

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 566

INTRODUCER: Commerce and Tourism Committee and Senator Detert

SUBJECT: Security of Protected Consumer Information

DATE: April 2, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Favorable
2.	Malcolm	Hrdlicka	CM	Fav/CS
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 566 establishes a procedure by which a guardian of a person younger than 16 years of age or a guardian or representative of a person represented by a guardian or representative can request that a consumer reporting agency place a security freeze on the protected consumer's record. The security freeze prohibits consumer reporting agencies from releasing the consumer's record or any information contained within the record, such as a credit score, without the authorized consent of the consumer's representative except in certain circumstances. The security freeze is designed to protect a consumer by preventing an unauthorized person from opening lines of credit in the consumer's name.

The bill requires that the representative requesting a security freeze submit a request to the consumer reporting agency, provide sufficient proof of identification, and pay the agency a \$10 fee. The fee is waived if the representative submits a copy of a valid police or investigative report about the unlawful use of the protected consumer's identifying information. A consumer reporting agency's willful failure to comply with the security freeze will result in an administrative fine of \$500. A person who obtains a consumer record under false pretenses or knowingly without a permissible purpose is liable for damages to the consumer for at least \$1,000, and to the consumer reporting agency for at least \$1,000.

The bill also requires consumer reporting agencies to provide written notice of the availability of a security freeze for people younger than 16 years of age or represented by a legally appointed guardian or representative.

This bill amends s. 501.005, F.S.

II. Present Situation:

Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA)¹ governs the collection, assembly, and use of consumer report information and establishes the framework for the credit reporting system in the United States. 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.

Consumer reports are used by financial institutions, insurance companies, employers, and other entities in determining a consumer's eligibility for certain products and services. Information included in consumer reports generally may include a consumer's credit and payment history, as well as demographic and identifying information and public record information (e.g., arrests, judgments, and bankruptcies).

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA.² The FACT Act added several sections to assist consumers and businesses in combating identity theft and reducing the damage when identity theft occurs. The FACT Act established a national fraud alert system and ordered credit reporting agencies to adopt rules for the disposition of consumer report information and how companies should respond to the "red flag" indicators of identity theft.³

Security freezes

In response to concerns regarding identity theft, 47 states, including Florida, have adopted laws that allow a consumer to freeze access to his or her credit report and prevent anyone from trying to open a new account or new credit.⁴ A security freeze restricts a consumer reporting agency from releasing a credit report or any information from the report without authorization from the consumer. A freeze also requires authorization to change information—such as the consumer's name, date of birth, Social Security number, and address—in a consumer report. A security freeze remains on a credit report until the consumer removes it. Generally, a person can temporarily remove the freeze to open a new credit account or apply for a loan. To do this, a consumer provides the consumer reporting agency with a special personal identifying number (PIN), which is required to verify the consumer's identity. States have created exemptions for specified organizations that still can access credit report information even if a freeze is in place.

¹ 15 U.S.C. s. 1681 et seq.

² P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 4, 2003).

³ Fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent new credit accounts. See 15 U.S.C. s. 1681c-1, m(e).

⁴ Consumers Union, *Consumers Union's Guide to Security Freeze Protection*, available at <http://defendyourdollars.org/document/guide-to-security-freeze-protection> (last visited March 24, 2013).

Typically, these organizations include law enforcement agencies, child support enforcement entities, insurance companies, and subsidiaries and affiliates of companies that have existing accounts with the consumer.

Florida Statutes Relating to Security Freezes

Currently, s. 501.005, F.S., 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 reporting agency. Generally, the security freeze prohibits the consumer reporting agency from releasing the consumer’s credit report or any information contained within the report without the authorization of the consumer.⁵ A consumer reporting agency may 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. However, the law prohibits a consumer reporting agency from charging a fee to a consumer 65 years or older or to a victim of identity theft for the placement or removal of a security freeze.

In addition to any other penalties or remedies provided under law, a person who is aggrieved by a violation of the provisions of s. 501.005, F.S., may bring a civil action as follows:

- Any person who willfully fails to comply with any requirement imposed under s. 501.005, F.S., 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 cost of the action and attorney’s fees.
- Any person who is negligent in failing to comply with any requirement imposed under s. 501.005, F.S., with respect to any consumer is liable to that consumer for any actual damages sustained by the consumer because of the failure of not less than \$100 and not more than \$1,000.

Additionally, 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 a consumer reporting agency under false pretenses or knowingly without a permissible purpose is also 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 s. 501.005, F.S. Lastly, if a court finds an unsuccessful pleading or motion was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney’s fees incurred for the work performed in responding to the pleading or motion.

Child Identity Theft

A 2011 study estimated that 140,000 instances of identity fraud are perpetrated on minors in the United States each year.⁶ An identity thief will typically apply for credit with a child’s Social Security number, but with a different name and date of birth. As a result, the identity theft may

⁵ Section 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, persons who have been granted access to the information according to law, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide credit reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified entities.

⁶ ID Analytics, *More than 140,000 Children Could be Victims of Identity Fraud Each Year* (News Release July 12, 2011), available at <http://www.idanalytics.com/news-and-events/news-releases/2011/7-12-2011.php> (last visited March 25, 2013).

go undetected for years. While parents typically apply for a Social Security number for their child shortly after birth, credit reporting agencies do not create credit files until an individual uses his or her Social Security number to apply for credit for the first time.

Identity thieves use a minor's social security number or fabricate a social security number that coincidentally has been assigned to a child in order to obtain employment, apply for government benefits, open new accounts, or apply for credit.⁷ A child's unused social security number is valuable to a thief because it typically lacks a previous credit history and can be paired with any name and birth date. Because parents typically do not monitor their child's credit, a child's identity can be used to obtain goods and services over many years without the parents' knowledge. The identity theft may not be detected until the child becomes an adult, seeks employment, or applies for student or car loans.

Current statutory security freezes only apply to existing consumer credit reports. Because minors generally do not have credit history they do not have credit reports and thus cannot get a security freeze.⁸ A credit history can be established for a minor through a parent adding the minor as a joint account holder. According to Experian, the agency does not knowingly disclose a minor's credit history; however, minors may request a copy of their credit report after the age of 14.⁹ Parents or legal guardians may request a credit report for their minor by providing documentation that they are the parent or guardian. When a minor reaches the age of 18, the credit report becomes available for access by authorized persons.

In addition to the penalties and remedies under s. 501.005, F.S., relating to credit reports and security freezes for adults, s. 817.568, F.S., addresses criminal penalties for the unauthorized use of personal identification information. In regards to minors, s. 817.568, F.S., makes it a second-degree felony for:

- Any person to willfully and without authorization fraudulently use personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian.
- Any person who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, to willfully and fraudulently use personal identification information of that individual.

III. Effect of Proposed Changes:

Section 1 creates s. 501.0051, F.S., to establish a process to allow the institution of a security freeze for a person younger than 16 years of age or a person represented by a guardian or other advocate.

⁷ Federal Trade Commission Consumer Information, *Child Identity Theft* (Aug. 2012), available at <http://www.consumer.ftc.gov/articles/0040-child-identity-theft> (last visited March 25, 2013).

⁸ A spokesman for TransUnion and Equifax has explained that a security freeze "applies to a credit file, not a social security number." Carrins, Ann, *Why It's Not Easy to Freeze Your Child's Credit File*, The New York Times, (Sept. 21, 2011), available at <http://bucks.blogs.nytimes.com/2011/09/21/why-its-not-easy-to-freeze-your-childs-credit-file/> (last visited March 25, 2013).

⁹ See Experian website at <http://www.experian.com/ask-experian/20110914-credit-reports-not-established-based-on-age.html> (last visited March 25, 2013).

Definitions for the terms “consumer reporting agency” and “consumer report” are identical to the definitions in s. 501.005, F.S. The term “protected consumer” means a person younger than 16 years of age or a person represented by a guardian or other advocate pursuant to ch. 39,¹⁰ ch. 393,¹¹ ch. 744,¹² or ch. 914,¹³ F.S. A “record” is defined as a compilation of information that identifies a protected consumer and may not be created or used to consider the protected person’s creditworthiness or eligibility for other financial services. A record is created if a consumer does not have a credit report. The definition of security freeze is similar to the current definition found in s. 501.005, F.S., and also includes a notice placed on the protected consumer’s record that prohibits the consumer reporting agency from releasing the record except as provided in s. 501.0051, F.S.

Security Freeze

The bill authorizes the representative of a protected consumer to place a security freeze on a protected consumer’s record by submitting a request to the consumer reporting agency, providing sufficient proof of identification, and paying the agency a \$10 fee. The representative would submit a request to a consumer reporting agency in the manner prescribed by the agency. The fee is waived if the representative submits a copy of a valid investigative report, incident report, or complaint with law enforcement about the unlawful use of the protected consumer’s identifying information.

The consumer reporting agency is required to place a security freeze on a consumer’s record within 30 calendar days of the request. If no consumer report already exists for a protected consumer, the consumer reporting agency is required to create a consumer record. The consumer reporting agency is required to send a written confirmation of the security freeze within 10 business days after creating the security freeze. Once the security freeze is in effect, a consumer reporting agency is not authorized to change the name, address, date of birth, or Social Security number without sending written confirmation to the consumer within 30 calendar days after the change is posted to the protected consumer’s record. The consumer reporting agency is also required to provide instructions for removing the security freeze and a unique personal identifier for use in removing the security freeze. The consumer reporting agency is authorized to charge a fee not to exceed \$10 if the representative loses the personal identifier and a new identifier must be issued.

The bill also delineates the procedures and documents required of the representative or protected consumer for the removal of the security freeze. A representative must provide sufficient proof of identification, unique personal identifier, and payment of the \$10 fee. A protected consumer must provide proof of identification as well as documentation that the authority for the representative to act on behalf of the protected consumer is no longer valid.

Certain persons and entities, for specified reasons, are allowed to access a consumer record that is subject to a security freeze. These exemptions are similar to the exemptions found in s. 501.005, F.S. However, the bill also allows access and use of a consumer’s record for personal insurance policy information and noncredit information used for insurance purposes.

¹⁰ Chapter 39, F.S., pertains to proceedings relating to children.

¹¹ Chapter 393, F.S., relates to developmental disabilities.

¹² Chapter 744, F.S., relates to guardianships.

¹³ Chapter 914, F.S., relates to witnesses and criminal proceedings, including guardian ad litem.

The section requires a consumer reporting agency that violates a security freeze by releasing information without proper authorization to notify the representative of the protected consumer within 5 business days after the discovery or notification of the release.

Penalties and Remedies

The bill provides that a consumer reporting agency that willfully fails to comply with the bill's requirements would be subject to an administrative fine of \$500 issued by the Department of Agriculture and Consumer Services. The bill provides a private right of action for certain violations. A person who obtains a record under false pretenses or knowingly without a permissible purpose is liable to the representative and protected consumer for the greater of either \$1,000 or the actual damages sustained. A person who obtains a record under false pretenses or knowingly without a permissible purpose is liable to the consumer reporting agency for actual damages sustained by the agency or \$1,000, whichever is greater.

Written Disclosures

The bill requires credit reporting agencies to provide a written disclosure of the availability of placing a security freeze on a protected consumer's record. The disclosure provides notice that if a person is a custodial parent or legal guardian of a minor younger than 16 years of age or a guardian or advocate of an incapacitated, disabled, or protected person under ch. 39, ch. 393, ch. 744, or ch. 914, F.S., they have the right to place a security freeze on the consumer report of the person in their care. If there is no credit report, the parent, guardian, or advocate may request the creation of a consumer record and the placement of a security freeze on the consumer record. The disclosure warns that using a security freeze may delay or prohibit access to credit, insurance, employment, or other services, and it explains that a security freeze does not apply to entities with which the protected consumer has an existing account. The disclosure provides the procedure for stopping the security freeze and releasing the credit record and credit report. It also provides notice of the rights and remedies available under the bill.

Section 2 provides that the bill will take effect September 1, 2013.

Other Potential Implications:

The bill does not provide the same remedies and penalties found in the security freeze provisions of s. 501.005, F.S. Section 501.005, F.S., authorizes the assessment of punitive damages for willful violations of that section. Section 501.005, F.S., provides that any person who is negligent in failing to comply with the provisions of that section is liable to the consumer for any actual damages sustained by the consumer because of the failure of not less than \$100 and not more than \$1,000. Section 501.005, F.S., also allows the court to award reasonable attorney's fees to the prevailing party in an action that was filed in bad faith or for purposes of harassment.

Currently, s. 501.005, F.S., exempts certain transactions from the security freeze, thereby allowing access to information contained in a credit file or report. The bill, which is applicable to protected consumers, including minors, contains similar exemption found in s. 501.005, F.S., except that the bill also allows the use of the protected consumer records by a consumer reporting agency's database or file that is used exclusively for personal insurance policy information and noncredit information used for insurance purposes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Credit reporting agencies may incur additional costs to establish security freezes for minors and other individuals covered under the bill. However, according to the Department of Agriculture and Consumer Services, Maryland passed similar legislation in 2012, which required compliance by the agencies; therefore, costs to the agencies to comply with the bill should be minimal.¹⁴

With the increasing incidence of child identity theft, the creation of security freezes on credit records of minors under age 16 and other persons represented by a guardian or advocate without an existing credit report may provide additional safeguards by deterring identity theft.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services believes the bill will have no fiscal impact on the department.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pursuant to s. 501.005, F.S., a request for a security freeze must be submitted in writing by certified mail to the consumer reporting agency. However, the bill provides that the

¹⁴ Department of Agriculture and Consumer Services, *House Bill 493 Agency Analysis* (Feb. 1, 2013) (on file with the Senate Committee on Commerce and Tourism).

¹⁵ *Supra* note 14.

representative would submit a request to a consumer reporting agency in the manner prescribed by the agency. It is unclear whether each consumer reporting agency would require certified mail or some other method, such as email.

The bill requires the consumer reporting agency to place a security freeze on a credit record within 30 calendar days after confirming authenticity of such a request. Section 501.005, F.S., relating to security freezes on credit reports, requires a consumer reporting agency to place a freeze within 5 business days after receiving a request for a security freeze on a credit report.

A request for the removal of a security freeze on a credit record must be completed within 30 calendar days, rather than 3 business days as required for security freezes of reports under s. 501.005, F.S. This could result in a significant delay for a teenager applying for a car loan, seeking employment, or applying for an apartment lease, even if the parents are co-signing for the loan or lease.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on April 1, 2013:

The committee substitute:

- Sets the Department of Agriculture and Consumer Services' authority to impose an administrative fine on consumer reporting agencies at \$500, instead of up to \$500;
- Clarifies the civil remedy available under the bill;
- Increases the actual damages a protected consumer and his or her representative may recover against identity thieves;
- Clarifies that certain required time-frames are "calendar days" rather than "business days";
- Creates mandatory disclosures specifically within the new statute for protected consumer security freezes;
- Clarifies that a "protected consumer" includes a person who has had a guardian or other representative appointed pursuant to ch. 914, F.S.;
- Clarifies that liability for obtaining a consumer record under false pretenses or knowingly without a permissible purpose is the greater of actual damages to the representative and protected consumer or \$1000; and
- Makes a technical correction by changing the word "failure" to "violation."

B. Amendments:

None.