

1 S.156

2 Introduced by Senator Sirotkin

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; consumer protection

6 Statement of purpose of bill as introduced: This bill proposes to eliminate fees
7 to place or remove a credit freeze on a consumer's credit report; to impose a
8 duty to adopt a comprehensive information security program on any person
9 that has access to personally identifiable information; to expand the
10 enforcement powers of the Attorney General and Vermont consumers for
11 unfair practices in commerce that result in a data security breach or failure to
12 comply with the Vermont Security Breach Notice Act; and to direct the
13 Attorney General to designate a current employee as the State Chief Privacy
14 Officer.

15 An act relating to protecting Vermont consumer data

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

2 * * * Eliminating Fees to Place or Remove Credit Freeze * * *

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

4 § 2480b. DISCLOSURES TO CONSUMERS

5 (a) A credit reporting agency shall, upon request and proper identification
6 of any consumer, clearly and accurately disclose to the consumer all
7 information available to users at the time of the request pertaining to the
8 consumer, including:

9 (1) any credit score or predictor relating to the consumer, in a form and
10 manner that complies with such comments or guidelines as may be issued by
11 the Federal Trade Commission;

12 (2) the names of users requesting information pertaining to the
13 consumer during the prior 12-month period and the date of each request; and

14 (3) a clear and concise explanation of the information.

15 (b) As frequently as new telephone directories are published, the credit
16 reporting agency shall cause to be listed its name and number in each
17 telephone directory published to serve communities of this State. In
18 accordance with rules adopted by the Attorney General, the credit reporting
19 agency shall make provision for consumers to request by telephone the
20 information required to be disclosed pursuant to subsection (a) of this section
21 at no cost to the consumer.

1 (c) Any time a credit reporting agency is required to make a written
2 disclosure to consumers pursuant to 15 U.S.C. § 1681g, it shall disclose, in at
3 least 12 point type, and in bold type as indicated, the following notice:

4 “NOTICE TO VERMONT CONSUMERS

5 (1) Under Vermont law, you are allowed to receive one free copy of
6 your credit report every 12 months from each credit reporting agency. If you
7 would like to obtain your free credit report from [INSERT NAME OF
8 COMPANY], you should contact us by [[writing to the following address:
9 [INSERT ADDRESS FOR OBTAINING FREE CREDIT REPORT]] or
10 [calling the following number: [INSERT TELEPHONE NUMBER FOR
11 OBTAINING FREE CREDIT REPORT]], or both].

12 (2) Under Vermont law, no one may access your credit report without
13 your permission except under the following limited circumstances:

14 (A) in response to a court order;

15 (B) for direct mail offers of credit;

16 (C) if you have given ongoing permission and you have an existing
17 relationship with the person requesting a copy of your credit report;

18 (D) where the request for a credit report is related to an education
19 loan made, guaranteed, or serviced by the Vermont Student Assistance
20 Corporation;

1 (E) where the request for a credit report is by the Office of Child
2 Support ~~Services~~ when investigating a child support case;

3 (F) where the request for a credit report is related to a credit
4 transaction entered into prior to January 1, 1993; ~~and~~ or

5 (G) where the request for a credit report is by the Vermont ~~State Tax~~
6 Department of Taxes and is used for the purpose of collecting or investigating
7 delinquent taxes.

8 (3) If you believe a law regulating consumer credit reporting has been
9 violated, you may file a complaint with the Vermont Attorney General's
10 Consumer Assistance Program, ~~104 Merrill Hall, University of Vermont,~~
11 ~~Burlington, Vermont 05405~~ 109 State Street, Montpelier, Vermont 05609-
12 1001.

13 Vermont Consumers Have the Right to Obtain a Security Freeze

14 You have a right to place a "security freeze" on your credit report pursuant
15 to 9 V.S.A. § 2480h at no charge ~~if you are a victim of identity theft. All other~~
16 ~~Vermont consumers will pay a fee to the credit reporting agency of up to~~
17 ~~\$10.00 to place the freeze on their credit report.~~ The security freeze will
18 prohibit a credit reporting agency from releasing any information in your credit
19 report without your express authorization. A security freeze must be requested
20 in writing by certified mail.

1 The security freeze is designed to help prevent credit, loans, and services
2 from being approved in your name without your consent. However, you
3 should be aware that using a security freeze to take control over who gains
4 access to the personal and financial information in your credit report may
5 delay, interfere with, or prohibit the timely approval of any subsequent request
6 or application you make regarding new loans, credit, mortgage, insurance,
7 government services or payments, rental housing, employment, investment,
8 license, cellular phone, utilities, digital signature, ~~internet~~ Internet credit card
9 transaction, or other services, including an extension of credit at point of sale.

10 When you place a security freeze on your credit report, within ten business
11 days you will be provided a personal identification number or password to use
12 if you choose to remove the freeze on your credit report or authorize the
13 release of your credit report for a specific party, parties, or period of time after
14 the freeze is in place. To provide that authorization, you must contact the
15 credit reporting agency and provide all of the following:

16 (1) The unique personal identification number or password provided by
17 the credit reporting agency.

18 (2) Proper identification to verify your identity.

19 (3) The proper information regarding the third party or parties who are
20 to receive the credit report or the period of time for which the report shall be
21 available to users of the credit report.

1 A credit reporting agency may not charge a fee of up to \$5.00 to a consumer
2 ~~who is not a victim of identity theft~~ to remove the freeze on your credit report
3 or authorize the release of your credit report for a specific party, parties, or
4 period of time after the freeze is in place. ~~For a victim of identity theft, there is~~
5 ~~no charge when the victim submits a copy of a police report, investigative~~
6 ~~report, or complaint filed with a law enforcement agency about unlawful use of~~
7 ~~the victim's personal information by another person.~~

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

11 A security freeze will not apply to “preauthorized approvals of credit.” If
12 you want to stop receiving preauthorized approvals of credit, you should call
13 [INSERT PHONE NUMBERS] [ALSO INSERT ALL OTHER CONTACT
14 INFORMATION FOR PRESCREENED OFFER ~~OPT-OUT~~ OPT-OUT.]

15 A security freeze does not apply to a person or entity, or its affiliates, or
16 collection agencies acting on behalf of the person or entity with which you
17 have an existing account that requests information in your credit report for the
18 purposes of reviewing or collecting the account, provided you have previously
19 given your consent to this use of your credit reports. Reviewing the account
20 includes activities related to account maintenance, monitoring, credit line
21 increases, and account upgrades and enhancements.

1 You have a right to bring a civil action against someone who violates your
2 rights under the credit reporting laws. The action can be brought against a
3 credit reporting agency or a user of your credit report.”

4 (d) The information required to be disclosed by this section shall be
5 disclosed in writing. The information required to be disclosed pursuant to
6 subsection (c) of this section shall be disclosed on one side of a separate
7 document, with text no smaller than that prescribed by the Federal Trade
8 Commission for the notice required under 15 U.S.C. ~~§ 1681g~~ § 1681g. The
9 information required to be disclosed pursuant to subsection (c) of this section
10 may accurately reflect changes in numerical items that change over time (such
11 as the ~~phone~~ telephone number or address of Vermont State agencies), and
12 remain in compliance.

13 (e) The Attorney General may revise this required notice by rule as
14 appropriate from time to time so long as no new substantive rights are created
15 therein.

16 Sec. 2. 9 V.S.A. § 2480h is amended to read:

17 § 2480h. SECURITY FREEZE BY CREDIT REPORTING AGENCY; TIME

18 IN EFFECT

19 (a)(1) Any Vermont consumer may place a security freeze on his or her
20 credit report. A credit reporting agency shall not charge a fee to ~~victims of~~
21 ~~identity theft but may charge a fee of up to \$10.00 to all other~~ Vermont

1 consumers for placing ~~and \$5.00 for~~ or removing, removing for a specific party
2 or parties, or removing for a specific period of time after the freeze is in place a
3 security freeze on a credit report.

4 (2) A consumer ~~who has been the victim of identity theft~~ may place a
5 security freeze on his or her credit report by making a request in writing by
6 certified mail to a credit reporting agency ~~with a valid copy of a police report,~~
7 ~~investigative report, or complaint the consumer has filed with a law~~
8 ~~enforcement agency about unlawful use of his or her personal information by~~
9 ~~another person. All other Vermont consumers may place a security freeze on~~
10 ~~his or her credit report by making a request in writing by certified mail to a~~
11 ~~credit reporting agency.~~

12 (3) A security freeze shall prohibit, subject to the exceptions in
13 subsection (1) of this section, the credit reporting agency from releasing the
14 consumer's credit report or any information from it without the express
15 authorization of the consumer. ~~When a security freeze is in place, information~~
16 ~~from a consumer's credit report shall not be released to a third party without~~
17 ~~prior express authorization from the consumer.~~

18 (4) This subsection does not prevent a credit reporting agency from
19 advising a third party that a security freeze is in effect with respect to the
20 consumer's credit report.

1 (b) A credit reporting agency shall place a security freeze on a consumer's
2 credit report ~~no~~ not later than five business days after receiving a written
3 request from the consumer.

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

10 (d) If the consumer wishes to allow his or her credit report to be accessed
11 for a specific party, parties, or period of time while a freeze is in place, he or
12 she shall contact the credit reporting agency, request that the freeze be
13 temporarily lifted, and provide the following:

14 (1) ~~Proper~~ proper identification;

15 (2) ~~The~~ the unique personal identification number or password provided
16 by the credit reporting agency pursuant to subsection (c) of this section; and

17 (3) ~~The~~ the proper information regarding the third party, parties, or time
18 period for which the report shall be available to users of the credit report.

19 (e) A credit reporting agency may develop procedures involving the use of
20 telephone, fax, the Internet, or other electronic media to receive and process a

1 request from a consumer to lift temporarily ~~lift~~ a freeze on a credit report
2 pursuant to subsection (d) of this section in an expedited manner.

3 (f) A credit reporting agency that receives a request from a consumer to lift
4 temporarily a freeze on a credit report pursuant to subsection (d) of this section
5 shall comply with the request ~~no~~ not later than three business days after
6 receiving the request.

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

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

11 (2) If the consumer's credit report was frozen due to a material
12 misrepresentation of fact by the consumer. If a credit reporting agency intends
13 to remove a freeze upon a consumer's credit report pursuant to this
14 subdivision, the credit reporting agency shall notify the consumer in writing
15 prior to removing the freeze on the consumer's credit report.

16 (h) If a third party requests access to a credit report on which a security
17 freeze is in effect and this request is in connection with an application for
18 credit or any other use and the consumer does not allow his or her credit report
19 to be accessed for that specific party or period of time, the third party may treat
20 the application as incomplete.

1 (i) If a consumer requests a security freeze pursuant to this section, the
2 credit reporting agency shall disclose to the consumer the process of placing
3 and lifting temporarily ~~lifting~~ a security freeze and the process for allowing
4 access to information from the consumer's credit report for a specific party,
5 parties, or period of time while the security freeze is in place.

6 (j) A security freeze shall remain in place until the consumer requests that
7 the security freeze be removed. A credit reporting agency shall remove a
8 security freeze within three business days of receiving a request for removal
9 from the consumer who provides both of the following:

10 (1) ~~Proper~~ proper identification; and

11 (2) ~~The~~ the unique personal identification number or password provided
12 by the credit reporting agency pursuant to subsection (c) of this section.

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

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

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

1 debtor-creditor relationship, subject to the requirements of section 2480e of
2 this title. For purposes of this subdivision, “reviewing the account” includes
3 activities related to account maintenance, monitoring, credit line increases, and
4 account upgrades and enhancements.

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

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

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

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

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

20 (7) A person’s use of credit information for the purposes of prescreening
21 as provided by the federal Fair Credit Reporting Act.

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

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

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

7 * * * Imposing Duty to Protect Personally Identifiable Information * * *

8 Sec. 3. 9 V.S.A. § 2433 is added to read:

9 § 2433. DUTY TO PROTECT PERSONALLY IDENTIFIABLE

10 INFORMATION; STANDARDS; TECHNICAL REQUIREMENTS

11 (a) Duty to protect personally identifiable information.

12 (1) A person who owns, licenses, receives, stores, maintains, processes,
13 or otherwise has access to personally identifiable information about a
14 consumer shall develop, implement, and maintain a comprehensive
15 information security program that is written in one or more readily accessible
16 parts and contains administrative, technical, and physical safeguards that are
17 appropriate to:

18 (A) the size, scope, and type of business of the person obligated to
19 safeguard the personally identifiable information under such comprehensive
20 information security program;

21 (B) the amount of resources available to such person;

1 (C) the amount of stored data; and

2 (D) the need for security and confidentiality of personally identifiable
3 information.

4 (2) A person subject to this subsection shall adopt safeguards in the
5 comprehensive security program that are consistent with the safeguards for
6 protection of personally identifiable information and information of a similar
7 character set forth in other State rules or federal regulations applicable to the
8 person.

9 (b) Information security program; minimum features. A comprehensive
10 information security program shall at minimum include the following features:

11 (1) designation of one or more employees to maintain the program;

12 (2) identification and assessment of reasonably foreseeable internal and
13 external risks to the security, confidentiality, and integrity of any electronic,
14 paper, or other records containing personally identifiable information, and a
15 process for evaluating and improving, where necessary, the effectiveness of the
16 current safeguards for limiting such risks, including:

17 (A) ongoing employee training, including training for temporary and
18 contract employees;

19 (B) employee compliance with policies and procedures; and

20 (C) means for detecting and preventing security system failures;

1 (3) security policies for employees relating to the storage, access, and
2 transportation of records containing personally identifiable information outside
3 business premises;

4 (4) disciplinary measures for violations of the comprehensive
5 information security program rules;

6 (5) measures that prevent terminated employees from accessing records
7 containing personally identifiable information;

8 (6) supervision of service providers, including:

9 (A) taking reasonable steps to select and retain third-party service
10 providers that are capable of maintaining appropriate security measures to
11 protect personally identifiable information consistent with applicable law; and

12 (B) requiring third-party service providers by contract to implement
13 and maintain appropriate security measures for personally identifiable
14 information;

15 (7) reasonable restrictions upon physical access to records containing
16 personally identifiable information and storage of the records and data in
17 locked facilities, storage areas, or containers;

18 (8)(A) regular monitoring to ensure that the comprehensive information
19 security program is operating in a manner reasonably calculated to prevent
20 unauthorized access to or unauthorized use of personally identifiable
21 information; and

1 (B) upgrading information safeguards as necessary to limit risks;

2 (9) regular review of the scope of the security measures:

3 (A) at least annually; or

4 (B) whenever there is a material change in business practices that
5 may reasonably implicate the security or integrity of records containing
6 personally identifiable information; and

7 (10)(A) documentation of responsive actions taken in connection with
8 any incident involving a breach of security; and

9 (B) mandatory post-incident review of events and actions taken, if
10 any, to make changes in business practices relating to protection of personally
11 identifiable information.

12 (c) Information security program; computer system security requirements.
13 A comprehensive information security program required by this section shall at
14 minimum, and to the extent technically feasible, include the following
15 elements:

16 (1) secure user authentication protocols, including:

17 (A) control of user IDs and other identifiers;

18 (B) a reasonably secure method of assigning and selecting passwords,
19 or use of unique identifier technologies, such as biometrics or token devices;

1 (C) control of data security passwords to ensure that such passwords
2 are kept in a location and format that do not compromise the security of the
3 data they protect;

4 (D) restricting access to only active users and active user
5 accounts; and

6 (E) blocking access to user identification after multiple unsuccessful
7 attempts to gain access;

8 (2) secure access control measures that:

9 (A) restrict access to records and files containing personally
10 identifiable information to those who need such information to perform their
11 job duties; and

12 (B) assign to each person with computer access unique identifications
13 plus passwords, which are not vendor-supplied default passwords, that are
14 reasonably designed to maintain the integrity of the security of the access
15 controls;

16 (3) encryption of all transmitted records and files containing personally
17 identifiable information that will travel across public networks and encryption
18 of all data containing personally identifiable information to be transmitted
19 wirelessly;

20 (4) reasonable monitoring of systems for unauthorized use of or access
21 to personally identifiable information;

1 (5) encryption of all personally identifiable information stored on
2 laptops or other portable devices;

3 (6) for files containing personally identifiable information on a system
4 that is connected to the Internet, reasonably up-to-date firewall protection and
5 operating system security patches, reasonably designed to maintain the
6 integrity of the personally identifiable information;

7 (7) reasonably up-to-date versions of system security agent software,
8 which must include malware protection and reasonably up-to-date patches and
9 virus definitions, or a version of such software that can still be supported with
10 up-to-date patches and virus definitions and is set to receive the most current
11 security updates on a regular basis; and

12 (8) education and training of employees on the proper use of the
13 computer security system and the importance of personally identifiable
14 information security.

15 (d) Enforcement.

16 (1) A person who violates a provision of this section commits an unfair
17 and deceptive act in commerce in violation of section 2453 of this title.

18 (2) The Attorney General has the same authority to adopt rules to
19 implement the provisions of this chapter and to conduct civil investigations,
20 enter into assurances of discontinuance, and bring civil actions as provided
21 under chapter 63, subchapter 1 of this title.

1 Sec. 4. 9 V.S.A. § 2435(g) is amended to read:

2 (g) Enforcement. A person who violates a provision of this section
3 commits an unfair and deceptive act in commerce in violation of section 2453
4 of this title and may be subject to enforcement as follows:

5 (1) With respect to all data collectors and other entities subject to this
6 subchapter, other than a person or entity licensed or registered with the
7 Department of Financial Regulation under Title 8 or this title, the Attorney
8 General and State's Attorney shall have ~~sole and~~ full authority to investigate
9 potential violations of this subchapter and to enforce, prosecute, obtain, and
10 impose remedies for a violation of this subchapter or any rules ~~or regulations~~
11 made pursuant to this chapter as the Attorney General and State's Attorney
12 have under chapter 63 of this title. The Attorney General may refer the matter
13 to the State's Attorney in an appropriate case. The Superior Courts shall have
14 jurisdiction over any enforcement matter brought by the Attorney General or a
15 State's Attorney under this subsection.

16 (2) With respect to a data collector that is a person or entity licensed or
17 registered with the Department of Financial Regulation under Title 8 or this
18 title, the Department of Financial Regulation shall have the full authority to
19 investigate potential violations of this subchapter and to prosecute, obtain, and
20 impose remedies for a violation of this subchapter or any rules ~~or regulations~~

1 adopted pursuant to this subchapter, as the Department has under Title 8 or this
2 title or any other applicable law or regulation.

3 (3) A consumer may bring a private right of action pursuant to section
4 2461 of this title against a data collector who violates a provision of this
5 section.

6 Sec. 5. CHIEF PRIVACY OFFICER

7 The Attorney General shall designate a current employee as Chief Privacy
8 Officer for the State of Vermont and shall specify the duties of the position,
9 which shall include responsibility for:

10 (1) internal policy and education within State agencies;

11 (2) evaluating for privacy implications any new technologies the State is
12 considering; and

13 (3) consumer awareness, education, and protection on privacy issues.

14 * * * Effective Dates * * *

15 Sec. 6. EFFECTIVE DATES

16 This act shall take effect on passage, except Sec. 3 (duty to protect
17 personally identifiable information), which shall take effect on July 1, 2019.