

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: CS/CS/SB 656

INTRODUCER: Banking and Insurance Committee, Commerce and Consumer Services Committee,
Senator Peaden and others

SUBJECT: Security of Consumer Credit Reports

DATE: March 29, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute allows a consumer to place a “security freeze” on his or her credit report by making a request by certified mail to a consumer credit reporting agency. The security freeze prohibits the consumer credit reporting agency from releasing the consumer’s credit report or any information contained within the report without the authorized consent of the consumer, except in certain circumstances for specified uses. The security freeze procedure is designed to protect a consumer by preventing an unauthorized person from opening credit accounts in the consumer’s name. No later than July 1, 2007, every consumer reporting agency doing business in Florida is required to select and develop a secure electronic method by which to receive and process requests from consumers to temporarily lift a freeze on a consumer report.

This committee substitute allows a consumer credit reporting agency to charge a fee, not to exceed \$10, each time a consumer elects to temporarily lift or remove a security freeze on his or her credit report. However, a consumer reporting agency is prohibited from charging any fee to a victim of identity theft seeking a security freeze. The committee substitute creates a new cause of action for a person who is aggrieved by a violation of the provisions of the committee substitute.

The bill also provides that credit balances held by financial institutions that are the result of check clearing functions are not subject to the unclaimed property reporting requirements under s. 717.117, F.S. This provision would apply retroactively to credit balances held on or after July 1, 2006. Under current law, such credit balances are not expressly exempted from these provisions.

This committee substitute creates sections 501.005 and 655.851 of the Florida Statutes.

II. Present Situation:

Fraud Alerts

Effective December 1, 2004, the Fair and Accurate Credit Transactions Act (FACT) significantly revised the Fair Credit Reporting Act to address identity fraud. The fraud alert procedure is designed to help prevent an unauthorized person from opening additional credit accounts in a consumer's name. The act authorizes consumers to place a 90-day temporary or extended (up to 7 years) fraud alert on their credit report file if they believe that they are or will become a victim of identity theft.¹

The initial fraud alert must include information to notify users of the consumer's report that the consumer may be a victim of identity theft or other fraud and that the consumer does not authorize the establishment of any credit plan or extension of credit, other than under an open-end credit plan, in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer.² Generally, any prospective user of a consumer report that includes a fraud alert must use reasonable procedures to form a reasonable belief that the user knows the identity of the person making the request for credit.³

If the consumer specifies a telephone number to be used for identity verification, any financial institution or other party that uses information in the consumer's credit report must contact the consumer at that telephone number.⁴ Before any new credit can be authorized, the prospective user of such a consumer report must contact the consumer using that telephone number or take reasonable steps to verify the consumer's identity and confirm that the application for credit is not the result of identity theft. For extended fraud alerts, a prospective user of a consumer report is required to contact the consumer in person, by telephone, or other reasonable contact method designated by the consumer.⁵

This service is free to consumers and the alert is placed on the reports of each of the three major credit bureaus or credit reporting agencies on the date the request is made to any of the three major credit bureaus ("one-call" process).⁶ The credit bureau is required to notify the consumer that two free copies of his or her credit report is available upon request within 12 months of the initial alert.⁷

Any violation of FACT constitutes an unfair or deceptive act under the Federal Trade Commission ("FTC") Act and is subject to enforcement by the FTC. Under the provisions of Part II of ch. 501, F.S., the office of the state attorney and the Department of Legal Affairs are charged with enforcing violations of the FTC Act. The act authorizes state attorney generals to bring action to enjoin such violations of the federal act in a court of competent jurisdiction or bring action on behalf of the residents of that state to recover damages that are a result of

¹ 15 U.S.C. s. 1681c-1.

² 15 U.S.C. s. 1681c-1(h)(1)(A).

³ 15 U.S.C. s. 1681c-1(h)(1)(B)(i).

⁴ 15 U.S.C. s. 1681c-1(h)(1)(B)(ii).

⁵ 15 U.S.C. s. 1681c-1(h)(2)(A).

⁶ 15 U.S.C. s. 1681c-1(a)(1)(B).

⁷ 15 U.S.C. s. 1681c-1(b)(2).

violations of the act. The act also authorizes fines of not more than \$1,000 for each willful or negligent violation and the recovery of reasonable attorney fees.

Blocking Information Resulting from Identity Theft

The Fair Credit Reporting Act (FCRA) provides that a consumer credit reporting agency must block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, no later than 4 business days after the receipt by such agency of appropriate proof of the identity of the consumer, a copy of an identity theft report, the identification of such information by the consumer, and a statement by the consumer that the information is not related to any transaction by the consumer.⁸

A consumer credit reporting agency is to promptly notify the furnisher of any information that has been identified as information resulting from an alleged identity theft that the information may be the result of identity theft, that an identity theft report has been filed, that a block has been requested, and the effective dates of the block.⁹

A consumer credit reporting agency may decline to block or rescind any block if the consumer credit reporting agency reasonably determines that: the information was blocked in error; a block was requested by the consumer on the basis of material misrepresentation of fact by the consumer relevant to the request to block; or the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.¹⁰

Other State Legislative Initiatives: Credit Freezes

Currently, California, Colorado, Connecticut, Illinois, Louisiana, Maine, New Jersey, Nevada, North Carolina, Texas, Vermont, and Washington offer consumers the right to freeze their credit reports. Texas, Vermont, Washington, and Illinois only offer the option to those consumers affected by identity theft.

Florida Disposition of Unclaimed Property Act

The Florida Disposition of Unclaimed Property Act (act) found in ch. 717, F.S., provides the statutory procedure for the escheat (reversion) and disposition of presumed abandoned property to the state. Generally, all property, real and personal, and every right of property of any nature are subject to escheat to the state. The reversion of such property is based on the presumption that there is no heir to assume the property upon the death of the owner. Escheat of abandoned property to the State under appropriate statutes does not constitute a taking of property without due process of law in violation of the Federal Constitution.¹¹ The general purpose of the act is to protect the interest of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever.¹²

The Department of Financial Services (the department) administers the act, through its Bureau of Unclaimed Property. Section 717.118, F.S., places an obligation on the state to notify owners of unclaimed property accounts valued at over \$100, in a cost-effective manner, including through

⁸ 15 U.S.C. s. 1681c-2(a).

⁹ 15 U.S.C. s. 1681c-2(b).

¹⁰ 15 U.S.C. s. 1681c-2(c).

¹¹ See *Cockrill v. California*, 268 U.S. 258 (1925).

¹² s. 717.139, F.S.

attempts to directly contact the owner. The department is responsible for receiving property, locating the rightful owners, and returning the property (or its value, in cases of sold securities) to claimants.¹³ Once a claim is made through filing a form with the department, the department has 90 days to determine the claim.¹⁴

Unclaimed property consists of any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain period of time.¹⁵ Savings and checking accounts, money orders, traveler's checks, uncashed payroll or cashier's checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are all potentially unclaimed property.¹⁶ The act excludes certain unclaimed patronage refunds of entities organized under ch. 425, F.S., intangible property held, issued, or owed to entities regulated by the United States Surface Transportation Board, and credit balances owed by a health care provider to a managed care company with whom the provider has a contract.¹⁷

Holders of unclaimed property, which typically include banks and insurance companies, are required to report and submit unclaimed property to the department.¹⁸ Under the provisions of s. 717.117(1)(a), F.S., the report to the department generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner. If the property remains unclaimed, all proceeds from abandoned property are then deposited by the department into the Department of Education School Trust Fund (State School Fund), except for a balance of \$15 million that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.¹⁹

In a lawsuit brought under the Florida False Claims Act, a whistleblower is alleging that a national bank, acting in its check clearinghouse capacity, committed fraud against the state by failing to properly process checks. The suit alleges that employees of the national bank were told not to notify other banks regarding funds owed to them due to processing errors. The suit contends that these credits should have been remitted to the Department of Financial Services as unclaimed property.²⁰

III. Effect of Proposed Changes:

Section 1 creates s. 501.005, F.S., to provide that a consumer may place a "security freeze" on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. The security freeze prohibits the consumer credit reporting agency from releasing the consumer's credit report or any information contained within the report without the authorized consent of the consumer. The security freeze remains until the consumer requests that

¹³ s. 717.130, F.S.

¹⁴ s. 717.124, F.S.

¹⁵ s. 717.102, F.S.; s. 717.1035, F.S.

¹⁶ ss. 717.104-717.116, F.S.

¹⁷ s. 717.117(7), F.S.

¹⁸ s. 717.119, F.S.

¹⁹ See s. 717.123, F.S.

²⁰ *Daily Business Review*, March 10, 2006.

it be removed. This section does not prohibit a consumer credit reporting agency from informing a third party that a particular consumer credit report has been placed under a security freeze.

This section requires a consumer credit reporting agency to place a security freeze on a consumer's credit report no later than 5 business days after receiving the written request, and requires the consumer credit reporting agency to send a written confirmation of the security freeze to the consumer within 10 business days of instituting the security freeze. A consumer credit reporting agency must remove the security freeze within 3 days of notification from the consumer. The committee substitute requires the consumer credit reporting agency to provide the consumer with a personal identification number or password to be used by the consumer in the case where a consumer may wish to provide for the limited release of his or her credit report for a designated period of time during the security freeze.

If the consumer wishes to allow his or her credit report to be accessed for a designated period of time while a security freeze is in effect, he or she must contact the consumer credit reporting agency, request that the freeze be temporarily lifted, and provide proper identification as determined by the consumer credit reporting agency, the personal identification number or password previously provided to the consumer by the consumer credit reporting agency, and the proper information regarding the specified period of time for which the report shall be made temporarily available.

This section requires a consumer credit reporting agency to lift the security freeze within 3 days of receiving a request from a consumer to temporarily lift the security freeze and requires a consumer credit reporting agency to use telephonic communication or any form of secure electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report. This section allows a third party requesting access to a consumer credit report to treat the application as incomplete if the consumer has not authorized a temporary lifting of the security freeze for the period of time in which the request is made.

This section requires that a security freeze remain in effect until the consumer requests that it be lifted. After a request to lift a freeze, the consumer credit reporting agency must lift the freeze within three business days of the request.

No later than July 1, 2007, every consumer reporting agency doing business in Florida is required to select and develop a secure electronic method by which to receive and process requests from consumers to temporarily lift a freeze on a consumer report. A secure electronic method may include the use of telephone, fax, Internet, or other secure electronic means.

This section provides the following exemptions for use of a credit report by certain entities regardless of a security freeze being placed on a consumer's credit report:

- Any person to whom the consumer owes a financial obligation under certain circumstances;
- A subsidiary, affiliate, agent, assignee of a person to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;
- Any state agency acting within its lawful investigative or regulatory authority;

- A state or local law enforcement agency acting to investigate a crime or conducting a criminal background check;
- Any person administering a credit file monitoring subscription service to which the consumer has subscribed;
- Any person for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request;
- As a result of a court order lawfully entered;
- The use of credit information for the purposes of prescreening as provided for by the FCRA; or
- Any insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

In addition, check services companies and deposit account information services companies are not required to comply with this act. Resellers of consumer credit information are also exempt, however they must honor a security freeze placed on a consumer credit report. Further, fraud prevention services companies are exempt as well.

This section allows a consumer credit reporting agency to charge a fee, not to exceed \$10, each time a consumer elects to place, temporarily lift, or remove a security freeze on his or her credit report. A consumer may be charged a fee, not to exceed \$10, if the consumer forgets or misplaces the identification number or password provided by the consumer credit reporting agency and the agency must reissue the information to the consumer. No fee may be charged to a victim of identity theft, who has submitted at the time the security freeze is requested, a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

This section does not allow a consumer credit reporting agency to change a consumer's official information in a credit report when a security freeze is in effect without sending a written confirmation of the change to the consumer within 30 days of making the change. "Official information" includes the consumer's name, address, date of birth, and social security number. In the case of an address change, the committee substitute requires the written confirmation to be sent to the new address and the former address of the consumer. This section provides that a written confirmation is not required for technical modifications to a consumer's official information including name and street abbreviations, complete spellings, or transposition of numbers or letters.

The committee substitute creates a new cause of action for any person who is aggrieved by a violation of the provisions of the committee substitute. The provisions for a civil action are:

- Any person who willfully fails to comply with any requirement of the committee substitute with respect to any consumer is liable to that consumer for actual damages sustained by the consumer as a result of the failure of not less than \$100 and not more than \$1,000, plus the costs of the action together with reasonable attorney's fees;
- Any individual who obtains a consumer report under false pretenses or knowingly without a permissible purpose is liable to the consumer for actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than

\$1,000, whichever is greater. Any person who obtains a consumer report from an agency under false pretenses or knowingly without a permissible purpose is liable to the agency for actual damages sustained by the agency or \$1,000, whichever is greater;

- Punitive damages may be assessed for willful violations;
- Any person who is negligent in failing to comply with any requirement imposed by the committee substitute with respect to any consumer is liable to that consumer for any actual damages sustained by the consumer as a result of the failure of not less than \$100 and not more than \$1,000; and
- If a court determines an unsuccessful pleading, motion, or other paper filed in connection with an action under this committee substitute was filed in bad faith or for purposes of harassment, the court must award to the prevailing party reasonable attorney's fees in relation to the work performed in responding to that pleading, motion, or other paper.

This section requires a consumer credit reporting agency to include a written summary of all rights under the committee substitute to a consumer when sending the consumer a written disclosure. This section details the information that must be included in the written summary of consumer rights, including the right to civil action. Consumer credit reporting agencies which maintain consumer credit reports on a nationwide basis must provide a toll-free telephone number for the consumer to use if he or she wishes to communicate with the consumer credit reporting agency.

Section 2 creates s. 655.851, F.S., to provide that credit balances held by financial institutions that are the result of check cashing functions are not subject to the unclaimed property reporting requirements under s. 717.117, F.S. This provision would apply retroactively to credit balances held on or after July 1, 2006. Such credit balances are not exempted under the current provisions of ch. 717, F.S.

Section 3 provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute provides additional consumer protections against identity theft by allowing a consumer to impose a security freeze or block on the credit reports, which limits access to the report to certain specified users unless the consumer provides express authorization.

The committee substitute allows consumer credit reporting agencies to charge a fee, not to exceed \$10, each time a consumer chooses to place, temporarily lift, or remove a freeze from his or her credit report.

The committee substitute creates a new cause of action for any person who is aggrieved by a violation of these provisions.

C. Government Sector Impact:

The committee substitute creates a new cause of action with potential costs for civil enforcement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
