

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	HB 953	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Consumer Report Security Freezes	113	<b>Y's</b> 0	<b>N's</b>
<b>SPONSOR(S):</b>	Harrison and others	<b>GOVERNOR'S ACTION:</b>		Approved
<b>COMPANION BILLS:</b>	SB 1302			

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### SUMMARY ANALYSIS

HB 953 passed the House on February 21, 2018, and subsequently passed the Senate on March 7, 2018.

Florida law allows a consumer to place a security freeze on his or her consumer report. Florida law also contains a process by which a security freeze may be placed on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate) who does not have an existing consumer report. The request for a security freeze must be made to each consumer reporting agency, which may charge a fee up to \$10 when a consumer elects to place, temporarily lift, or remove a security freeze or when the consumer reporting agency reissues a lost personal identifier. The fees are the same in relation to the placement or removal of a security freeze for a protected consumer; a temporary lift is not available for a protected consumer. A consumer reporting agency is prohibited from charging a fee to a consumer 65 years or older for the placement or removal of a security freeze and is prohibited from charging any fee to a victim of identity theft.

The bill prohibits a consumer reporting agency from charging a fee for placing, temporarily lifting, or removing a security freeze on an existing credit report or on a record created to identify a protected consumer. However, the bill still permits a consumer reporting agency to charge the currently authorized fee of up to \$10 for replacing a lost unique personal identifier.

The bill has no impact on state or local governments. The bill has an indeterminate fiscal impact on the private sector.

The bill was approved by the Governor on March 21, 2018, ch. 2018-62, L.O.F., and will become effective on July 1, 2018.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Federal Fair Credit Reporting Act (FCRA)

The FCRA governs the collection, assembly, and use of consumer report information and establishes the framework for the credit reporting system in the United States.<sup>1</sup> The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.<sup>2</sup>

Most significantly, the FCRA regulates the practices of consumer reporting agencies (e.g., Equifax, Experian, TransUnion, etc.) that collect and compile consumer information into consumer reports, which are often referred to as credit reports.<sup>3</sup> Consumer reports are used by credit grantors, insurance companies, employers, and other entities in determining a consumer's eligibility for certain products and services.<sup>4</sup> Information in consumer reports may include a consumer's credit and payment history, demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).<sup>5</sup>

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA.<sup>6</sup> It added a number of provisions to help consumers and businesses combat identity theft and reduce the damage when identity theft occurs.<sup>7</sup> Among these provisions, the FACT Act established a national fraud alert system, required federal agencies to adopt rules for the disposition of consumer report information and how companies should respond to the "red flag" indicators of identity theft, and required that information placed on a consumer report due to identity theft be blocked from the report.<sup>8</sup>

The FCRA, as amended by the FACT Act, allows a consumer or the consumer's representative to assert a good-faith suspicion to a consumer reporting agency that he or she has been or is about to become the victim of identity theft.<sup>9</sup> This requires the agency to place an initial fraud alert on the consumer report for at least 90 days at no charge to the consumer.<sup>10</sup> A consumer or the consumer's representative can also file for an extended fraud alert that lasts up to seven years if an identity theft report is submitted to the consumer reporting agency.<sup>11</sup> However, fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent the opening of new credit accounts.<sup>12</sup>

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<sup>1</sup> 15 U.S.C. § 1681 *et seq.*

<sup>2</sup> Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 1 (July 2011), available at <http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 4, 2003), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg1952.pdf>.

<sup>7</sup> Federal Trade Commission, *supra* note 2, at 3.

<sup>8</sup> *Id.*

<sup>9</sup> 15 U.S.C. § 1681c-1(a)(1).

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. § 1681c-1(b).

<sup>12</sup> 15 U.S.C. §§ 1681c-1 and 1681m(e).

## Florida Statutes Relating to Consumer Report Security Freezes

In response to concerns regarding identity theft, Florida and the majority of states have adopted laws that allow a consumer to freeze access to his or her consumer report and prevent anyone from trying to open a new account or new credit. A consumer can place a “security freeze” on his or her consumer report by sending a written request by certified mail to a consumer reporting agency.<sup>13</sup> With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the consumer.<sup>14</sup> Additionally, while a security freeze is in effect, a consumer reporting agency cannot change a consumer’s name, address, date of birth, or social security number in a consumer report without sending the consumer written confirmation of the change.<sup>15</sup>

A consumer reporting agency must place a security freeze within five business days after receiving a request and must provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the removal of a security freeze.<sup>16</sup> A consumer reporting agency may charge a fee up to \$10 when a consumer elects to place, temporarily lift, or remove a security freeze or when the consumer reporting agency reissues a lost personal identification number or password.<sup>17</sup> However, the law prohibits a consumer reporting agency from charging a fee to a consumer 65 years or older for the placement or removal of a security freeze and prohibits a consumer reporting agency from charging any fee to a victim of identity theft.<sup>18</sup>

Any written consumer disclosures that are required by the federal FCRA and that are provided to a consumer residing in this state must include a written summary of all rights the consumer has under Florida law relating to security freezes.<sup>19</sup>

While this law on security freezes has been in place in Florida since 2006, the law did not contain a mechanism for “freezing” the credit for individuals who do not have an existing credit report. Therefore, in 2014, the Keeping I.D. Safe (KIDS) Act became law in Florida, and Florida law now contains a process by which a security freeze may be placed on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate).<sup>20</sup> To place the “security freeze”, a representative of the protected consumer must submit a request to the consumer reporting agency and provide sufficient proof of authority and identification.<sup>21</sup> With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the protected consumer’s record.<sup>22</sup> Additionally, while a security freeze is in effect, a consumer reporting

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<sup>13</sup> s. 501.005(2), F.S.

<sup>14</sup> s. 501.005(1), (12), (15). Subsection 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide consumer reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified persons. Subsection 501.005(15), F.S., allows for the release of information otherwise protected by a security freeze to a check services company, a deposit account information service company, a consumer reporting agency that acts only as a reseller of credit information, and a fraud prevention services company.

<sup>15</sup> s. 501.005(14), F.S.

<sup>16</sup> s. 501.005(3), (4), F.S.

<sup>17</sup> s. 501.005(13)(a), (c), F.S.

<sup>18</sup> s. 501.005(13)(b), F.S.

<sup>19</sup> s. 501.005(17), F.S.

<sup>20</sup> Ch. 2014-66, Laws of Fla.; s. 501.0051, F.S.

<sup>21</sup> s. 501.0051(2), F.S.

<sup>22</sup> s. 501.0051(1)(f)2., (8), F.S. Subsection 501.0051(8), F.S., allows for the release of information otherwise protected by a security freeze to persons and entities similar to those listed in s. 501.005(12) and (15), F.S. See *supra* note 14.

agency must send the protected consumer's representative written confirmation of a change to the protected consumer's name, address, date of birth, or social security number.<sup>23</sup>

A consumer reporting agency must place a security freeze within 30 days after confirming the authenticity of a security freeze request and must provide the protected consumer's representative with a unique personal identifier to be used by the protected consumer's representative when providing authorization for the removal of a security freeze.<sup>24</sup> A consumer reporting agency may charge a fee up to \$10 when a security freeze is placed or removed or when the consumer reporting agency reissues a lost unique personal identifier.<sup>25</sup> However, the law prohibits a consumer reporting agency from charging a fee to the representative of a protected consumer who is a victim of identity theft.<sup>26</sup>

Any written consumer disclosures that are required by the federal FCRA and that are provided to a protected consumer and his or her representative residing in this state must include a written summary of all rights the protected consumer and his or her representative have under Florida law relating to security freezes.<sup>27</sup>

Regardless of whether a security freeze is requested on an existing consumer report or on a record created to identify a protected consumer, the request for a security freeze must be made to each consumer reporting agency. For example, when a request to place a security freeze is made to three consumer reporting agencies, the consumer or protected consumer's representative would be charged up to \$10 by each, for a total of up to \$30.<sup>28</sup> Additionally, the consumer or protected consumer's representative incurs fees of up to \$10 by each consumer reporting agency when there is a need to temporarily lift a security freeze, remove a security freeze, or replace a lost unique personal identifier.

#### Other States' Statutes Relating to Consumer Report Security Freezes

Most states permit fees for placing a security freeze, and fees generally range from \$2 to \$10.<sup>29</sup> Among the states that do not permit fees for placing a security freeze, the majority permit some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report.<sup>30</sup> Two states currently prohibit fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer.<sup>31</sup>

#### **Effect of the Bill**

The bill prohibits a consumer reporting agency from charging a fee for placing, temporarily lifting, or removing a security freeze on an existing credit report or on a record created to identify a protected

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<sup>23</sup> S. 501.0051(10), F.S.

<sup>24</sup> S. 501.0051(4), (5), F.S.

<sup>25</sup> S. 501.0051(9)(a) and (b), F.S.

<sup>26</sup> S. 501.0051(9)(c), F.S.

<sup>27</sup> S. 501.0051(14), F.S.

<sup>28</sup> However, Equifax is waiving its fees for placing, temporarily lifting, or removing a security freeze through June 30, 2018. EQUIFAX, *Place, Temporarily Lift or Permanently Remove a Security Freeze*, [https://www.freeze.equifax.com/Freeze/jsp/SFF\\_PersonalIDInfo.jsp](https://www.freeze.equifax.com/Freeze/jsp/SFF_PersonalIDInfo.jsp) (last visited Mar. 9, 2018).

<sup>29</sup> EQUIFAX, *What are the security freeze fees in my state?*, <https://help.equifax.com/s/article/What-are-the-security-freeze-fees-in-my-state> (last visited Mar. 9, 2018); EXPERIAN, *Security Freeze*, <https://www.experian.com/blogs/ask-experian/credit-education/preventing-fraud/security-freeze/> (last visited Mar. 9, 2018); TRANSUNION, *Credit Freeze Information by State*, <https://www.transunion.com/credit-freeze/credit-freeze-information-by-state> (last visited Mar. 9, 2018).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* The two states are Indiana and South Carolina.

consumer. However, the bill still permits a consumer reporting agency to charge the currently authorized fee of up to \$10 for replacing a lost unique personal identifier.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The elimination of fees for placing, temporarily lifting, or removing a security freeze will decrease revenues for consumer reporting agencies. The elimination of fees will decrease costs for consumers and may increase the occurrence and frequency of these activities by consumers. The use of security freezes may reduce the prevalence of identity theft, which would have a positive impact on consumers as well as creditors and other businesses. It is unknown how much revenue consumer reporting agencies currently earn from Florida residents or how the elimination of fees may affect consumer behavior and the prevalence of identity theft. Therefore, the impact to the private sector is indeterminate.

### **D. FISCAL COMMENTS:**

None.