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H.390

Introduced by Representative Burditt of West Rutland

Referred to Committee on

Date:

Subject: Commerce and trade; consumer protection; child identity theft

Statement of purpose of bill as introduced: This bill proposes to modify and enact safeguards for the consumer protection rights of certain minors, incapacitated adults, and protected persons.

An act relating to consumer protections for susceptible persons

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 9 V.S.A. § 2480a is amended to read:

§ 2480a. DEFINITIONS

~~For purposes of~~ As used in this subchapter and subchapter 9 of this chapter:

(1) “Consumer” means a natural person ~~residing in this State~~ other than a protected consumer.

(2) “Credit report” means ~~any written, oral, or other communication of any information by a credit reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, including an investigative credit report.~~ The term does not include:

1 ~~(A) a report containing information solely as to transactions or~~
2 ~~experiences between the consumer and the person making the report; or~~

3 ~~(B) an authorization or approval of a specific extension of credit~~
4 ~~directly or indirectly by the issuer of a credit card or similar device. a~~
5 consumer report, as defined in 15 U.S.C. § 1681a, that is used or collected in
6 whole or in part for the purpose of serving as a factor in establishing a
7 consumer’s eligibility for credit for personal, family, or household purposes.

8 (3) “Credit reporting agency” or “agency” means ~~any person which, for~~
9 ~~monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in~~
10 ~~whole or in part in the practice of assembling or evaluating consumer credit~~
11 ~~information or other information on consumers for the purpose of reporting to~~
12 ~~third parties on the credit rating or creditworthiness of any consumer a person~~
13 who, for fees, dues, or on a cooperative basis, regularly engages in whole or in
14 part in the practice of assembling or evaluating information concerning a
15 consumer’s credit or other information for the purpose of furnishing a credit
16 report to another person.

17 (4) “Identity theft” means the unauthorized use of another person’s
18 personal identifying information to obtain credit, goods, services, money, or
19 property.

20 (5) “Investigative credit report” means a report in which information on
21 a consumer’s character, general reputation, personal characteristics, or mode of

1 living is obtained through personal interviews with neighbors, friends, or
2 associates of the consumer reported on or with others with whom the consumer
3 is acquainted or who may have knowledge concerning any such items of
4 information. The term does not include reports of specific factual information
5 on a consumer's credit record obtained directly from a creditor of the
6 consumer or from a credit reporting agency when such information was
7 obtained directly from a creditor of the consumer or from the consumer.

8 (6) "~~Proper identification,~~" ~~as used in this subchapter, means that~~
9 ~~information generally deemed sufficient to identify a person~~ has the same
10 meaning as in 15 U.S.C. § 1681h(a)(1), and includes:

11 (A) the consumer's full name, including first, last, and middle names
12 and any suffix;

13 (B) any name the consumer previously used;

14 (C) the consumer's current and recent full addresses, including street
15 address, any apartment number, city, state, and ZIP code;

16 (D) the consumer's Social Security number; and

17 (E) the consumer's date of birth.

18 (7) "Security freeze" means a notice placed in a credit report, at the
19 request of the consumer, pursuant to section 2480h of this title.

20 (8) "Consumer who is subject to a protected consumer security freeze"
21 means a natural person:

1 (A) for whom a credit reporting agency placed a security freeze
2 under section 2480h of this title; and

3 (B) who, on the day on which a request for the removal of the
4 security freeze is submitted under section 2480h of this title, is not a protected
5 consumer.

6 (9) “File” has the same meaning as in 15 U.S.C. § 1681a.

7 (10) “Incapacitated person” has the same meaning as in 14 V.S.A.
8 § 3152.

9 (11)(A) “Personal information” means personally identifiable financial
10 information:

11 (i) provided by a consumer to another person;

12 (ii) resulting from any transaction with the consumer or any
13 service performed for the consumer; or

14 (iii) otherwise obtained by another person.

15 (B) “Personal information” does not include:

16 (i) publicly available information, as that term is defined by the
17 regulations prescribed under 15 U.S.C. § 6804; or

18 (ii) any list, description, or other grouping of consumers, and
19 publicly available information pertaining to the consumers, that is derived
20 without using any nonpublic personal information.

1 (C) Notwithstanding subdivision (B) of this subdivision (11),
2 “personal information” includes any list, description, or other grouping of
3 consumers, and publicly available information pertaining to the consumers,
4 that is derived using any nonpublic personal information other than publicly
5 available information.

6 (12) “Protected consumer” means a natural person who, at the time a
7 request for a security freeze is made, is:

8 (A) less than 16 years of age;

9 (B) an incapacitated person; or

10 (C) a protected person.

11 (13) “Protected person” has the same meaning as in 14 V.S.A. § 3152.

12 (14) “Record” means a compilation of information that:

13 (A) identifies a protected consumer;

14 (B) is created by a consumer reporting agency solely for the purpose
15 of complying with this section; and

16 (C) may not be created or used to consider the protected consumer’s
17 credit worthiness, credit standing, credit capacity, character, general reputation,
18 personal characteristics, or mode of living.

19 (15) “Representative” means a person who provides to a consumer
20 reporting agency sufficient proof of authority to act on behalf of a protected
21 consumer.

1 (16) “Sufficient proof of authority” means documentation that shows
2 that a person has authority to act on behalf of a protected consumer, including:

3 (A) a court order;

4 (B) a lawfully executed power of attorney; or

5 (C) a written, notarized statement signed by the person that expressly
6 describes the person’s authority to act on behalf of the protected consumer.

7 (17) “Sufficient proof of identification” means information or
8 documentation that identifies a protected consumer or a representative,
9 including:

10 (A) a Social Security number or a copy of a Social Security card
11 issued by the U.S. Social Security Administration;

12 (B) a certified or official copy of a birth certificate; or

13 (C) a copy of a government issued driver license or identification
14 card.

15 Sec. 2. 9 V.S.A. chapter 63, subchapter 9 is added to read:

16 Subchapter 9. Credit Report Protection for Minors

17 § 2493. TITLE

18 This subchapter is known as “Credit Report Protection for Minors.”

19 § 2494. DEFINITIONS

20 As used in this subchapter:

21 (1) “Proper authority” means:

1 (A) in the case that it is required of a protected consumer's
2 representative:

3 (i) sufficient proof of identification of the protected consumer;

4 (ii) sufficient proof of identification of the protected consumer's
5 representative; and

6 (iii) sufficient proof of authority to act on behalf of the protected
7 consumer; and

8 (B) in the case that it is required of a consumer who is subject to a
9 protected consumer security freeze:

10 (i) sufficient proof of identification of the consumer who is subject
11 to a protected consumer security freeze; and

12 (ii) proof that the consumer who is subject to a protected
13 consumer security freeze is not a protected consumer.

14 (2) "Protected consumer security freeze" means:

15 (A) if a consumer reporting agency does not have a file that pertains
16 to a protected consumer, a restriction that:

17 (i) is placed on the protected consumer's record in accordance
18 with this subchapter; and

19 (ii) except as otherwise provided in this subchapter, prohibits the
20 consumer reporting agency from releasing the protected consumer's record; or

1 (B) if a consumer reporting agency has a file that pertains to the
2 protected consumer, a restriction that:

3 (i) is placed on the protected consumer's credit report in accordance
4 with this subchapter; and

5 (ii) except as otherwise provided in this subchapter, prohibits the
6 consumer reporting agency from releasing the protected consumer's credit
7 report or any information derived from the protected consumer's credit report.

8 § 2495. APPLICABILITY

9 This subchapter does not apply to the use of a protected consumer's credit
10 report or record by:

11 (1) a person administering a credit file monitoring subscription service
12 to which:

13 (A) the protected consumer has subscribed; or

14 (B) the protected consumer's representative has subscribed on the
15 protected consumer's behalf;

16 (2) a person who, upon request from the protected consumer or the
17 protected consumer's representative, provides the protected consumer or the
18 protected consumer's representative with a copy of the protected consumer's
19 credit report;

20 (3) a check services or fraud prevention services company that issues:

21 (A) reports on incidents of fraud; or

1 (B) authorization for the purpose of approving or processing
2 negotiable instruments, electronic funds transfers, or similar payment methods;

3 (4) a deposit account information service company that issues reports
4 regarding account closures due to fraud, substantial overdrafts, automated
5 teller machine abuse, or similar information regarding an individual to
6 inquiring banks or other financial institutions for use only in reviewing an
7 individual's request for a deposit account at the inquiring bank or financial
8 institution;

9 (5) an insurance company for the purpose of conducting the insurance
10 company's ordinary business;

11 (6) a consumer reporting agency that:

12 (A) only resells credit information by assembling and merging
13 information contained in a database of another consumer reporting agency or
14 multiple consumer reporting agencies; and

15 (B) does not maintain a permanent database of credit information
16 from which new credit reports are produced; or

17 (7) a consumer reporting agency's database or file that consists of
18 information that:

19 (A) concerns and is used for:

20 (i) criminal record information;

21 (ii) fraud prevention or detection;

1 (iii) personal loss history information; or

2 (iv) employment, tenant, or individual background screening; and

3 (B) is not used for credit granting purposes.

4 § 2496. SECURITY FREEZE FOR PROTECTED CONSUMER; TIME IN

5 EFFECT

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

8 (1) the consumer reporting agency receives a request from the protected
9 consumer's representative for the placement of the security freeze; and

10 (2) the protected consumer's representative:

11 (A) submits the request described in subdivision (1) of this
12 subsection (a):

13 (i) to the address or other point of contact provided by the
14 consumer reporting agency; and

15 (ii) in the manner specified by the consumer reporting agency;

16 (B) demonstrates proper authority to the consumer reporting
17 agency; and

18 (C) if applicable, pays the consumer reporting agency a fee described
19 in section 2497 of this title.

20 (b) If a consumer reporting agency does not have a file that pertains to a
21 protected consumer when the consumer reporting agency receives a request

1 described in subsection (a) of this section, the consumer reporting agency shall
2 create a record for the protected consumer.

3 (c) The credit reporting agency shall send a written confirmation of the
4 security freeze to the protected consumer or the protected consumer's
5 representative within 10 business days and shall provide a unique personal
6 identification number or password, other than a Social Security number, to be
7 used to authorize the release of the protected consumer's credit for a specific
8 party, parties, or period of time.

9 (d) If the protected consumer or protected consumer's representative
10 wishes to allow the protected consumer's credit report to be accessed by a
11 specific party or parties, or for a specific period of time while a freeze is in
12 place, he or she shall:

13 (1) contact the credit reporting agency;

14 (2) request that the freeze be temporarily lifted;

15 (3) provide:

16 (A) proper authority;

17 (B) the unique personal identification number or password provided
18 by the credit reporting agency pursuant to subsection (c) of this section;

19 (C) the proper information regarding the third party, parties, or time
20 period for which the report shall be available to users of the credit report; and

1 (4) if applicable, pay the consumer reporting agency a fee described in
2 section 2497 of this title.

3 (e) A credit reporting agency may develop procedures involving the use of
4 telephone, fax, the Internet, or other electronic media to receive and process a
5 request from a consumer to lift temporarily a freeze on a credit report pursuant
6 to subsection (d) of this section in an expedited manner.

7 (f) A credit reporting agency that receives a request from a consumer to lift
8 temporarily a freeze on a credit report pursuant to subsection (e) of this section
9 shall comply with the request not later than three business days after receiving
10 the request.

11 (g) A credit reporting agency shall remove or lift temporarily a freeze
12 placed on a protected consumer's credit report only in the following cases:

13 (1) Upon request, pursuant to subsection (d) or (j) of this section.

14 (2) If the protected consumer's credit report was frozen due to a material
15 misrepresentation of fact by the consumer. If a credit reporting agency intends
16 to remove a freeze upon a protected consumer's credit report pursuant to this
17 subdivision, the credit reporting agency shall notify the protected consumer
18 and his or her representative in writing prior to removing the freeze on the
19 consumer's credit report.

20 (h) If a third party requests access to a credit report on which a protected
21 consumer security freeze is in effect and this request is in connection with an

1 application for credit or any other use and neither the consumer subject to the
2 protected consumer security freeze nor the protected consumer's representative
3 allows the credit report to be accessed for that specific party or period of time,
4 the third party may treat the application as incomplete.

5 (i) If a protected consumer's representative requests a security freeze
6 pursuant to this section, the credit reporting agency shall disclose to the
7 protected consumer's representative the process of placing and lifting
8 temporarily a security freeze and the process for allowing access to
9 information from the protected consumer's credit report for a specific party,
10 parties, or period of time while the protected consumer security freeze is in
11 place.

12 (j)(1) A protected consumer security freeze shall remain in place until the
13 consumer subject to the protected consumer security freeze or the protected
14 consumer's representative requests that the security freeze be removed.

15 (2) A credit reporting agency shall remove a protected consumer
16 security freeze within three business days of receiving a proper request for
17 removal.

18 (3) The protected consumer's representative or the consumer who is
19 subject to a protected consumer security freeze shall submit to the consumer
20 reporting agency a proper request for removal:

1 (A) at the address or other point of contact provided by the consumer
2 reporting agency; and

3 (B) in the manner specified by the consumer reporting agency.

4 (4) When submitting a proper request for removal, a protected
5 consumer's representative or a consumer who is subject to a protected
6 consumer security freeze shall:

7 (A) provide proper authority;

8 (B) provide the unique personal identification number or password
9 provided by the credit reporting agency pursuant to subsection (c) of this
10 section; and

11 (C) if applicable, pay the consumer reporting agency a fee described
12 in section 2497 of this title.

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

16 (l) The provisions of this section, including the protected consumer security
17 freeze, do not apply to the use of a consumer report by the following:

18 (1) A person, or the person's subsidiary, affiliate, agent, or assignee with
19 which the protected consumer has or, prior to assignment, had an account,
20 contract, or debtor-creditor relationship for the purposes of reviewing the
21 account or collecting the financial obligation owing for the account, contract,

1 or debt, or extending credit to a consumer with a prior or existing account,
2 contract, or debtor-creditor relationship, subject to the requirements of section
3 2480e of this title. As used in this subdivision, “reviewing the account”
4 includes activities related to account maintenance, monitoring, credit line
5 increases, and account upgrades and enhancements.

6 (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a
7 person to whom access has been granted under subsection (d) of this section
8 for purposes of facilitating the extension of credit or other permissible use.

9 (3) Any person acting pursuant to a court order, warrant, or subpoena.

10 (4) The Office of Child Support when investigating a child support case
11 pursuant to Title IV-D of the Social Security Act (42 U.S.C. et seq.) and
12 33 V.S.A. 4102.

13 (5) The Economic Services Division of the Department for Children and
14 Families or the Department of Vermont Health Access or its agents or assignee
15 acting to investigate welfare or Medicaid fraud.

16 (6) The Department of Taxes, municipal taxing authorities, or the
17 Department of Motor Vehicles or any of their agents or assignees, acting to
18 investigate or collect delinquent taxes or assessments, including interest and
19 penalties, unpaid court orders, or to fulfill any of their other statutory or charter
20 responsibilities.

1 (7) A person's use of credit information for the purposes of prescreening
2 as provided by the federal Fair Credit Reporting Act.

3 (8) Any person for the sole purpose of providing a credit file monitoring
4 subscription service to which the consumer has subscribed.

5 (9) A credit reporting agency for the sole purpose of providing a
6 consumer with a copy of his or her credit report upon the consumer's request.

7 (10) Any property and casualty insurance company for use in setting or
8 adjusting a rate or underwriting for property and casualty insurance purposes.

9 § 2497. FEES

10 (a) Except as provided in subsection (b) of this section, a consumer
11 reporting agency may not charge a fee for any service performed under this
12 subchapter.

13 (b) A consumer reporting agency may charge a reasonable fee, which does
14 not exceed \$5.00, for each placement, suspension, or removal of a protected
15 consumer security freeze, unless:

16 (1) the protected consumer's representative:

17 (A) has obtained a police report that states the protected consumer is
18 the alleged victim of identity fraud; and

19 (B) provides a copy of the report to the consumer reporting
20 agency; or

1 (2)(A) the protected consumer is less than 16 years of age at the time the
2 request is submitted to the consumer reporting agency; and

3 (B) the consumer reporting agency has a file that pertains to the
4 protected consumer.

5 Sec. 3. EFFECTIVE DATE

6 This act shall take effect on July 1, 2017.