

**New Mexico Code**

Chapter 56 – Commercial Instruments and Transactions

Article 3A – Credit Report Security

**§ 56-3A-1. Short title.**

Chapter 56, Article 3A NMSA 1978 may be cited as the "Fair Credit Reporting and Identity Security Act".

**§ 56-3A-2. Definitions.**

As used in the Fair Credit Reporting and Identity Security Act:

- A. "consumer" means an individual who is a resident of New Mexico;
- B. "consumer reporting agency" means any person that, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties;
- C. "credit report" means a written, oral or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living that is used or expected to be used or collected for the purpose of serving as a factor in establishing the consumer's eligibility for credit, insurance, investment, benefit, employment or other purpose as authorized by the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a;
- D. "declaration of removal" means an identity theft report with a sworn affidavit that is delivered by regular or certified mail or facsimile or delivered electronically to a consumer reporting agency that operates within New Mexico and which affidavit states:
  - (1) that the consumer is entitled to removal of information in the consumer reporting agency's files on grounds that the consumer is the victim of identity theft; and
  - (2) the address at which the consumer is available for service of process by the consumer reporting agency and proper identifying information by which the consumer can be identified by the consumer reporting agency;
- E. "person" means an individual, corporation, firm, association, organization, trust, estate, cooperative, business, partnership, limited liability company, joint venture, governmental agency or subdivision or any legal or commercial entity;
- F. "security freeze" means a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits a consumer reporting agency from

releasing the consumer's credit report or score relating to the extension of credit or the opening of new accounts without the express authorization of the consumer; and

G. "operates within New Mexico" means accepting or maintaining a credit report on a person that resides within New Mexico.

**§ 56-3A-3.1. Declaration of removal; procedures.**

A. A consumer may file a declaration of removal with a consumer reporting agency operating within New Mexico declaring that the consumer:

- (1) is the victim of identity theft;
- (2) is eligible for removal of information reported to or by the consumer reporting agency on the basis of identity theft;
- (3) is available for service of process at a conclusively valid designated address for at least thirty days; and
- (4) discloses proper identifying information by which the consumer may be identified by the consumer reporting agency.

B. The attorney general may publish a sample declaration of removal in compliance with the applicable requirements of Subsection A of this section. The declaration of removal published by the attorney general is not required to be used. A consumer may use other forms that serve the same purpose and that are in compliance with the applicable requirements of Subsection A of this section.

C. A consumer reporting agency shall make available on a web site and on all credit reports of the consumer reporting agency the means for contacting the consumer reporting agency through a physical mailing address, by telephone and facsimile, and through use of a web site and an internet electronic mailing address. A consumer reporting agency shall state on a web site and on all credit reports of the consumer the methods for submitting a declaration of removal.

D. Within five days of receiving a declaration of removal and, if applicable, receipt of a fee as authorized in Subsection I of Section [56-3A-3](#) NMSA 1978, a consumer reporting agency shall remove from its files and credit reports of the affected consumer the information that is the subject of the declaration of removal and notify the consumer once the removal is complete. A consumer reporting agency shall not state on a credit report that information was removed at the request of a declaration of removal and shall not use that information to suggest or otherwise state or imply to a third party that the affected consumer has a negative credit score, history, report or rating.

E. A consumer reporting agency may restore the information that was the subject of a declaration of removal upon:

- (1) request of the affected consumer; or
- (2) a court order after the adjudication of the alleged debt in the judicial district in which the consumer resides.

**§ 56-3A-4. Notice of rights.**

At any time that a consumer reporting agency is required to provide the consumer with a summary of rights pursuant to Section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

"New Mexico Consumers Have the  
Right to Obtain a Security Freeze or  
Submit a Declaration of Removal

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You may submit a declaration of removal to remove information placed in your credit report as a result of being a victim of identity theft. You have a right to place a security freeze on your credit report or submit a declaration of removal pursuant to the Fair Credit Reporting and Identity Security Act.

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

The security freeze is designed to prevent credit, loans and services from being approved in your name without your consent. When you place a security freeze on your credit report, you will be provided with a personal identification number, password or similar device to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report to a specific party or parties or for a specific period of time after the freeze is in place. To remove the freeze or to provide authorization for the temporary release of your credit report, you must contact the consumer reporting agency and provide all of the following:

- (1) the unique personal identification number, password or similar device provided by the consumer reporting agency;
- (2) proper identification to verify your identity;
- (3) information regarding the third party or parties who are to receive the credit report or the period of time for which the credit report may be released to users of the credit report; and
- (4) payment of a fee, if applicable.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request. As of September 1, 2008, a consumer reporting agency shall comply with the request within fifteen minutes of receiving the request by a secure electronic method or by telephone.

A security freeze does not apply in all circumstances, such as where you have an existing account relationship and a copy of your credit report is requested by your existing creditor or its agents for certain types of account review, collection, fraud control or similar activities; for use in setting or adjusting an insurance rate or claim or insurance underwriting; for certain governmental purposes; and for purposes of prescreening as defined in the federal Fair Credit Reporting Act.

If you are actively seeking a new credit, loan, utility, telephone or insurance account, you should understand that the procedures involved in lifting a security freeze may slow your

own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around or specifically for a certain creditor, with enough advance notice before you apply for new credit for the lifting to take effect. You should contact a consumer reporting agency and request it to lift the freeze at least three business days before applying. As of September 1, 2008, if you contact a consumer reporting agency by a secure electronic method or by telephone, the consumer reporting agency should lift the freeze within fifteen minutes. You have a right to bring a civil action against a consumer reporting agency that violates your rights under the Fair Credit Reporting and Identity Security Act".

#### **§ 56-3A-5. Violations; Civil liability**

If a consumer reporting agency violates the provisions of the Fair Credit Reporting and Identity Security Act, the affected consumer or the attorney general may bring a civil action against the consumer reporting agency for:

- A. injunctive relief to prevent further violation of the Fair Credit Reporting and Identity Security Act;
- B. any actual damages sustained by the consumer as a result of a violation of the Fair Credit Reporting and Identity Security Act;
- C. a civil penalty in an amount not to exceed two thousand dollars (\$2,000) for each violation of the security freeze or each violation of the provisions of Subsection D of Section 3 of this 2010 act; and
- D. costs of the action and reasonable attorney fees.

#### **§56-3A-6. Severability.**

If any part or application of the Fair Credit Reporting and Identity Security Act is held invalid, the remainder or its application to other persons or situations shall not be affected.