. Upon the request of a representative or a protected consumer. A consumer reporting agency shall remove a security freeze within 30 days after receiving a request for removal from a protected consumer or his or her representative.

1. A representative submitting a request for removal must provide all of the following:

i. Sufficient proof of identification of the representative and sufficient proof of authority as determined by the consumer reporting agency.

ii. A fee as authorized under this Act.

2. A protected consumer submitting a request for removal must provide all of the following:

i. Sufficient proof of identification of the protected consumer as determined by the consumer reporting agency.

ii. Documentation that the sufficient proof of authority of the protected consumer's representative to act on behalf of the protected consumer is no longer valid.

iii. A fee as authorized under this Act.

b. If the security freeze was instituted due to a material misrepresentation of fact. A consumer reporting agency that intends to remove a security freeze under this



paragraph shall notify the representative and protected consumer in writing before removing the security freeze.

## **Section 6 Fees**

(A) A consumer reporting agency may charge a fee for each placement or removal of a security freeze on a protected consumer's record or credit report. The fee may not exceed ten dollars (\$10).

(B) Notwithstanding paragraph (A) of this section, a consumer reporting agency may not charge any fee under this Act if:

(a) The protected consumer's representative provides a copy of a police report to the consumer reporting agency alleging that the protected consumer has been a victim of an offense involving identity theft; or

(b) A request for the placement or removal of a security freeze is for a protected consumer who is under sixteen (16) years of age at the time of the request and the consumer reporting agency has a credit report pertaining to the protected consumer.

## **Section 7 Penalties**

(A) (1) Any person who willfully fails to comply with any requirement imposed under this section 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) Any liquidated damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000);

(c) Any punitive damages as the court may allow; and

(d) 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.

(2) Any person, other than the named individual or individuals in the report, who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or requests the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or one thousand dollars (\$1,000), whichever is greater.

## **Section 6 Applicability and Scope**

(A) This Act does not apply to a protected consumer's credit report or record provided to:





- (a) A federal, state, or local governmental entity, including a law enforcement agency, or court, or their agents or assigns;
- (b) A private collection agency for the sole purpose of assisting in the collection of an existing debt of the consumer who is the subject of the consumer report requested;
- (c) 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 subparagraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;
- (d) A person, for the purposes of prescreening as provided by the federal Fair Credit Reporting Act, 15 U.S.C. sec. 1681 et seq.;
- (e) A consumer reporting agency for the purposes of providing a consumer with a copy of his or her own report on his or her request;
- (f) A child support enforcement agency;
- (g) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple credit reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer report by another consumer reporting agency;
- (h) 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;
- (i) 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;
- (j) Any person or entity using a consumer report in preparation for a civil or criminal action, or an insurance company in investigation of a claim; or

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- (k) 1. Any insurance company for setting or adjusting a rate or underwriting for property and casualty insurance purposes; or
2. Any consumer reporting agency database or file which consists solely of consumer information concerning, and used solely for:
- a. Criminal record information;
  - b. Personal loss history information;
  - c. Fraud prevention or detection;
  - d. Employment screening; or
  - e. Tenant screening.

#### **Section 7 Effective Date**

This Act shall take effect 90 days after enactment.