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HOUSE BILL DRH40393-LR-10C

Short Title: Identity Theft Protection Act/Changes. (Public)

Sponsors: Representatives Saine, Jones, and Reives (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE IDENTITY THEFT PROTECTION ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 75-61(14) reads as rewritten:

5 "**§ 75-61. Definitions.**

6 The following definitions apply in this Article:

7 ...

8 (14) "Security breach". – An incident of unauthorized access to ~~and~~or acquisition
9 of unencrypted and unredacted records or data containing personal
10 information where illegal use of the personal information has occurred or is
11 reasonably likely to occur or that creates a material risk of harm to a consumer.
12 Any incident of unauthorized access to ~~and~~or acquisition of encrypted records
13 or data containing personal information along with the confidential process or
14 key shall constitute a security breach. Good faith acquisition of personal
15 information by an employee or agent of the business for a legitimate purpose
16 is not a security breach, provided that the personal information is not used for
17 a purpose other than a lawful purpose of the business and is not subject to
18 further unauthorized disclosure. Any determination that illegal use has not
19 occurred or is not reasonably likely to occur or that no material risk of harm
20 is created shall be documented and maintained for at least three years.

21"

22 **SECTION 2.** G.S. 75-63 reads as rewritten:

23 "**§ 75-63. Security freeze.**

24 (a) A consumer may place a security freeze on the consumer's credit report by making a
25 request to a consumer reporting agency in accordance with this subsection. A security freeze
26 shall prohibit, subject to exceptions in subsection (l) of this section, the consumer reporting
27 agency from releasing the consumer's credit report or any information from it without the express
28 authorization of the consumer. When a security freeze is in place, a consumer reporting agency
29 may not release the consumer's credit report or information to a third party without prior express
30 authorization from the consumer. This subsection does not prevent a consumer reporting agency
31 from advising a third party that a security freeze is in effect with respect to the consumer's credit
32 report, provided that the consumer reporting agency does not state or otherwise imply to the third
33 party that the consumer's security freeze reflects a negative credit score, history, report, or rating.
34 A consumer reporting agency shall place a security freeze on a consumer's credit report if the
35 consumer requests a security freeze by any of the following methods:

36 (1) First-class mail.



1 (2) Telephone call.

2 (3) Secure Internet Web site or secure electronic mail connection.

3 (a1) A nationwide consumer reporting agency, as defined in ~~section 603(p)~~ 15 U.S.C. §
4 1681a(p) of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., that receives a
5 request from a consumer residing in this State to place a security freeze on the consumer's file,
6 shall provide ~~a notice communicating to the consumer that the freeze is only placed with the~~
7 ~~consumer reporting agency to which the consumer directed the request. The notice shall provide~~
8 ~~to the consumer the Web site, postal address, and telephone number of the other nationwide~~
9 ~~consumer reporting agencies and of the North Carolina Attorney General's Office and shall~~
10 ~~inform the consumer that he or she may use this information to contact other nationwide~~
11 ~~consumer reporting agencies to make security freeze requests and obtain information on~~
12 ~~combating identity theft. No part of the notice to the consumer shall be used to make a solicitation~~
13 ~~for other goods and services.~~ the consumer with the option of having the freeze implemented by
14 all consumer reporting agencies that assemble or evaluate information about consumers in this
15 State.

16 Notwithstanding any provision of law to the contrary, consumer reporting agencies that
17 assemble or evaluate information about consumers in this State shall create and maintain a shared
18 Internet Web site and toll-free number that a consumer can contact to request a security freeze
19 and actions related to a security freeze. A request made via the toll-free number or Internet Web
20 site shall be considered made to all credit reporting agencies and shall trigger all applicable
21 provisions of this section with respect to each consumer reporting agency. A consumer reporting
22 agency that receives a request for a security freeze from a consumer shall communicate that
23 request to the other consumer reporting agencies within three days of receipt of the request. Once
24 a consumer reporting agency receives such a communication from another consumer reporting
25 agency, all applicable provisions of this section shall be triggered with respect to that agency as
26 if the agency received notice directly from the consumer.

27 (b) A consumer reporting agency shall place a security freeze on a consumer's credit
28 report no later than three business days after receiving a written request from the consumer by
29 mail. A consumer reporting agency that receives such a request electronically or by telephone
30 shall comply with the request within 24 hours of receiving the request.

31 (c) The consumer reporting agency shall send a written confirmation of the security
32 freeze to the consumer within three business days of placing the freeze and at the same time shall
33 provide the consumer with a unique personal identification number or password, other than the
34 consumer's social security number, to be used by the consumer when providing authorization for
35 the release of the consumer's credit report for a specific period of time, or to a specific party, or
36 for permanently lifting the freeze.

37 (d) If the consumer wishes to allow the consumer's credit report to be accessed for a
38 specific period of time or by a specific party while a freeze is in place, the consumer shall contact
39 the consumer reporting agency by mail, phone, or electronically, request that the freeze be lifted
40 or lifted with respect to a specific party, and provide all of the following:

41 (1) Proper identification.

42 (2) The unique personal identification number or password provided by the
43 consumer reporting agency pursuant to subsection (c) of this section.

44 (3) The proper information regarding the third party who is authorized to receive
45 the consumer credit report or the time period for which the report shall be
46 available to users of the credit report.

47 (e) Repealed by Session Laws 2009-355, s. 1, effective October 1, 2009.

48 (f) A consumer reporting agency that receives a request by mail from a consumer to lift
49 a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request
50 no later than three business days after receiving the request. A consumer reporting agency that

1 receives such a request electronically or by telephone shall comply with the request within 15
2 minutes of receiving the request.

3 (g) A consumer reporting agency shall remove, temporarily lift, or lift with respect to a
4 specific third party a freeze placed on a consumer's credit report only in the following cases:

5 (1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.

6 (2) If the consumer's credit report was frozen due to a material misrepresentation
7 of fact by the consumer. If a consumer reporting agency intends to remove a
8 freeze upon a consumer's credit report pursuant to this subdivision, the
9 consumer reporting agency shall notify the consumer in writing prior to
10 removing the freeze on the consumer's credit report.

11 (g1) A consumer reporting agency need not meet the time requirements provided in this
12 section, only for such time as the occurrences prevent compliance, if any of the following
13 occurrences apply:

14 (1) The consumer fails to meet the requirements of subsection (d) or (j) of this
15 section.

16 (2) The consumer reporting agency's ability to remove, place, temporarily lift, or
17 lift with respect to a specific party the security freeze is prevented by any of
18 the following:

19 a. An act of God, including fire, earthquakes, hurricanes, storms, or
20 similar natural disaster or phenomena.

21 b. Unauthorized or illegal acts by a third party, including terrorism,
22 sabotage, riot, vandalism, labor strikes or disputes disrupting
23 operations, or similar occurrences.

24 c. Operational interruption, including electrical failure, unanticipated
25 delay in equipment or replacement part delivery, computer hardware
26 or software failures inhibiting response time, or similar disruption.

27 d. Governmental action, including emergency orders or regulations,
28 judicial or law enforcement action, or similar directives.

29 e. Regularly scheduled maintenance, during other than normal business
30 hours, of, or updates to, the consumer reporting agency's systems.

31 f. Commercially reasonable maintenance of, or repair to, the consumer
32 reporting agency's systems that is unexpected or unscheduled.

33 g. Receipt of a request outside of normal business hours.

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

38 (i) If a consumer requests a security freeze pursuant to this section, the consumer
39 reporting agency shall disclose to the consumer the process of placing and temporarily lifting a
40 security freeze and the process for allowing access to information from the consumer's credit
41 report for a specific period of time or to a specific third party while the security freeze is in place.

42 (j) A security freeze shall remain in place until the consumer requests that the security
43 freeze be temporarily lifted for a specific period of time or to a specific third party or removed.
44 A consumer reporting agency shall remove a security freeze within 15 minutes of receiving an
45 electronic request for removal from the consumer or within three business days of receiving a
46 written or telephonic request for removal from the consumer, who provides all of the following:

47 (1) Proper identification.

48 (2) The unique personal identification number or password provided by the
49 consumer reporting agency pursuant to subsection (c) of this section.

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

- 1 (l) The provisions of this section do not apply to the use of a consumer credit report by
2 any of the following:
- 3 (1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee
4 with whom the consumer has, or prior to assignment had, an account, contract,
5 or debtor-creditor relationship for the purposes of reviewing the active
6 account or collecting the financial obligation owing for the account, contract,
7 or debt.
 - 8 (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to
9 whom access has been granted under subsection (d) of this section for
10 purposes of facilitating the extension of credit or other permissible use.
 - 11 (3) Any person acting pursuant to a court order, warrant, or subpoena.
 - 12 (4) A state or local agency, or its agents or assigns, which administers a program
13 for establishing and enforcing child support obligations.
 - 14 (5) A state or local agency, or its agents or assigns, acting to investigate fraud,
15 including Medicaid fraud, or acting to investigate or collect delinquent taxes
16 or assessments, including interest and penalties, unpaid court orders, or to
17 fulfill any of its other statutory responsibilities.
 - 18 (6) A federal, state, or local governmental entity, including law enforcement
19 agency, court, or their agent or assigns.
 - 20 (7) A person for the purposes of prescreening as defined by the Fair Credit
21 Reporting Act, 15 U.S.C. § 1681, et seq.
 - 22 (8) Any person for the sole purpose of providing for a credit file monitoring
23 subscription service to which the consumer has subscribed.
 - 24 (9) A consumer reporting agency for the purpose of providing a consumer with a
25 copy of the consumer's credit report upon the consumer's request.
 - 26 (10) Any depository financial institution for checking, savings, and investment
27 accounts.
 - 28 (11) Any property and casualty insurance company for use in setting or adjusting
29 a rate, adjusting a claim, or underwriting for property and casualty insurance
30 purposes.
 - 31 (12) A person for the purpose of furnishing or using credit reports for employment
32 purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening pursuant to 15
33 U.S.C. § 1681b(a)(3)(F).
 - 34 (13) A person for the purpose of criminal background record information.
- 35 (m) If a security freeze is in place, a consumer reporting agency shall not change any of
36 the following official information in a credit report without sending a written confirmation of the
37 change to the consumer within 30 days of the change being posted to the consumer's file: name,
38 date of birth, social security number, and address. Written confirmation is not required for
39 technical modifications of a consumer's official information, including name and street
40 abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address
41 change, the written confirmation shall be sent to both the new address and the former address.
- 42 (n) The following persons are not required to place in a credit report a security freeze
43 pursuant to this section provided, however, that any person that is not required to place a security
44 freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject
45 to any security freeze placed on a credit report by another consumer reporting agency from which
46 it obtains information:
- 47 (1) A check services or fraud prevention services company, which reports on
48 incidents of fraud or issues authorizations for the purpose of approving or
49 processing negotiable instruments, electronic fund transfers, or similar
50 methods of payment.

1 (2) A deposit account information service company, which issues reports
2 regarding account closures due to fraud, substantial overdrafts, ATM abuse,
3 or other similar negative information regarding a consumer to inquiring banks
4 or other financial institutions for use only in reviewing a consumer request for
5 a deposit account at the inquiring bank or financial institution.

6 (3) A consumer reporting agency that does all of the following:

7 a. Acts only to resell credit information by assembling and merging
8 information contained in a database of one or more credit reporting
9 agencies.

10 b. Does not maintain a permanent database of credit information from
11 which new credit reports are produced.

12 (o) ~~A-Unless expressly authorized in this Article, a consumer reporting agency shall not~~
13 ~~charge a fee to put a security freeze in place, remove a freeze, or lift a freeze pursuant to~~
14 ~~subsection (d) or (j) of this section, provided that any such request is made electronically. If a~~
15 ~~request to put a security freeze in place is made by telephone or by mail, a consumer reporting~~
16 ~~agency may charge a fee to a consumer not to exceed three dollars (\$3.00), except that a consumer~~
17 ~~reporting agency may not charge any fee to a consumer over the age of 62, to a victim of identity~~
18 ~~theft who has submitted a copy of a valid investigative or incident report or complaint with a law~~
19 ~~enforcement agency about the unlawful use of the victim's identifying information by another~~
20 ~~person, or to the victim's spouse. freeze. A consumer reporting agency shall not charge an~~
21 ~~additional fee to a consumer who requests to temporarily lift for a specific period of time or to a~~
22 ~~specific third party, reinstate, or remove a security freeze. A consumer reporting agency shall not~~
23 ~~charge a consumer for a onetime reissue of a replacement personal identification number. A~~
24 ~~consumer reporting agency may charge a fee not to exceed three dollars (\$3.00) to provide any~~
25 ~~subsequent replacement personal identification number.~~

26 (o1) Repealed by Session Laws 2015-193, s. 2, effective January 1, 2016.

27 (p) At any time that a consumer is required to receive a summary of rights required under
28 section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

29 "North Carolina Consumers Have the Right to Obtain a Security Freeze.

30 You have a right to place a "security freeze" on your credit report pursuant to North Carolina
31 law. The security freeze will prohibit a consumer reporting agency from releasing any
32 information in your credit report without your express authorization. A security freeze can be
33 requested in writing by first-class mail, by telephone, or electronically. You also may request a
34 freeze by visiting the following Web site: [URL] or calling the following telephone number:
35 [NUMBER].

36 The security freeze is designed to prevent credit, loans, and services from being approved in
37 your name without your consent. However, you should be aware that using a security freeze to
38 take control over who gains access to the personal and financial information in your credit report
39 may delay, interfere with, or prohibit the timely approval of any subsequent request or application
40 you make regarding new loans, credit, mortgage, insurance, rental housing, employment,
41 investment, license, cellular phone, utilities, digital signature, Internet credit card transactions,
42 or other services, including an extension of credit at point of sale.

43 The freeze will be placed within three business days if you request it by mail, or within 24
44 hours if you request it by telephone or electronically. When you place a security freeze on your
45 credit report, within three business days, you will be sent a personal identification number or a
46 password to use when you want to remove the security freeze, temporarily lift it, or lift it with
47 respect to a particular third party.

48 A freeze does not apply when you have an existing account relationship and a copy of your
49 report is requested by your existing creditor or its agents or affiliates for certain types of account
50 review, collection, fraud control, or similar activities.

1 You should plan ahead and lift a freeze if you are actively seeking credit or services as a
2 security freeze may slow your applications, as mentioned above.

3 You can remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular
4 third party by contacting the consumer reporting agency and providing all of the following:

- 5 (1) Your personal identification number or password,
- 6 (2) Proper identification to verify your identity, and
- 7 (3) Proper information regarding the period of time you want your report
8 available to users of the credit report, or the third party with respect to which
9 you want to lift the freeze.

10 A consumer reporting agency that receives a request from you to temporarily lift a freeze or
11 to lift a freeze with respect to a particular third party on a credit report shall comply with the
12 request no later than three business days after receiving the request by mail and no later than 15
13 minutes after receiving a request by telephone or electronically. ~~A consumer reporting agency
14 may charge you up to three dollars (\$3.00) to institute a freeze if your request is made by
15 telephone or by mail. A consumer reporting agency may not charge you any amount to freeze,
16 remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party,
17 if any of the following are true:~~

- 18 ~~(1) Your request is made electronically.~~
- 19 ~~(2) You are over the age of 62.~~
- 20 ~~(3) You are the victim of identity theft and have submitted a copy of a valid investigative
21 or incident report or complaint with a law enforcement agency about the unlawful use of your
22 identifying information by another person, or you are the spouse of such a person.~~

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

26 (q) A violation of this section is a violation of G.S. 75-1.1."

27 **SECTION 3.** G.S. 75-63.1(d) reads as rewritten:

28 "(d) Fees. – A consumer reporting agency ~~may~~ shall not charge a ~~reasonable fee for each~~
29 the placement or removal of a protected consumer security freeze ~~in accordance with the~~
30 following: freeze.

- 31 ~~(1) Fee allowed in certain cases. – Except as provided in subdivision (2) of this
32 subsection, a consumer reporting agency may charge a fee to a consumer not
33 to exceed five dollars (\$5.00) for placement or removal of a protected
34 consumer security freeze.~~
- 35 ~~(2) No fee allowed in certain cases. – A fee may not be charged for the placement
36 or removal of a protected consumer security freeze under this section if any
37 of the following conditions are satisfied:~~
 - 38 ~~a. The protected consumer's representative has submitted a copy of a
39 valid investigative or incident report or complaint with a law
40 enforcement agency about the unlawful use of the protected
41 consumer's identifying information by another person.~~
 - 42 ~~b. A request for placement or removal of a protected consumer security
43 freeze is for a protected consumer who is under the age of 16 at the
44 time of the request and the consumer reporting agency has a consumer
45 report pertaining to the protected consumer.~~
 - 46 ~~e. The protected consumer is over the age of 62.~~
- 47 ~~(3) No other fees allowed. – No fee other than those authorized under this
48 subsection may be charged for placement or removal of a protected consumer
49 security freeze."~~

50 **SECTION 4.** G.S. 75-65 reads as rewritten:

51 "**§ 75-65. Protection from security breaches.**

1 (a) Any business that owns or licenses personal information of residents of North
2 Carolina or any business that conducts business in North Carolina that owns or licenses personal
3 information in any form (whether computerized, paper, or otherwise) shall ~~provide notice to the~~
4 ~~affected person that there has been a security breach following discovery or notification of the~~
5 ~~breach. The disclosure notification shall be made without unreasonable delay, consistent with the~~
6 ~~legitimate needs of law enforcement, as provided in subsection (c) of this section, and consistent~~
7 ~~with any measures necessary to determine sufficient contact information, determine the scope of~~
8 ~~the breach and restore the reasonable integrity, security, and confidentiality of the data system.~~
9 ~~For the purposes of this section, personal information shall not include electronic identification~~
10 ~~numbers, electronic mail names or addresses, Internet account numbers, Internet identification~~
11 ~~names, parent's legal surname prior to marriage, or a password unless this information would~~
12 ~~permit access to a person's financial account or resources.~~ do all of the following:

- 13 (1) Implement and maintain reasonable security procedures and practices,
14 appropriate to the nature of the personal information and the size, complexity,
15 and capabilities of the business, to protect the personal information from
16 unauthorized access, destruction, use, modification, or disclosure.
- 17 (2) Provide notice to all persons affected by a security breach as soon as
18 practicable, but not later than 30 days after discovery of the breach or reason
19 to believe a breach has occurred in accordance with this section.
- 20 (3) Provide notice to the Consumer Protection Division of the Attorney General's
21 Office that there has been a security breach as soon as practicable, but not later
22 than 30 days after discovery of the breach or reason to believe a breach has
23 occurred. The Consumer Protection Division may request any of the following
24 information:
 - 25 a. A description of the policies in place regarding breaches.
 - 26 b. Steps taken to rectify the breach.
 - 27 c. A copy of the police report, if relevant.
 - 28 d. A summary of the incident report.
 - 29 e. A summary of the computer forensics report, if a forensic examination
30 was undertaken.
 - 31 f. All information prescribed under subsections (e) and (e1) of this
32 section.

33 The business shall provide notification of a security breach in a manner consistent with the
34 legitimate needs of law enforcement as provided in subsection (c) of this section and consistent
35 with any measures necessary to determine sufficient contact information, to determine the scope
36 of the breach, and to restore the reasonable integrity, security, and confidentiality of the data
37 system. The information provided to the Consumer Protection Division of the Attorney General's
38 Office pursuant to subdivision (3) of this subsection is not a public record as defined in
39 G.S. 132-1.

40 For the purposes of this section, the term "personal information" does not include (i)
41 electronic identification numbers or electronic mail names or addresses unless it includes any
42 required security code, access code, or password that would allow access to an individual's
43 financial account or resources or other personal information, as defined in this section, (ii)
44 Internet identification names, (iii) parent's legal surname prior to marriage, or (iv) a password,
45 unless the business is aware that this information would permit access to a person's financial
46 account or resources or other personal information, as defined in this section.

47 (b) Any business that maintains or possesses records or data containing personal
48 information of residents of North Carolina that the business does not own or license, or any
49 business that conducts business in North Carolina that maintains or possesses records or data
50 containing personal information that the business does not own or license shall notify the owner
51 or licensee of the information of any security breach immediately following discovery of the

1 breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of
2 this section.

3 (c) The notice required by this section shall be delayed if a law enforcement agency
4 informs the business that notification may impede a criminal investigation or jeopardize national
5 or homeland security, provided that such request is made in writing or the business documents
6 such request contemporaneously in writing, including the name of the law enforcement officer
7 making the request and the officer's law enforcement agency engaged in the investigation. The
8 notice required by this section shall be provided ~~without unreasonable delay~~ within five days
9 after the law enforcement agency communicates to the business its determination that notice will
10 no longer impede the investigation or jeopardize national or homeland security.

11 (d) The notice shall be clear and conspicuous. The notice shall include all of the
12 following:

- 13 (1) A description of the incident in general terms.
- 14 (2) A description of the type of personal information that was subject to the
15 unauthorized access and acquisition.
- 16 (3) A description of the general acts of the business to protect the personal
17 information from further unauthorized access.
- 18 (4) A telephone number for the business that the person may call for further
19 information and assistance, if one exists.
- 20 (5) Advice that directs the person to remain vigilant by reviewing account
21 statements and monitoring free credit reports.
- 22 (6) The toll-free numbers and addresses for the major consumer reporting
23 agencies.
- 24 (7) The toll-free numbers, addresses, and Web site addresses for the Federal Trade
25 Commission and the North Carolina Attorney General's Office, along with a
26 statement that the individual can obtain information from these sources about
27 preventing identity theft.

28 (e) For purposes of this section, notice to affected persons may be provided by one of the
29 following methods:

- 30 (1) Written notice.
- 31 (2) Electronic notice, for those persons for whom it has a valid e-mail address and
32 with whom it regularly conducts business electronically or who have agreed
33 to receive communications electronically if the notice provided is consistent
34 with the provisions regarding electronic records and signatures for notices
35 legally required to be in writing set forth in 15 U.S.C. § 7001.
- 36 (3) Telephonic notice provided that contact is made directly with the affected
37 persons.
- 38 (4) Substitute notice, if the business demonstrates that the cost of providing notice
39 would exceed two hundred fifty thousand dollars (\$250,000) or that the
40 affected class of subject persons to be notified exceeds 500,000, or if the
41 business does not have sufficient contact information or consent to satisfy
42 subdivisions (1), (2), or (3) of this subsection, for only those affected persons
43 without sufficient contact information or consent, or if the business is unable
44 to identify particular affected persons, for only those unidentifiable affected
45 persons. Substitute notice shall consist of all the following:
 - 46 a. E-mail notice when the business has an electronic mail address for the
47 subject persons.
 - 48 b. Conspicuous posting of the notice on the Web site page of the
49 business, if one is maintained.
 - 50 c. Notification to major statewide media.

1 (e1) In the event a business provides notice to an affected person pursuant to this section,
2 the business shall notify without unreasonable delay the Consumer Protection Division of the
3 Attorney General's Office of the nature of the breach, the number of consumers affected by the
4 breach, steps taken to investigate the breach, steps taken to prevent a similar breach in the future,
5 and information regarding the timing, distribution, and content of the notice.

6 ~~(f) In the event a business provides notice to more than 1,000 persons at one time
7 pursuant to this section, the business shall notify, without unreasonable delay, the Consumer
8 Protection Division of the Attorney General's Office and all consumer reporting agencies that
9 compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. §
10 1681a(p), of the timing, distribution, and content of the notice.~~

11 (g) Any waiver of the provisions of this Article is contrary to public policy and is void
12 and unenforceable.

13 (g1) A person or agency that is subject to and in compliance with the Health Insurance
14 Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended and with
15 regulations promulgated under that Act, shall be deemed in compliance with this section. If notice
16 of a security breach is provided to any affected person or agency pursuant to HIPAA, then notice
17 shall also be provided to the Consumer Protection Division in the Office of the Attorney General.

18 (h) A financial institution that is subject to and in compliance with the Federal
19 Interagency Guidance Response Programs for Unauthorized Access to Consumer Information
20 and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve
21 System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the
22 Currency, and the Office of Thrift Supervision; or a credit union that is subject to and in
23 compliance with the Final Guidance on Response Programs for Unauthorized Access to Member
24 Information and Member Notice, issued on April 14, 2005, by the National Credit Union
25 Administration; and any revisions, additions, or substitutions relating to any of the said
26 interagency guidance, shall be deemed to be in compliance with this section.

27 (h1) If a consumer receives notice under this section or is the subject of a security breach
28 by a consumer reporting agency, and the consumer's personal information was held by a
29 consumer reporting agency, then that consumer reporting agency shall offer to provide
30 appropriate identity theft prevention and mitigation services such as credit monitoring at no cost
31 to the consumer for not less than 48 months. The consumer reporting agency shall provide the
32 consumer with information necessary to take advantage of the offer.

33 (h2) If a business knows or has reason to know that said business experienced a security
34 breach that requires notice under this section and the security breach includes a person's social
35 security number, the business shall contract with a third party to offer to each person whose social
36 security number was disclosed in the security breach or is reasonably believed to have been
37 disclosed in the security breach, credit monitoring services at no cost to the person for a period
38 of not less than 24 months.

39 (h3) A consumer reporting agency shall not knowingly offer a paid product to prevent
40 unauthorized access or restrict access to a consumer's credit unless, at the time of the transaction,
41 the consumer reporting agency (i) notifies the consumer of the availability of obtaining a security
42 freeze without charge and (ii) provides information to the consumer on how to obtain a security
43 freeze.

44 (i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may
45 be brought by an individual for a violation of this section unless such individual is injured as a
46 result of the violation.

47 (j) Causes of action arising under this Article may not be assigned."

48 **SECTION 5.** G.S. 75-66 reads as rewritten:

49 **"§ 75-66. Publication of personal information.**

50 (a) It shall be a violation of this section for any person to knowingly broadcast or publish
51 to the public on radio, television, cable television, in a writing of any kind, or on the Internet, the

1 personal information of another with actual knowledge that the person whose personal
2 information is disclosed has previously objected to any such disclosure.

3 (b) As used in this section, "person" means any individual, partnership, corporation, trust,
4 estate, cooperative, association, or other entity, but does not include any:

5 (1) Government, government subdivision or agency.

6 (2) Entity subject to federal requirements pursuant to the Health Insurance
7 Portability and Accountability Act (HIPAA).

8 (c) ~~As used in this section, the phrase "personal information" includes a person's first
9 name or first initial and last name in combination with any of the following information:~~

10 ~~(1) Social security or employer taxpayer identification numbers.~~

11 ~~(2) Drivers license, State identification card, or passport numbers.~~

12 ~~(3) Checking account numbers.~~

13 ~~(4) Savings account numbers.~~

14 ~~(5) Credit card numbers.~~

15 ~~(6) Debit card numbers.~~

16 ~~(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).~~

17 ~~(8) Digital signatures.~~

18 ~~(9) Any other numbers or information that can be used to access a person's
19 financial resources.~~

20 ~~(10) Biometric data.~~

21 ~~(11) Fingerprints.~~

22 ~~(12) Passwords.~~

23 (c1) For the purposes of this section, the phrase "personal information" does not include
24 any of the following:

25 (1) Electronic identification numbers or electronic mail names or addresses unless
26 it includes any required security code, access code, or password that would
27 allow access to an individual's financial account or resources or other personal
28 information, as defined in G.S. 75-61(10).

29 (2) Internet identification names.

30 (3) Parent's legal surname prior to marriage.

31 (4) A password, unless the business is aware that this information would permit
32 access to a person's financial account or resources or other personal
33 information, as defined in G.S. 75-61.

34 (d) Nothing in this section shall:

35 (1) Limit the requirements or obligations under any other section of this Article,
36 including, but not limited to, G.S. 75-62 and G.S. 75-65.

37 (2) Apply to the collection, use, or release of personal information for a purpose
38 permitted, authorized, or required by any federal, State, or local law,
39 regulation, or ordinance.

40 (3) Apply to data integration efforts to implement the State's business intelligence
41 strategy as provided by law or under contract.

42 (e) Any person whose property or person is injured by reason of a violation of this section
43 may sue for civil damages pursuant to the provisions of G.S. 1-539.2C."

44 **SECTION 6.** Article 2A of Chapter 75 of the General Statutes is amended by adding
45 three new sections to read:

46 **"§ 75-67. Consumer report consent.**

47 A person shall not obtain, use, or seek the consumer report or credit score of a consumer in
48 connection with an application for credit unless the user obtains the written, verbal, or electronic
49 consent of the consumer, as appropriate to the manner in which the application for credit is made.

50 **"§ 75-68. Right to request credit report.**

1 A consumer has the right to request from the credit reporting agencies a listing of any of the
2 information maintained on the consumer (both credit-related and noncredit-related information),
3 the source of the information maintained, and a list of any person or entity that information was
4 disclosed to. Violation of this section is a violation of G.S. 75-1.1.

5 **"§ 75-69. Conflict with Fair Credit Reporting Act.**

6 In all cases of irreconcilable conflict between the provisions of this Article and the provisions
7 of the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended, the provisions of the
8 Fair Credit Reporting Act shall control."

9 **SECTION 7.** G.S. 14-113.20(b) reads as rewritten:

10 "(b) The term "identifying information" as used in this Article includes the following:

- 11 (1) Social security or employer taxpayer identification numbers.
- 12 (2) Drivers license, State identification card, or passport numbers.
- 13 (3) Checking account numbers.
- 14 (4) Savings account numbers.
- 15 (5) Credit card numbers.
- 16 (6) Debit card numbers.
- 17 (7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
- 18 (8) Electronic identification numbers, electronic mail names or addresses,
- 19 ~~Internet account numbers,~~ or Internet identification names.
- 20 (9) Digital signatures.
- 21 (10) Any other numbers or information that can be used to access a person's
- 22 financial resources.
- 23 (11) Biometric data.
- 24 (12) Fingerprints.
- 25 (13) Passwords.
- 26 (14) Parent's legal surname prior to marriage.
- 27 (15) Health insurance policy number, subscriber identification number, or any
28 other unique identifier used by a health insurer or payer to identify the person.
- 29 (16) Any information regarding the individual's medical history or condition,
30 medical treatment or diagnosis, or genetic information, by a health care
31 professional."

32 **SECTION 8.** This act is effective when it becomes law.