

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: Commerce and Consumer Services Committee

BILL: CS/SB 656

INTRODUCER: Commerce and Consumer Services Committee, Senator Peadon and others

SUBJECT: Security of Consumer Credit Reports

DATE: March 16, 2005

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|--------|
| 1. | Earlywine | Cooper | CM | Fav/CS |
| 2. | _____ | _____ | BI | _____ |
| 3. | _____ | _____ | _____ | _____ |
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I. Summary:

This committee substitute allows a consumer to 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.

This committee substitute allows a consumer credit reporting agency to charge a fee, not to exceed \$10, when 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.

This committee substitute creates section 501.005 of the Florida Statutes.

II. Present Situation:

Fraud Alerts

The federal Fair and Accurate Credit Transactions Act permits a consumer who believes he or she may be a victim of identity theft to ask a consumer reporting agency to place a fraud alert on the consumer’s credit report. The fraud alert procedure is designed to help prevent an identity thief 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, or 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 2 free copies of his or her credit report is available upon request within 12 months of the initial alert.⁷

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

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).

⁸ 15 U.S.C. s. 1681c-2(a).

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

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.

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 lasts until the consumer requests that 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 five 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 ten business days of instituting the security freeze. A consumer credit reporting agency must remove the security freeze within three 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.

⁹ 15 U.S.C. s. 1681c-2(b).

¹⁰ 15 U.S.C. s. 1681c-2(c).

This section requires a consumer credit reporting agency to lift the security freeze within three 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.

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;
- Pursuant to a court order lawfully entered;
- The use of credit information for the purposes of prescreening as provided for by the FCRA; or
- Any person in connection with the underwriting of insurance.

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, when 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 of the committee substitute;
- 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 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:

The committee substitute allows consumer credit reporting agencies to charge a \$10 fee any time a consumer chooses to temporarily lift or remove a freeze from his or her credit report.

B. Private Sector Impact:

See Tax/Fee issues.

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.
