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SB 428  
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WEST VIRGINIA LEGISLATURE  
SEVENTY-EIGHTH LEGISLATURE  
REGULAR SESSION, 2007

WEST VIRGINIA  
SECRETARY OF STATE

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 428**

(SENATORS KESSLER, WHITE, STOLLINGS, YODER, LOVE,  
UNGER, HUNTER AND JENKINS, *original sponsors*)

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[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6L-101, §46A-6L-102, §46A-6L-103, §46A-6L-104 and §46A-6L-105, all relating to consumer protection generally; defining certain terms; providing a procedure for consumers to implement a security freeze to prohibit a consumer-reporting agency from releasing all or any part of the consumer's credit report or any information

derived from it to entities with whom the consumer has no existing credit relationship without the express authorization of the consumer in certain circumstances; exemptions; personal identification number or password; procedures for removal or temporary lifting of security freeze; exceptions; fees; providing for a written notice of a consumer's rights; providing civil penalties for violations; and making a violation an unfair or deceptive act or practice.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §46A-6L-101, §46A-6L-102, §46A-6L-103, §46A-6L-104 and §46A-6L-105, all to read as follows:

**ARTICLE 6L. THEFT OF CONSUMER IDENTITY PROTECTIONS.**

**§46A-6L-101. Definitions.**

1 For the purposes of this article, the following terms  
2 have the following meanings:

3 (1) "Person" means any individual, partnership,  
4 corporation, trust, estate, cooperative, association,  
5 government or governmental subdivision or agency or  
6 other entity.

7 (2) "Consumer" means an individual.

8 (3) "Consumer-reporting agency" means any entity  
9 which, for monetary fees, dues or on a cooperative  
10 nonprofit basis, regularly engages, in whole or in part,  
11 in the practice of assembling or evaluating consumer  
12 credit information or other information on consumers

13 for the purpose of furnishing credit reports to third  
14 parties.

15 (4) "Credit report" means any written, oral or other  
16 communication of any information by a consumer-  
17 reporting agency bearing on a consumer's credit  
18 worthiness, credit standing, credit capacity, character,  
19 general reputation, personal characteristics or mode of  
20 living which is used or expected to be used or collected,  
21 in whole or in part, for the purpose of serving as a factor  
22 in establishing the consumer's eligibility for:

23 (A) Credit or insurance to be used primarily for a  
24 personal, family, household or agricultural purpose,  
25 except that nothing in this article authorizes or  
26 prohibits the use of credit evaluations, credit scoring or  
27 insurance scoring in the underwriting of personal lines  
28 of property or casualty insurance;

29 (B) Employment purposes; or

30 (C) Any other purpose authorized under Section 15 U.  
31 S. C. §1681b as in effect on the effective date of this  
32 article.

33 (5) "Security freeze" means a notice, at the request of  
34 the consumer and subject to certain exceptions, that  
35 prohibits the consumer-reporting agency from releasing  
36 all or any part of the consumer's credit report or any  
37 information derived from it without the express  
38 authorization of the consumer.

39 (6) "Reviewing the account" or "account review"  
40 includes activities related to account maintenance,  
41 monitoring, credit line increases and account upgrades

42 and enhancements.

**§46A-6L-102. Security freeze; timing; effect; covered entities; cost.**

1 (a) A consumer-reporting agency shall permit a  
2 consumer to place a security freeze on his or her credit  
3 report by the consumer selecting either of the following:

4 (1) A request in writing by certified or overnight mail  
5 to a consumer-reporting agency; or

6 (2) Making a request directly to the consumer-  
7 reporting agency through a secure electronic method, if  
8 available: *Provided*, That by the thirty-first day of  
9 January, two thousand nine, a secure electronic method  
10 shall be made available to the consumer by the  
11 consumer-reporting agency.

12 (b) A consumer-reporting agency shall place a security  
13 freeze on a credit report no later than five business days  
14 after receiving a written request from the consumer. If  
15 a security freeze is in place, a report or information may  
16 not be distributed to a third party without prior express  
17 authorization from the consumer. This subdivision does  
18 not prevent a consumer-reporting agency from advising  
19 a third party that a security freeze is in effect with  
20 respect to the consumer's credit report. A consumer-  
21 reporting agency may, regardless of the existence of a  
22 security freeze, distribute information contained in a  
23 consumer file to the extent otherwise permitted by law  
24 if the information was lawfully obtained by or for a  
25 consumer-reporting agency from an open public record,  
26 without respect to the existence of a security freeze.  
27 Nothing herein prevents a consumer-reporting agency

28 from choosing to apply the security freeze to the entire  
29 contents of the credit reporting file that is subject to the  
30 security freeze.

31 (c) The consumer-reporting agency shall send a  
32 written confirmation of the security freeze to the  
33 consumer within five business days of placing the freeze  
34 and at the same time shall provide the consumer with a  
35 unique personal identification number or password to  
36 be used by the consumer when providing authorization  
37 for the distribution of his or her credit information.

38 (d) If the consumer wishes to allow his or her credit  
39 report to be accessed for a period of time while a freeze  
40 is in place, he or she shall contact the consumer-  
41 reporting agency by regular mail or a procedure  
42 developed under subsection (f) of this section and  
43 request that the freeze be temporarily lifted, providing  
44 all of the following:

45 (1) Proper identification;

46 (2) The unique personal identification number or  
47 password provided by the consumer-reporting agency  
48 pursuant to subsection (c) of this section; and

49 (3) The time period for which the credit report shall be  
50 available to users of the credit report.

51 (e) A consumer-reporting agency that receives a  
52 request from a consumer to temporarily lift a freeze on  
53 a credit report pursuant to subsection (d) of this section  
54 shall comply with the request no later than three  
55 business days after receiving the request.

56 (f) A consumer-reporting agency shall develop  
57 procedures involving the use of telephone, fax, the  
58 internet or other electronic media to receive and process  
59 a request from a consumer pursuant to subsection (d) of  
60 this section to temporarily lift a freeze on a credit report  
61 in an expedited manner .

62 (g) (1) Beginning on the first day of September, two  
63 thousand eight, a consumer-reporting agency shall  
64 temporarily lift a security freeze from a consumer's  
65 credit report within fifteen minutes after the consumer's  
66 request is received pursuant to subsection (f) of this  
67 section by the consumer-reporting agency.

68 (2) A consumer-reporting agency does not have to  
69 remove a security freeze within the time provided in this  
70 subsection if:

71 (A) The consumer fails to meet the requirements of  
72 subsection (d) of this section; or

73 (B) The consumer-reporting agency's ability to remove  
74 the security freeze within fifteen minutes is prevented  
75 by:

76 (i) An act of God, including fire, earthquakes,  
77 hurricanes, storms or similar natural disasters or  
78 phenomena;

79 (ii) Unauthorized or illegal acts by a third party,  
80 including terrorism, sabotage, riot, vandalism, labor  
81 strikes or disputes disrupting operations or similar  
82 occurrence;

83 (iii) Operational interruption, including electrical

84 failure, unanticipated delay in equipment or  
85 replacement part delivery, computer hardware or  
86 software failures inhibiting response time or similar  
87 disruption;

88 (iv) Governmental action, including emergency orders  
89 or regulations, judicial or law-enforcement action or  
90 similar directives;

91 (v) Regularly scheduled maintenance, during other  
92 than normal business hours, of, or updates to, the  
93 consumer-reporting agency's systems; or

94 (vi) Commercially reasonable maintenance of, or  
95 repair to, the consumer-reporting agency's systems that  
96 is unexpected or unscheduled.

97 (h) A consumer-reporting agency shall remove or  
98 temporarily lift a freeze placed on a credit report only  
99 upon the request of the consumer, pursuant to  
100 subsection (d) or (j) of this section.

101 (i) If a third party requests access to a credit report on  
102 which a security freeze is in effect, and this request is in  
103 connection with an application for credit or any other  
104 use, and the consumer has not allowed his or her credit  
105 report to be accessed for a period of time, the third  
106 party may treat the application as incomplete.

107 (j) A security freeze shall remain in place until the  
108 consumer requests that the security freeze be removed.  
109 A consumer-reporting agency shall remove a security  
110 freeze within three business days of receiving a request  
111 for removal from the consumer who provides the  
112 following:

113 (1) Proper identification; and

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

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

120 (l) The provisions of this section do not apply to the  
121 distribution of a consumer credit report to any of the  
122 following:

123 (1) A person or the person's subsidiary, affiliate, agent  
124 or assignee with whom the consumer has or, prior to  
125 assignment, had an account, contract or debtor-creditor  
126 relationship for the purposes of reviewing the account  
127 or collecting the financial obligation owing for the  
128 account, contract or debt;

129 (2) A subsidiary, affiliate, agent, assignee or  
130 prospective assignee of a person to whom access has  
131 been granted under this section for purposes of  
132 facilitating the extension of credit or other permissible  
133 use;

134 (3) A person acting pursuant to a court order, warrant  
135 or subpoena;

136 (4) A state or local agency that administers a program  
137 for establishing and enforcing child support obligations;

138 (5) The West Virginia Department of Health and  
139 Human Resources or its agents or assigns acting to

140 investigate fraud;

141 (6) The West Virginia Department of Revenue or its  
142 agents or assigns acting to investigate or collect  
143 delinquent taxes or unpaid court orders or to fulfill any  
144 of its other statutory responsibilities;

145 (7) A person for the purposes of prescreening as  
146 defined by the federal Fair Credit Reporting Act;

147 (8) A person or entity administering a credit file  
148 monitoring subscription service to which the consumer  
149 has subscribed; and

150 (9) A person or entity for the purpose of providing a  
151 consumer with a copy of his or her credit report upon  
152 the consumer's request.

153 (10) Any person or entity for use in setting or  
154 adjusting a rate, adjusting a claim or underwriting for  
155 insurance purposes to the extent not otherwise  
156 prohibited by law.

157 (m) The provisions of this section do not apply to any  
158 of the following:

159 (1) A consumer-reporting agency that acts only as a  
160 reseller of credit information by assembling and  
161 merging information contained in the database of  
162 another consumer-reporting agency or multiple  
163 consumer credit-reporting agencies and does not  
164 maintain a permanent database of credit information  
165 from which new consumer credit reports are produced.  
166 A consumer-reporting agency acting as a reseller shall  
167 honor any security freeze placed on a consumer credit

168 report by another consumer-reporting agency.

169 (2) A check services or fraud prevention services  
170 company which issues reports on incidents of fraud or  
171 authorizations for the purpose of approving or  
172 processing negotiable instruments, electronic funds  
173 transfers or similar methods of payments.

174 (3) A deposit account information service company  
175 which issues reports regarding account closures due to  
176 fraud, a substantial number of overdrafts, ATM abuse  
177 or similar negative information regarding a consumer to  
178 inquiring banks or other financial institutions for use  
179 only in reviewing a consumer request for a deposit  
180 account at the inquiring bank or financial institution.

181 (4) A consumer-reporting agency's database or file  
182 which consists of information concerning, and used for,  
183 criminal record information, fraud prevention or  
184 detection, personal loss history information and  
185 employment, tenant or background screening.

186 (n) Except as prohibited by subsection (o) of this  
187 section, a consumer-reporting agency may charge a  
188 reasonable fee, not to exceed five dollars, to a consumer  
189 who elects to place, remove or temporarily lift a security  
190 freeze on the consumer's credit report. No fees except  
191 those authorized by this subsection and subsection (p)  
192 of this section may be charged in connection with a  
193 security freeze.

194 (o) A consumer-reporting agency may not charge a fee  
195 for security freeze services to a consumer who is a  
196 victim of identity theft and who provides a copy of a  
197 police report, an investigative report or a written

198 complaint made to the Federal Trade Commission, to  
199 the office of the Attorney General of West Virginia or to  
200 a law-enforcement agency concerning the identity theft.

201 (p) A consumer may be charged a reasonable fee, not  
202 to exceed five dollars, if the consumer fails to retain the  
203 original unique personal identification number or  
204 password provided by the consumer-reporting agency  
205 and must be reissued the same or a new unique personal  
206 identification number or password.

**§46A-6L-103. Notice of rights.**

1 (a) At any time that a consumer is required to receive  
2 a summary of rights required under Section 609 of the  
3 federal Fair Credit Reporting Act, 15 U. S. C. §1681g, as  
4 in effect on the effective date of this article, the  
5 following notice shall be included:

6 "West Virginia consumers have the right to obtain a  
7 security freeze.

8 You may obtain a security freeze on your credit report  
9 to protect your privacy and ensure that credit is not  
10 granted in your name without your knowledge. You  
11 have a right to place a security freeze on your credit  
12 report pursuant to West Virginia law.

13 The security freeze will prohibit a consumer reporting  
14 agency from releasing any information in your credit  
15 report without your express authorization or approval.

16 The security freeze is designed to prevent credit, loans  
17 and services from being approved in your name without  
18 your consent. When you place a security freeze on your

19 credit report, within five business days you will be  
20 provided a unique personal identification number or  
21 password to use if you choose to remove the freeze on  
22 your credit report or to temporarily authorize the  
23 distribution of your credit report for a period of time  
24 after the freeze is in place. To provide that  
25 authorization, you must contact the consumer reporting  
26 agency and provide all of the following:

27 (1) The unique personal identification number or  
28 password provided by the consumer-reporting agency;

29 (2) Proper identification to verify your identity; and

30 (3) The period of time for which the report shall be  
31 available to users of the credit report.

32 A consumer-reporting agency that receives a request  
33 from a consumer to temporarily lift a freeze on a credit  
34 report shall comply with the request no later than three  
35 business days after receiving the request.

36 A security freeze does not apply to circumstances in  
37 which you have an existing account relationship and a  
38 copy of your report is requested by your existing  
39 creditor or its agents or affiliates for certain types of  
40 account review, collection, fraud control or similar  
41 activities.

42 If you are actively seeking credit, you should  
43 understand that the procedures involved in lifting a  
44 security freeze may slow your own applications for  
45 credit. You should plan ahead and lift a freeze, either  
46 completely if you are shopping around or specifically  
47 for a certain creditor, a few days before actually

48 applying for new credit.

49 You have the right to bring a civil action against  
50 someone who violates your rights under the credit  
51 reporting laws. The action can be brought against a  
52 consumer-reporting agency.”

53 (b) If a consumer requests information about a  
54 security freeze, he or she shall be provided with the  
55 notice provided in this section about how to place,  
56 temporarily lift and remove a security freeze.

**§46A-6L-104. Violations; penalties.**

1 (a) If a consumer-reporting agency negligently violates  
2 the security freeze by releasing credit information that  
3 has been placed under a security freeze, the affected  
4 consumer is entitled to:

5 (1) Notification within five business days following  
6 discovery or actual knowledge of the distribution of the  
7 information, including specificity as to the information  
8 distributed and the third-party recipient of the  
9 information. (2) File a complaint with the Federal  
10 Trade Commission or the office of the Attorney General  
11 of West Virginia.

12 (3) File a civil action against the consumer-reporting  
13 agency seeking:

14 (A) Injunctive relief to prevent or restrain further  
15 violation of the security freeze;

16 (B) Actual damages sustained or not more than one  
17 thousand dollars, whichever is greater; and

18 (C) Reasonable expenses, court costs, investigative  
19 costs and attorney's fees.

20 (4) Each violation of the security freeze is a separate  
21 incident for purposes of imposing penalties under this  
22 section.

23 (b) If a consumer-reporting agency willfully violates  
24 the security freeze by releasing credit information that  
25 has been placed under a security freeze, the affected  
26 consumer is entitled to:

27 (1) Notification within five business days following  
28 discovery or actual knowledge of the distribution of the  
29 information, including specificity as to the information  
30 distributed and the third-party recipient of the  
31 information.

32 (2) File a complaint with the Federal Trade  
33 Commission or the office of the Attorney General of  
34 West Virginia.

35 (3) File a civil action against the consumer-reporting  
36 agency seeking:

37 (A) Injunctive relief to prevent or restrain further  
38 violation of the security freeze;

39 (B) Actual damages sustained or not more than five  
40 thousand dollars, whichever is greater; and

41 (C) Reasonable expenses, court costs, investigative  
42 costs and attorney's fees.

43 (4) Each violation of the security freeze is a separate

44 incident for purposes of imposing penalties under this  
45 section.

**§46A-6L-105. Unfair or deceptive acts or practices.**

1 Any violation of this article constitutes an unlawful  
2 act or practice under the provisions of article six of this  
3 chapter regarding fraudulent acts or practices  
4 committed by a person in connection with a consumer  
5 transaction and shall be subject to the enforcement  
6 provisions of article seven of this chapter.

Enr. Com. Sub. for S. B. No. 428] 16

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

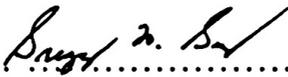
  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved ..... this  
the 3<sup>rd</sup> Day of April ....., 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 03 2007

Time 1:30 pm