

By: Representative Moak

To: Banking and Financial Services

HOUSE BILL NO. 377

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; TO REPEAL SECTIONS 75-24-201
 17 THROUGH 75-24-217, MISSISSIPPI CODE OF 1972, WHICH ARE THE CURRENT
 18 SECURITY FREEZE STATUTES; AND FOR RELATED PURPOSES.

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

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

22 (a) "Consumer" means an individual.

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

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



35 factor in establishing the consumer's eligibility for any of the
36 following:

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

39 (ii) Employment purposes.

40 (iii) Any other purpose authorized under 15 USCS
41 Section 1681(b).

42 (d) "Credit card" has the same meaning as in Section
43 103 of the Truth in Lending Act (15 USCS Section 160 et seq.).

44 (e) "Person" means any individual, partnership,
45 corporation, trust, estate, cooperative, association, government,
46 or governmental subdivision or agency, or other entity.

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

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

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



68 prior express authorization from the consumer. This subsection
69 does not prevent a consumer reporting agency from advising a third
70 party that a security freeze is in effect with respect to the
71 consumer's credit report.

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

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

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

88 (a) Proper identification;

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

92 (c) The proper information regarding the time period
93 for which the report will be available to users of the credit
94 report.

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



100 (6) A consumer reporting agency that receives a request from
101 a consumer to temporarily lift a freeze on a credit report under
102 subsection (4) of this section shall comply with the request no
103 later than three (3) business days after receiving the request.

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

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

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

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

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

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

132 (a) Proper identification; and



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

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

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

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

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

151 (c) Any person acting under a court order, warrant, or
152 subpoena;

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

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

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



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

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

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

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

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

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

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



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

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

208 (c) A consumer reporting agency that does all of the
209 following:

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

278 (17) A violation of this section is a violation of Section
279 75-24-5.

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

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



293 75-24-5. (1) Unfair methods of competition affecting
294 commerce and unfair or deceptive trade practices in or affecting
295 commerce are prohibited. Action may be brought under Section
296 75-24-5(1) only under the provisions of Section 75-24-9.

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

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

302 (b) Misrepresentation of the source, sponsorship,
303 approval, or certification of goods or services;

304 (c) Misrepresentation of affiliation, connection, or
305 association with, or certification by another;

306 (d) Misrepresentation of designations of geographic
307 origin in connection with goods or services;

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

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

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

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

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

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



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

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

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

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

349 **SECTION 5.** Sections 75-24-201 through 75-24-217, Mississippi
350 Code of 1972, which are the current security freeze statutes, are
351 repealed.

352 **SECTION 6.** This act shall take effect and be in force from
353 and after July 1, 2010.

