

By: Representative Guice

To: Banking and Financial Services

HOUSE BILL NO. 656
(As Passed the House)

1 AN ACT TO AUTHORIZE A CONSUMER TO PLACE A SECURITY FREEZE ON
2 HIS OR HER CREDIT REPORT, WHICH WILL PROHIBIT A CONSUMER REPORTING
3 AGENCY FROM RELEASING THE CONSUMER'S CREDIT REPORT OR ANY
4 INFORMATION FROM IT WITHOUT THE EXPRESS AUTHORIZATION OF THE
5 CONSUMER; TO REQUIRE CONSUMER REPORTING AGENCIES TO PLACE A
6 SECURITY FREEZE ON A CONSUMER'S CREDIT REPORT WITHIN FIVE BUSINESS
7 DAYS AFTER RECEIVING A WRITTEN REQUEST FROM THE CONSUMER; TO
8 PROVIDE THAT A SECURITY FREEZE WILL REMAIN IN PLACE UNTIL THE
9 CONSUMER REQUESTS THAT THE SECURITY FREEZE BE REMOVED; TO REQUIRE
10 CONSUMER REPORTING AGENCIES TO REMOVE A SECURITY FREEZE WITHIN
11 THREE BUSINESS DAYS OF RECEIVING A REQUEST FOR REMOVAL FROM THE
12 CONSUMER; TO PROVIDE FOR CERTAIN EXCEPTIONS TO THE REQUIREMENTS OF
13 THIS ACT; TO PROVIDE THAT ANY PERSON WHOSE PROPERTY OR PERSON IS
14 INJURED BY REASON OF A VIOLATION OF THIS ACT MAY SUE FOR CIVIL
15 DAMAGES; TO AMEND SECTION 75-24-5, MISSISSIPPI CODE OF 1972, TO
16 CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

18 **SECTION 1.** As used in this act, the following words shall be
19 defined as provided in this section:

20 (a) "Consumer" means an individual.

21 (b) "Consumer reporting agency" means any person who,
22 for monetary fees, dues, or on a cooperative nonprofit basis,
23 regularly engages in whole or in part in the practice of
24 assembling or evaluating consumer credit information or other
25 information on consumers for the purpose of furnishing consumer
26 reports to third parties.

27 (c) "Credit report" means any written, oral, or other
28 communication of any information by a consumer reporting agency
29 bearing on a consumer's creditworthiness, credit standing, credit
30 capacity, character, general reputation, personal characteristics,
31 or mode of living that is used or expected to be used or collected
32 in whole or in part for the purpose of serving as a factor in
33 establishing the consumer's eligibility for any of the following:

34 (i) Credit to be used primarily for personal,
35 family, or household purposes.

36 (ii) Employment purposes.

37 (iii) Any other purpose authorized under 15 USCS
38 Section 1681(b).

39 (d) "Credit card" has the same meaning as in Section
40 103 of the Truth in Lending Act (15 USCS Section 160 et seq.).

41 (e) "Person" means any individual, partnership,
42 corporation, trust, estate, cooperative, association, government,
43 or governmental subdivision or agency, or other entity.

44 (f) "Proper identification" means information generally
45 deemed sufficient to identify a person. If a person is unable to
46 reasonably identify himself or herself with the information
47 described above, a consumer reporting agency may require
48 additional information concerning the consumer's employment and
49 personal or family history in order to verify the consumer's
50 identity.

51 (g) "Security freeze" means notice placed in a credit
52 report, at the request of the consumer and subject to certain
53 exceptions, that prohibits the consumer reporting agency from
54 releasing all or any part of the consumer's credit report or any
55 information derived from it without the express authorization of
56 the consumer.

57 **SECTION 2.** (1) A consumer may place a security freeze on
58 the consumer's credit report by making a request in writing by
59 certified mail to a consumer reporting agency. A security freeze
60 shall prohibit, subject to exceptions in subsection (12) of this
61 section, the consumer reporting agency from releasing the
62 consumer's credit report or any information from it without the
63 express authorization of the consumer. When a security freeze is
64 in place, a consumer reporting agency may not release the
65 consumer's credit report or information to a third party without
66 prior express authorization from the consumer. This subsection

67 does not prevent a consumer reporting agency from advising a third
68 party that a security freeze is in effect with respect to the
69 consumer's credit report.

70 (2) A consumer reporting agency shall place a security
71 freeze on a consumer's credit report no later than five (5)
72 business days after receiving a written request from the consumer.

73 (3) The consumer reporting agency shall send a written
74 confirmation of the security freeze to the consumer within ten
75 (10) business days of placing the freeze and at the same time
76 shall provide the consumer with a unique personal identification
77 number or password, other than the consumer's social security
78 number, to be used by the consumer when providing authorization
79 for the release of the consumer's credit report for a specific
80 period of time.

81 (4) If the consumer wishes to allow the consumer's credit
82 report to be accessed for a specific period of time while a freeze
83 is in place, the consumer shall contact the consumer reporting
84 agency, request that the freeze be temporarily lifted, and provide
85 all of the following:

86 (a) Proper identification;

87 (b) The unique personal identification number or
88 password provided by the consumer reporting agency under
89 subsection (3) of this section; and

90 (c) The proper information regarding the time period
91 for which the report shall be available to users of the credit
92 report.

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

98 (6) A consumer reporting agency that receives a request from
99 a consumer to temporarily lift a freeze on a credit report under

100 subsection (4) of this section shall comply with the request no
101 later than three (3) business days after receiving the request.

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

105 (a) Upon the consumer's request, under subsection (4)
106 or (10) of this section; or

107 (b) If the consumer's credit report was frozen due to a
108 material misrepresentation of fact by the consumer. If a consumer
109 reporting agency intends to remove a freeze upon a consumer's
110 credit report under this paragraph, the consumer reporting agency
111 shall notify the consumer in writing prior to removing the freeze
112 on the consumer's credit report.

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

119 (9) If a consumer requests a security freeze under this
120 section, the consumer reporting agency shall disclose to the
121 consumer the process of placing and temporarily lifting a security
122 freeze and the process for allowing access to information from the
123 consumer's credit report for a specific period of time while the
124 security freeze is in place.

125 (10) A security freeze shall remain in place until the
126 consumer requests that the security freeze be removed. A consumer
127 reporting agency shall remove a security freeze within three (3)
128 business days of receiving a request for removal from the
129 consumer, who provides all of the following:

130 (a) Proper identification; and

131 (b) The unique personal identification number or
132 password provided by the consumer reporting agency under
133 subsection (3) of this section.

134 (11) A consumer reporting agency shall require proper
135 identification of the person making a request to place or remove a
136 security freeze.

137 (12) The provisions of this section do not apply to the use
138 of a consumer credit report by any of the following:

139 (a) A person, or the person's subsidiary, affiliate,
140 agent, subcontractor, or assignee with whom the consumer has, or
141 prior to assignment had, an account, contract, or debtor-creditor
142 relationship for the purposes of reviewing the active account or
143 collecting the financial obligation owing for the account,
144 contract, or debt;

145 (b) A subsidiary, affiliate, agent, assignee, or
146 prospective assignee of a person to whom access has been granted
147 under subsection (4) of this section for purposes of facilitating
148 the extension of credit or other permissible use;

149 (c) Any person acting under a court order, warrant, or
150 subpoena;

151 (d) A state or local agency, or its agents or assigns,
152 that administers a program for establishing and enforcing child
153 support obligations;

154 (e) A state or local agency, or its agents or assigns,
155 acting to investigate fraud, including Medicaid fraud, or acting
156 to investigate or collect delinquent taxes or assessments,
157 including interest and penalties, unpaid court orders, or to
158 fulfill any of its other statutory responsibilities;

159 (f) A federal, state, or local governmental entity,
160 including law enforcement agency, court, or their agent or
161 assigns;

162 (g) A person for the purposes of prescreening as
163 defined by the Fair Credit Reporting Act, 15 USCS Section 1681(b)
164 et seq.;

165 (h) Any person for the sole purpose of providing for a
166 credit file monitoring subscription service to which the consumer
167 has subscribed;

168 (i) A consumer reporting agency for the purpose of
169 providing a consumer with a copy of the consumer's credit report
170 upon the consumer's request;

171 (j) Any depository financial institution for checking,
172 savings, and investment accounts; or

173 (k) Any property and casualty insurance company for use
174 in setting or adjusting a rate, adjusting a claim, or underwriting
175 for property and casualty insurance purposes.

176 (13) If a security freeze is in place, a consumer reporting
177 agency shall not change any of the following official information
178 in a credit report without sending a written confirmation of the
179 change to the consumer within thirty (30) days of the change being
180 posted to the consumer's file: name, date of birth, social
181 security number, and address. Written confirmation is not
182 required for technical modifications of a consumer's official
183 information, including name and street abbreviations, complete
184 spellings, or transposition of numbers or letters. In the case of
185 an address change, the written confirmation shall be sent to both
186 the new address and the former address.

187 (14) The following persons are not required to place in a
188 credit report a security freeze under this section, except that
189 any person that is not required to place a security freeze on a
190 credit report under the provisions of paragraph (c) of this
191 subsection shall be subject to any security freeze placed on a
192 credit report by another consumer reporting agency from which it
193 obtains information:

194 (a) A check services or fraud prevention services
195 company that reports on incidents of fraud or issues
196 authorizations for the purpose of approving or processing
197 negotiable instruments, electronic fund transfers, or similar
198 methods of payment.

199 (b) A deposit account information service company that
200 issues reports regarding account closures due to fraud,
201 substantial overdrafts, ATM abuse, or other similar negative
202 information regarding a consumer to inquiring banks or other
203 financial institutions for use only in reviewing a consumer
204 request for a deposit account at the inquiring bank or financial
205 institution; or

206 (c) A consumer reporting agency that does all of the
207 following:

208 (i) Acts only to resell credit information by
209 assembling and merging information contained in a database of one
210 or more credit reporting agencies; and

211 (ii) Does not maintain a permanent database of
212 credit information from which new credit reports are produced.

213 (15) This section does not prevent a consumer reporting
214 agency from charging a fee of no more than Ten Dollars (\$10.00) to
215 a consumer for each freeze, removal of the freeze, or temporary
216 lifting of the freeze for a period of time, regarding access to a
217 consumer credit report, except that a consumer reporting agency
218 may not charge any fee to a victim of identity theft who has
219 submitted a copy of a valid investigative or incident report or
220 complaint with a law enforcement agency about the unlawful use of
221 the victim's identifying information by another person.

222 (16) At any time that a consumer is required to receive a
223 summary of rights required under Section 609 of the federal Fair
224 Credit Reporting Act, the following notice shall be included:

225 **"Mississippi Consumers Have the Right to Obtain a Security Freeze.**

226 You have a right to place a "security freeze" on your credit
227 report under Mississippi law. The security freeze will prohibit a
228 consumer reporting agency from releasing any information in your
229 credit report without your express authorization. A security
230 freeze must be requested in writing by certified mail.

231 The security freeze is designed to prevent credit, loans, and
232 services from being approved in your name without your consent.
233 However, you should be aware that using a security freeze to take
234 control over who gains access to the personal and financial
235 information in your credit report may delay, interfere with, or
236 prohibit the timely approval of any later request or application
237 you make regarding new loans, credit, mortgage, insurance, rental
238 housing, employment, investment, license, cellular phone,
239 utilities, digital signature, Internet credit card transactions,
240 or other services, including an extension of credit at point of
241 sale.

242 The freeze will be placed within five (5) business days. When
243 you place a security freeze on your credit report, within ten (10)
244 business days, you will be provided a personal identification
245 number or a password to use when you want to remove or lift
246 temporarily the security freeze.

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

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

254 You can remove a freeze or authorize temporary access for a
255 specific period of time by contacting the consumer reporting
256 agency and providing all of the following:

- 257 (1) Your personal identification number or password;
- 258 (2) Proper identification to verify your identity; and

259 (3) Proper information regarding the period of time you want
260 your report available to users of the credit report.

261 A consumer reporting agency that receives a request from you
262 to temporarily lift a freeze on a credit report shall comply with
263 the request no later than three (3) business days after receiving
264 the request. A consumer reporting agency may charge you up to Ten
265 Dollars (\$10.00) for each time you freeze, remove the freeze, or
266 temporarily lift the freeze for a period of time, except a
267 consumer reporting agency may not charge any amount to a victim of
268 identify theft who has submitted a copy of a valid investigative
269 or incident report or complaint with a law enforcement agency
270 about the unlawful use of the victim's identifying information by
271 another person.

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

276 (17) A violation of this section is a violation of Section
277 75-24-5.

278 **SECTION 3.** (1) Any person whose property or person is
279 injured by reason of an act made unlawful by Section 2 of this act
280 may sue for civil damages. Damages may be in an amount of up to
281 Five Thousand Dollars (\$5,000.00) but no less than Five Hundred
282 Dollars (\$500.00) for each incident, or three (3) times the amount
283 of actual damages, whichever amount is greater. A person seeking
284 damages as set forth in this section also may institute a civil
285 action to enjoin and restrain future acts that would constitute a
286 violation of this section. The court, in an action brought under
287 this section, may award reasonable attorneys' fees to the
288 prevailing party.

289 **SECTION 4.** Section 75-24-5, Mississippi Code of 1972, is
290 amended as follows:

291 75-24-5. (1) Unfair methods of competition affecting
292 commerce and unfair or deceptive trade practices in or affecting
293 commerce are prohibited. Action may be brought under Section
294 75-24-5(1) only under the provisions of Section 75-24-9.

295 (2) Without limiting the scope of subsection (1) of this
296 section, the following unfair methods of competition and unfair or
297 deceptive trade practices or acts in the conduct of any trade or
298 commerce are * * * prohibited:

299 (a) Passing off goods or services as those of another;

300 (b) Misrepresentation of the source, sponsorship,
301 approval, or certification of goods or services;

302 (c) Misrepresentation of affiliation, connection, or
303 association with, or certification by another;

304 (d) Misrepresentation of designations of geographic
305 origin in connection with goods or services;

306 (e) Representing that goods or services have
307 sponsorship, approval, characteristics, ingredients, uses,
308 benefits, or quantities that they do not have or that a person has
309 a sponsorship, approval, status, affiliation, or connection that
310 he does not have;

311 (f) Representing that goods are original or new if they
312 are reconditioned, reclaimed, used, or secondhand;

313 (g) Representing that goods or services are of a
314 particular standard, quality, or grade, or that goods are of a
315 particular style or model, if they are of another;

316 (h) Disparaging the goods, services, or business of
317 another by false or misleading representation of fact;

318 (i) Advertising goods or services with intent not to
319 sell them as advertised;

320 (j) Advertising goods or services with intent not to
321 supply reasonably expectable public demand, unless the
322 advertisement discloses a limitation of quantity;

323 (k) Misrepresentations of fact concerning the reasons
324 for, existence of, or amounts of price reductions;

325 (l) Advertising by or on behalf of any licensed or
326 regulated health care professional which does not specifically
327 describe the license or qualifications of the licensed or
328 regulated health care professional;

329 (m) Charging an increased premium for reinstating a
330 motor vehicle insurance policy that was cancelled or suspended by
331 the insured solely for the reason that he was transferred out of
332 this state while serving in the United States Armed Forces or on
333 active duty in the National Guard or United States Armed Forces
334 Reserve. It is also an unfair practice for an insurer to charge
335 an increased premium for a new motor vehicle insurance policy if
336 the applicant for coverage or his covered dependents were
337 previously insured with a different insurer and canceled that
338 policy solely for the reason that he was transferred out of this
339 state while serving in the United States Armed Forces or on active
340 duty in the National Guard or United States Armed Forces Reserve.
341 For purposes of determining premiums, an insurer shall consider
342 such persons as having maintained continuous coverage. The
343 provisions of this paragraph (m) shall apply only to such
344 instances when the insured does not drive the vehicle during the
345 period of cancellation or suspension of his policy;

346 (n) Any violation of Section 2 of this act.

347 **SECTION 5.** This act shall stand repealed after July 1, 2009.

348 **SECTION 6.** This act shall take effect and be in force from
349 and after July 1, 2007.