

SECOND REGULAR SESSION

[CORRECTED]

SENATE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1384

AND

# HOUSE BILL NO. 2157

94TH GENERAL ASSEMBLY

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 17, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3562S.03C

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## AN ACT

To amend chapters 407 and 570, RSMo, by adding thereto eleven new sections relating to protecting consumers against fraudulent practices, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapters 407 and 570, RSMo, is amended by adding thereto eleven new sections, to be known as sections 407.1380, 407.1382, 407.1384, 407.1385, 407.2050, 407.2056, 407.2059, 407.2062, 407.2063, 570.222, and 570.380, to read as follows:

**407.1380. As used in sections 407.1380 to 407.1384, the following terms shall mean:**

(1) "Account review", activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) "Consumer", any individual;

(3) "Consumer credit reporting agency", any entity that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties. The term "consumer credit reporting agency" shall not include an entity that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer credit reporting agency and who does not maintain a permanent

16 database of credit information from which consumer reports are  
17 produced and who does not furnish consumer reports to third parties;

18 (4) "Credit report", any written or electronic communication of  
19 any information by a consumer credit reporting agency that in any way  
20 bears upon a person's credit worthiness, credit capacity, or credit  
21 standing;

22 (5) "Security freeze", a notice placed in a consumer's credit  
23 report, at the request of the consumer, that prohibits the consumer  
24 credit reporting agency from releasing the consumer's credit report,  
25 credit score, or any information contained in the report without the  
26 express authorization of the consumer.

407.1382. 1. A consumer may request that a consumer credit  
2 reporting agency place a security freeze on that consumer's credit  
3 report, if that request is made:

4 (1) In writing by certified mail or personal delivery; or

5 (2) By other reliable means, including, but not limited to,  
6 Internet, telephone, or facsimile; and

7 (3) Proper identification is presented to adequately identify the  
8 requestor as the consumer subject to the credit report.

9 2. A consumer credit reporting agency shall honor a consumer's  
10 request for a security freeze within five days of receipt of such request.  
11 No consumer credit reporting agency shall assess a fee to a consumer  
12 for the consumer's first request for a security freeze, but a consumer  
13 credit reporting agency may assess a fee up to ten dollars for any  
14 subsequent request for a security freeze made by the same consumer.

15 3. A consumer credit reporting agency shall, within ten days of  
16 placing a security freeze on the consumer's credit report, send the  
17 consumer:

18 (1) Written confirmation of compliance with the consumer's  
19 request;

20 (2) Instructions explaining the process of placing, removing, and  
21 temporarily lifting a security freeze and the process for allowing access  
22 to information from the consumer's credit report for a specific  
23 requestor;

24 (3) A unique personal identification number or password to be  
25 used by the consumer to remove temporarily or permanently the  
26 security freeze or designate a specific requestor for receipt of the

27 credit report despite the security freeze.

28 4. A consumer credit reporting agency shall not furnish a credit  
29 report to any person if the consumer who is subject to the credit report  
30 has requested a security freeze be placed on that report unless the  
31 credit report:

32 (1) Is requested by the consumer who is subject to the report;

33 (2) Is furnished under a court order;

34 (3) Is furnished during a period in which the consumer has  
35 temporarily removed the freeze;

36 (4) Is requested for the purposes of prescreening as provided by  
37 the Fair Credit Reporting Act under 15 U.S.C. 1681, et seq.;

38 (5) Is requested by a child support enforcement agency;

39 (6) Is requested for use in setting or adjusting a rate, issuing or  
40 underwriting a policy, adjusting a claim or servicing a policy for  
41 underwriting for property and casualty insurance purposes;

42 (7) Is requested by a specific person, or the subsidiary, affiliate,  
43 agent, or assignee of such person, whom the consumer has identified as  
44 eligible for receipt of the credit report under subsection 6 of this  
45 section, despite the consumer's request for a security freeze;

46 (8) Is furnished to a person, or the subsidiary, affiliate, agent, or  
47 assignee of such person, with whom the consumer has a debtor-creditor  
48 relationship for the purpose of account review or collecting the  
49 financial obligation owing for the account contract or debt;

50 (9) Is requested by the state or its agents or assigns for the  
51 purpose of investigating fraud or investigating or collecting delinquent  
52 taxes to the extent consistent with a permissible purpose under 15  
53 U.S.C. 1681; or

54 (10) Is requested by a person or entity administering a credit file  
55 monitoring service or similar service to which the consumer has  
56 subscribed.

57 5. If a security freeze is in place, a consumer credit reporting  
58 agency shall not change any of the following official information in a  
59 consumer credit report without sending a written confirmation of the  
60 change to the consumer within thirty days of the change being posted  
61 to the consumer's file: name, date of birth, social security number, and  
62 address. Written confirmation is not required for technical  
63 modifications of a consumer's official information, including name and

64 street abbreviations, complete spellings, or transposition of numbers or  
65 letters. In the case of an address change, the written confirmation shall  
66 be sent to both the new address and to the former address.

67 6. A consumer may request that the consumer credit reporting  
68 agency furnish a credit report to a designated person despite the  
69 consumer request for a security freeze under subsection 1 of this  
70 section, if that request is made:

71 (1) In writing by certified mail or personal delivery; or

72 (2) By other reliable means, including, but not limited to,  
73 Internet, telephone, or facsimile; and

74 (3) Proper identification is presented to adequately identify the  
75 requestor as the consumer subject to the credit report, which shall  
76 include the unique personal identification number or password issued  
77 to the consumer under subsection 3 of this section.

78 7. A consumer credit reporting agency shall temporarily or  
79 permanently remove a security freeze within fifteen minutes of  
80 receiving a request for removal from a consumer, if that request is  
81 made during normal business hours:

82 (1) By personal delivery of a written request; or

83 (2) By other reliable means, including, but not limited to,  
84 Internet, telephone, or facsimile; and

85 (3) Proper identification is presented to adequately identify the  
86 requestor as the consumer subject to the credit report, which shall  
87 include the unique personal identification number or password issued  
88 to the consumer under subsection 3 of this section; and

89 (4) In the case of a request for temporary removal, the time  
90 period is specified for which the freeze shall be temporarily removed;  
91 except that the time frame in which a consumer credit reporting  
92 agency shall remove a security freeze may be extended in the event of  
93 an act of God, an unauthorized or illegal act by a third party,  
94 operational interruption due to electrical failure or hardware or  
95 software failure, government action, or reasonable unexpected  
96 maintenance of the agency's systems, provided that the removal of a  
97 security freeze shall occur within a reasonable time after resumption  
98 of normal business operations which in no case shall be longer than two  
99 days after resumption of normal business operations. If a removal  
100 request is received outside of normal business hours, the consumer

101 credit reporting agency shall remove the security freeze within fifteen  
102 minutes of the start of the next normal business day.

103 8. At any time a consumer is required to receive a summary of  
104 rights under 15 U.S.C. Section 1681g(d), the following notice shall be  
105 included:

106 "Missouri Consumers Have the Right to Obtain a Security Freeze.

107 You have a right to place a "security freeze" on your credit  
108 report, which will prohibit a consumer credit reporting agency from  
109 releasing information in your credit report without your express  
110 authorization. A security freeze must be requested in writing by  
111 certified mail or via other approved methods. The security freeze is  
112 designed to prevent credit, loans, and services from being approved in  
113 your name without your consent. However, you should be aware that  
114 using a security freeze to take control over who gets access to the  
115 personal and financial information in your credit report may delay,  
116 interfere with, or prohibit the timely approval of any subsequent  
117 request or application you make regarding a new loan, credit,  
118 mortgage, government services or payments, rental housing,  
119 employment, investment, license, cellular phone, utilities, digital  
120 signature, Internet credit card transaction, or other services, including  
121 an extension of credit at point of sale. When you place a security freeze  
122 on your credit report, you will be provided a personal identification  
123 number or password to use if you choose to remove the freeze on your  
124 credit report or authorize the release of your credit report for a period  
125 of time after the freeze is in place. To provide that authorization you  
126 must contact the consumer credit reporting agency and provide all of  
127 the following:

- 128 (1) The personal identification number or password;  
129 (2) Proper identification to verify your identity;  
130 (3) The proper information regarding the period of time for  
131 which the report shall be available.

132 A consumer credit reporting agency must authorize the release  
133 of your credit report no later than fifteen minutes after receiving the  
134 above information.

135 A security freeze does not apply to a person or entity, or its  
136 affiliates, or collection agencies acting on behalf of the person or  
137 entity, with which you have an existing account, that requests

138 information in your credit report for the purposes of reviewing or  
139 collecting the account. Reviewing the account includes activities  
140 related to account maintenance, monitoring, credit line increases, and  
141 account upgrades and enhancements.

142 You have a right to bring civil action against anyone, including  
143 a consumer credit reporting agency, who improperly obtains access to  
144 a file, knowingly misuses file data, or fails to correct inaccurate file  
145 data."

407.1384. 1. Any consumer credit reporting agency that  
2 knowingly fails to comply with the provisions of sections 407.1380 to  
3 407.1384 shall be liable to the consumer who is subject to the credit  
4 report in an amount equal to:

5 (1) Any actual damages sustained by the consumer due to such  
6 failure; and

7 (2) Any court costs and fees assessed in maintaining the action,  
8 as well as reasonable attorney's fees.

9 2. In addition to the foregoing monetary sums, a court, upon  
10 request of the damaged consumer, shall award such equitable relief as  
11 may be necessary to restore the damaged consumer's credit and to  
12 discourage future violations of sections 407.1380 to 407.1384 by the  
13 consumer credit reporting agency.

407.1385. It shall not be considered a violation of any law that  
2 requires an application for credit to be processed within a specified  
3 time frame if a creditor is unable to meet this time frame because of  
4 inability to access a credit report due to a security freeze.

407.2050. As used in sections 407.2050 to 407.2062, the following  
2 terms shall mean:

3 (1) "Advertisement", the attempt by publication, dissemination,  
4 solicitation, circulation, or any other means to induce, directly or  
5 indirectly, any person to enter into any obligation or acquire any title  
6 or interest in any merchandise;

7 (2) "Mail-in rebate", a rebate involving a return to the consumer  
8 of any portion of the price paid for merchandise which occurs after the  
9 consumer purchases the merchandise and usually involves the  
10 consumer submitting proof of purchase;

11 (3) "Merchandise", any objects, wares, goods, commodities,  
12 intangibles, real estate, or services;

13           (4) "Person", any natural person or his or her legal  
14 representative, partnership, firm, for-profit or not-for-profit  
15 corporation, whether domestic or foreign, company, foundation, trust,  
16 business entity or association, and any agent, employee, salesman,  
17 partner, officer, director, member, stockholder, associate, trustee, or  
18 cestui que trust thereof;

19           (5) "Rebate", a deduction from the amount charged to the  
20 consumer for merchandise or a return to the consumer of any portion  
21 of the amount paid by the consumer for the purchase of merchandise;

22           (6) "Sale", any sale, lease, offer for sale or lease, or attempt to sell  
23 or lease merchandise for cash or on credit.

          407.2056. 1. A person shall not require a consumer to provide  
2 more than the following as proof of purchase for purposes of redeeming  
3 a rebate:

4           (1) A receipt for the purchase of the merchandise;

5           (2) A universal product code, packing slip, or packaging element  
6 that is clearly and conspicuously marked as the necessary proof of  
7 purchase for the rebate offer;

8           (3) The name of the consumer;

9           (4) The address of the consumer;

10          (5) The consumer's telephone number;

11          (6) The consumer's membership number, if applicable;

12          (7) The consumer's signature; and

13          (8) In the event that the eligibility for the rebate is triggered by  
14 an electronic transaction, a valid proof of the electronic transaction.

15           2. For purposes of subdivision (1) of subsection 1 of this section,  
16 a copy of the receipt shall be sufficient unless the consumer is provided  
17 with a duplicate original receipt for each item of merchandise  
18 associated with a rebate, in which case the duplicate original may be  
19 required.

20           3. In addition to the information permitted to be requested  
21 under subsection 1 of this section, a person may require:

22           (1) The consumer to write the model number or other identifying  
23 number on a rebate claim form only if the receipt does not reveal the  
24 product name, type, model, or other identifying number;

25           (2) Instead of a telephone number, a consumer's email address  
26 with respect to merchandise purchased over the Internet, Internet-

27 based services, or Internet rebate redemptions, but it shall not be cause  
28 for a person to reject a consumer's rebate claim request if the consumer  
29 declines to provide his or her email address; or

30 (3) If the rebate offer is contingent upon ownership of another  
31 item of merchandise, reasonable proof of ownership of such other item.

32 4. A person offering a rebate shall not require personal  
33 information about the consumer other than the information permitted  
34 under subsections 1 and 3 of this section. It shall not be considered a  
35 violation of this section for a person to request the email address of any  
36 consumer in conjunction with a rebate offer, however no consumer  
37 shall be obligated to provide his or her email address in order to  
38 receive a rebate.

39 5. Notwithstanding subsection 1 of this section, a person has the  
40 right to reject a consumer rebate claim or to request reasonable  
41 additional documentation to verify a claim if the person has reason to  
42 believe that the consumer submitting the rebate request is attempting  
43 to commit fraud, has already received the offered rebate, or that the  
44 proof of purchase is not from a legitimate item of merchandise.

407.2059. 1. A person offering a mail-in rebate shall provide the  
2 rebate claim form directly with the merchandise, or at the same  
3 location and at the same time that the consumer purchases the  
4 merchandise.

5 2. If a person sells merchandise on which another person offers  
6 a mail-in rebate, the person offering the rebate shall supply the person  
7 selling the merchandise with rebate claim forms either by providing:

8 (1) A sufficient quantity of rebate claim forms based on  
9 reasonably anticipated sales;

10 (2) The means for the person selling the merchandise to create  
11 a rebate claim form at the time and place of sale; or

12 (3) A rebate claim form enclosed within the packaging of each  
13 item of merchandise.

14 3. For purposes of Internet sales, a generally accessible web  
15 page, including a rebate claim form thereon, shall comply with this  
16 section. For purposes of telephone sales, directing consumers to a  
17 generally accessible web page, including the rebate claim form, and,  
18 upon request, sending the rebate claim form via the consumer's choice  
19 of regular or electronic mail or facsimile shall comply with this section.

20           4. Except as provided in subsection 5 of this section, any mail-in  
21 rebate claim form under this section shall conspicuously disclose a  
22 telephone number on the form that a consumer may call to check the  
23 status of his or her rebate claim.

24           5. For purchases of merchandise that occur over a website  
25 operated or maintained by that person, a website or other electronic  
26 means may be provided instead of the telephone number required in  
27 subsection 4 of this section to check the status of a rebate claim.

          407.2062. 1. A person that offers a mail-in rebate shall allow a  
2 minimum of thirty days from the date the consumer purchases the  
3 merchandise, or becomes eligible for the rebate pursuant to subdivision  
4 (2) of subsection 2 of this section, for the consumer to submit the rebate  
5 claim.

6           2. A person shall mail the rebate payment or transmit the rebate  
7 funds to the consumer, or otherwise fulfill the terms of the mail-in  
8 rebate offer, within thirty days from either of the following events as  
9 applicable:

10           (1) Upon receipt of a consumer rebate claim meeting the terms  
11 and conditions of the rebate offer, to the extent permitted by sections  
12 407.2050 to 407.2062, and as disclosed at the time of purchase; or

13           (2) If the consumer rebate offer is conditioned upon a consumer  
14 staying with a service contract for a minimum length of time, then  
15 upon completion of this term of the rebate offer and receipt of a rebate  
16 claim meeting the terms and conditions for the rebate offer, to the  
17 extent permitted by sections 407.2050 to 407.2062 and as disclosed at  
18 the time of purchase.

19           3. If an advertisement for a mail-in rebate does not specify the  
20 monetary form in which the rebate shall be awarded, then the rebate  
21 shall be awarded in cash, check, or an equivalent method of  
22 payment. Reward cards shall not qualify as an equivalent method of  
23 payment. For purposes of this section, a "reward card" is a card that:

24           (1) Requires activation; or

25           (2) Has an expiration date; or

26           (3) Is not redeemable for cash; or

27           (4) Is not universally accepted as a form of payment.

          407.2063. The provisions of sections 407.2056 to 407.2062 shall not  
2 apply to merchandise manufactured prior to January 1, 2009.

570.222. 1. Notwithstanding that jurisdiction may lie elsewhere  
2 for investigation and prosecution of a crime of identity theft, victims  
3 of identity theft have the right to contact the local law enforcement  
4 agency where the victim is domiciled and request that an incident  
5 report about the identity theft be prepared and filed. The victim may  
6 also request from the local law enforcement agency to receive a copy  
7 of the incident report. The law enforcement agency may share the  
8 incident report with law enforcement agencies located in other  
9 jurisdictions.

10 2. As used in this section "incident report" means a loss or other  
11 similar report prepared and filed by a local law enforcement agency.

12 3. Nothing in this section shall interfere with the discretion of  
13 a local law enforcement agency to allocate resources for investigations  
14 of crimes or to provide an incident report as permitted in this section. An  
15 incident report prepared and filed under this section shall not be an  
16 open case for purposes of compiling open case statistics.

570.380. Any person who manufactures or possesses five or more  
2 fictitious or forged means of identification, as defined in section  
3 570.223, with the intent to distribute to others for the purpose of  
4 committing a crime shall be guilty of a class C felony.

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