

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 493 Security of Protected Consumer Information

SPONSOR(S): Fitzenhagen

TIED BILLS: **IDEN./SIM. BILLS:** SB 566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 0 N	Collins	Luczynski
2) Insurance & Banking Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill creates s. 501.0051, F.S., to provide a mechanism to protect the personal information of protected consumers, which is an individual less than sixteen years of age or a person represented by a guardian or other advocate pursuant to chs. 39, 393, or 744, F.S. The newly-created section provides definitions, procedures, requirements, damages, and limitations regarding security freezes on a protected consumer's credit record.

The bill has no fiscal impact on state funds.

The bill has an effective date of September 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida consumers have a statutory right to place a security freeze on their consumer report.¹ A “security freeze” is a notice placed in a consumer report that prohibits a consumer reporting agency from releasing the consumer report, credit score, or any information contained in the report to a third party without the express authorization of the consumer.²

Any disclosure by a consumer reporting agency to a resident of the state must include a written summary of all rights the consumer has, including the right to place a security freeze on his or her consumer report.³

While the program is commonly used by adults, the current statutory security freeze is often not able to be utilized by minor consumers and consumers who are represented by a guardian or other advocate. Consumer reporting agencies generally do not administer security freezes for consumers who do not have an existing credit file. A spokesman for TransUnion and Equifax explained that a security freeze “applies to a credit file, not a social security number.”⁴ However, unlike the average adult, most minors and consumers represented by a guardian or other advocate do not have existing credit files. Conversely, an existing credit file for these groups typically indicates that fraudulent activity has already occurred.

Effect of Proposed Changes

The bill creates s. 501.0051, F.S., to authorize a representative of a minor consumer less than sixteen years of age, or a guardian or other advocate of a consumer pursuant to chs. 39, 393, or 744, F.S., to place a security freeze on that consumer’s credit report.

The bill also directs credit reporting agencies to create a credit record for the protected consumer in the event that the consumer does not yet have a credit report file. Similarly, a representative of a minor consumer less than sixteen years of age, or a guardian or other advocate of a consumer pursuant to chs. 39, 393, or 744, F.S., is provided the ability to place a security freeze on that consumer’s newly-created credit record.

Definitions

The bill defines the terms: “consumer reporting agency,” “consumer report,” “protected consumer,” “record,” “representative,” “security freeze,” “sufficient proof of authority,” and “sufficient proof of identification.”

- “Consumer reporting agency” is defined as any person which, 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 reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
- “Consumer report” is defined as any written, oral or other communication 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 which is used or

¹ See, generally: s. 501.005, Florida Statutes.

² Section 501.005(1), Florida Statutes.

³ See, generally: s. 501.005(17), Florida Statutes.

⁴ <http://bucks.blogs.nytimes.com/2011/09/21/why-its-not-easy-to-freeze-your-childs-credit-file/> (Last accessed on February 7, 2013).

expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer's eligibility for credit or insurance, employment, or any other purpose authorized under 15 U.S.C. 1681(b).

- "Protected consumer" is defined as a person less than sixteen years of age at the time a security freeze request is made, or a person represented by a guardian or other advocate pursuant to chs. 39, 393, or 744, F.S.
- "Record" is defined as a compilation of information that 1) identifies a protected consumer, 2) is created by a consumer reporting agency for the purpose of complying with credit reporting requirements and 3) may *not* be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or eligibility for other financial services.
- "Representative" is defined as the custodial parent or legal guardian of a protected consumer, including a guardian ad litem.
- "Security freeze" is defined as a notice that may be placed on either 1) the protected consumer's consumer report, which prohibits a 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 representative, or 2) the protected consumer's record, which prohibits the consumer reporting agency from releasing the protected consumer's record, in the event that a consumer reporting agency does not have an existing consumer report file pertaining to the protected consumer.
- "Sufficient proof of authority" is defined as documentation that shows that a representative has authority to act on behalf of a protected consumer, such as a court order, valid power of attorney, or a written notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of the protected consumer.
- "Sufficient proof of identification" is defined as documentation that identifies a protected consumer or a representative of a protected consumer, such as a social security card, a certified or official copy of a birth certificate, a copy of a valid driver license, or government-issued photo identification.

Creating a Security Freeze

The bill provides the procedure to be used in the event that a representative, guardian or other advocate wants to place a security freeze on a protected consumer's consumer record. Specifically, to place a security freeze on a consumer record, the representative must:

- Submit a request to the consumer reporting agency in the manner prescribed by that agency;
- Provide the agency with sufficient proof of authority and identification; and
- Pay the agency a fee.

If a consumer reporting agency doesn't have a consumer report pertaining to a protected consumer when it receives the security freeze request, the agency must create a record for the protected consumer and place a security freeze on that newly-created record.

The security freeze must be placed within thirty days after the consumer reporting agency confirms the authenticity of the security freeze request.

Moreover, within ten days of the consumer reporting agency placing the security freeze, it is required to send the representative written confirmation of the implementation of the security freeze. It must also provide the representative with a unique personal identifier and instructions for removing the security freeze.

Removing a Security Freeze

The bill also provides procedures to be used in the event that a representative wants to remove the security freeze. A consumer reporting agency may only remove a security freeze:

- Upon request of a representative;

- Upon request of a protected consumer; or
- If the security freeze was instituted due to a material misrepresentation of fact by a representative; however, the consumer reporting agency must first notify the representative in writing before removing the security freeze.

If the removal of a security freeze is requested by the representative, he or she must provide the consumer reporting agency with the following:

- Sufficient proof of identification and authority;
- The unique personal identifier; and
- Payment of a fee.

If the removal of a security freeze is requested by the protected consumer, he or she must provide the consumer reporting agency with the following:

- Sufficient proof of identification; and
- Documentation that the authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid.

The security freeze must be removed within thirty days after receiving the request for removal.

Exemptions from Section

The bill provides that the provisions of s. 501.0051, F.S., do not apply to the use of consumer credit information by:

- A state agency acting within its lawful investigative or regulatory authority;
- A state or local law enforcement agency investigating a crime or conducting a criminal background check;
- Any person administering a credit file monitoring subscription, to which the protected consumer has subscribed;
- Any person, for the purpose of providing the protected consumer's consumer report upon the representative's request;
- Any person with a court order;
- An insurance company, for the purpose of settling or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;
- A consumer reporting agency's database or file which consists entirely of information concerning, and is used exclusively for: 1) criminal record information, 2) personal loss history information, 3) fraud prevention or detection, 4) tenant screening, 5) employment screening, 6) personal insurance policy information, or 7) noncredit information used for insurance purposes;
- A check services company that issues authorizations, for the purpose of approving or processing checks, electronic funds transfers, or similar methods of payment;
- A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or other negative information regarding a protected consumer to an inquiring financial institution, for limited purposes;
- A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency; or
- A fraud prevention services company issuing reports to prevent or investigate fraud.

Fees

The bill authorizes consumer reporting agencies to charge a representative who elects to place or remove a security freeze a "reasonable fee," which may not exceed ten dollars.

Additionally, consumer reporting agencies are granted the ability to charge a representative a "reasonable fee," not to exceed ten dollars, to be imposed if the representative fails to retain the original

personal identifier granted when the security freeze was placed, and the agency has to reissue that original personal identifier.

However, the bill does not allow for a consumer reporting agency to charge the representative any fee if the representative submits a copy of an investigative report, incident report, or other complaint with a law enforcement agency about the unlawful use of the protected consumer's identifying information by another person. The documentation must be submitted at the time the security freeze is requested.

The bill does not provide a consumer reporting agency the ability to charge a protected consumer directly, for any reason.

Changes to a Protected Consumer's Consumer Record

If a security freeze is in effect, the bill prohibits a consumer reporting agency from changing the protected consumer's name, address, date of birth, or social security number in his or her consumer record, unless the agency first sends a written confirmation of the change to the representative within thirty days after the change is posted to the consumer record.

However, written confirmation is not required to be made regarding technical corrections of a protected consumer's information. Technical corrections include name and street abbreviations, complete spellings, or transposition of numbers or letters.

Violations of the Security Freeze

In the event that a consumer reporting agency violates the security freeze by releasing credit information without proper authorization, the bill provides that the consumer reporting agency is required to notify the representative, in writing, within five business days after discovering or being notified of the release of information.

Moreover, the bill provides for fines and damages, in certain circumstances. Specifically:

- A credit reporting agency that willfully fails to comply with the security freeze provisions is subject to a maximum \$500 administrative fine, issued pursuant to ch. 120, F.S., by the Department of Agriculture and Consumer Services.
- Anyone who obtains a record under false pretenses, or knowingly without a permissible purpose, is liable to: 1) the representative and the protected consumer for actual damages of \$100-\$1,000, and 2) the consumer reporting agency for actual damages or \$1,000, whichever is greater.

Effects on Credit Score, Credit History, and Credit Rating

The bill also provides that a consumer reporting agency may not state or otherwise imply that a security freeze reflects a negative credit score, history, or rating.

Written Summary of Rights

The bill provides that the written summary of rights required under s. 501.005, F.S., also applies to s. 501.0051, F.S. Additionally, the bill amends the terms of the summary of rights to include that a representative has a right to place a security freeze on the consumer report of the person that he or she is legally authorized to care for, pursuant to the provisions in s. 501.0051, F.S.

Moreover, the summary of rights must indicate that if no consumer report exists for the protected consumer, that the representative has a right to request that a record be created and that a security freeze be placed on that consumer record.

B. SECTION DIRECTORY:

Section 1: creates s. 501.0051, F.S., to provide definitions, procedures, requirements, exemptions enforcement and damages, and limitations regarding security freezes on a protected consumer's credit record.

Section 2: amends s. 501.005, F.S., to apply the provisions of s. 501.005(17), F.S., to s. 501.0051, F.S., and to include a disclaimer involving protected consumer security freezes.

Section 3: provides an effective date of September 1, 2013.

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 bill will expand consumer protections to individuals under the age of sixteen and certain protected adults, specifically helping to protect these groups from identity theft and fraudulent credit card use.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of sales tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that a credit reporting agency that willfully fails to comply with the security freeze is subject to an administrative fine of up to \$500. This provision will require agency rulemaking authority and rulemaking in order to determine the exact amount of the administrative fine.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 501.005(17)(f), F.S., stipulates that there is a right to bring a civil action against anyone, including a consumer reporting agency, who fails to comply with the provisions of s. 501.005, F.S. The newly-created provisions of s. 501.0051, F.S., specifically ss. 501.0051(13)(b) and 501.0051(13)(c), F.S., provide amounts of damages liability for a person who obtains a consumer record under false pretenses or knowingly without a permissible purpose; however, unlike s. 501.005, F.S., the new statutory provision does not expressly state that there is a right to bring a civil action for failure to comply with the provisions of the section.

This could potentially cause confusion regarding a consumer or consumer reporting agency's right to bring a civil action against a person who obtains a record under false pretenses or knowingly without a permissible purpose.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.