

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 Banking and Insurance

BILL: SB 566

INTRODUCER: Senator Detert

SUBJECT: Security of Protected Consumer Information

DATE: February 20, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 566 establishes a procedure by which a representative of a protected consumer may request that a consumer-reporting agency create a protected consumer’s record and place a security freeze on the record. The establishment of a consumer record for a person who does not have a credit report and the placement of a security freeze on the record would restrict the ability of a consumer-reporting agency to release the record, thereby potentially preventing child identity theft by individuals who obtain the social security number of a minor or other protected consumer. For purposes of the bill, a “protected consumer” means a person younger than 16 years of age or a person represented by a guardian or other advocate.

A recent study estimated that 142,000 instances of identity fraud are perpetrated on minors in the United States each year.¹ 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 go undetected for years. While parents typically apply for a Social Security number for their child shortly after birth, a credit-reporting agency does not create a credit report or history until an application for credit is received.² The consumer’s representative or the protected consumer may authorize the removal of a credit freeze by submitting a \$10 fee and providing specified documentation.

This bill amends the following section of the Florida Statutes: 501.005.

¹ See ID Analytics, *More than 140,000 Children Could be Victims of Identity Fraud Each Year* (News Release July 12, 2011), available at www.idanalytics.com.

² If a parent adds a teenager to a credit card account, as a joint account holder, that action may establish a credit report or file for the teenager.

The bill creates the following section of the Florida Statutes: 501.0051.

II. Present Situation:

Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA)³ governs the collection, assembly, and use of consumer report information and provides 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 recipients to those who have a legitimate need for it; (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 making eligibility decisions affecting consumers. Information included in consumer reports generally may include consumers' credit history and payment patterns, 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.⁴ The FACT Act added several sections to assist consumers and businesses in combating identity theft and reducing the damage to consumers when that crime occurred. The FACT Act established a national fraud alert system,⁵ and ordered credit-reporting agencies to adopt rules on proper disposition of consumer report information and on what companies should do to respond to the "red flag" indicators of identity theft.

Credit Freezes

In response to concerns regarding identity theft, 47 states, including Florida and the District of Columbia, have adopted laws that allow a consumer to place a credit freeze on their credit report.⁶ 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 "thaw" or temporarily remove the freeze to open a new credit account or a new loan. To do this, a consumer provides the consumer-reporting agency with 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. Typically, these organizations include law enforcement agencies, child support enforcement, insurance, and subsidiaries and affiliates of companies that have existing accounts with the consumer.

Florida Statutory Provision Relating to Credit Freezes

³ 15 U.S.C. s. 1681 et seq.

⁴ P.L. 108-159.

⁵ Fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent new credit accounts.

⁶ Consumers Union's Guide to Security Freeze Protection, at http://www.consumersunion.org/campaigns/learn_more/003484/indiv.html.

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 credit reporting agency. Generally, 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.⁷ A credit-reporting agency may 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, the law prohibits a consumer-reporting agency from charging a fee to a consumer age 65 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 authorized by s. 501.005(16), F.S. 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 together with reasonable attorney’s fees. Any person who is negligent in failing to comply with any requirement imposed under this 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.

Also, s. 501.005, F.S., provides that 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 liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater. Section 501.005(16), F.S., allows for the assessment of punitive damages for willful violations of s. 501.005, F.S. Upon a finding by the court that an unsuccessful pleading, motion was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney’s fees that are reasonable in relation to the work performed in responding to the pleading, motion, or other paper.

Child Identity Theft

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 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. Through a variety of means, identity thieves use a minor’s social security 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 car loans. 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

⁷ Section 501.005(12), F.S., allows for the release of information that would otherwise be 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, to persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified entities.

birth date. In effect, a child's identity can be used to obtain goods and services over many years because parents typically do not monitor their child's credit. The identity theft may not be detected until the child becomes an adult and seeks employment, or applies for student or car loans.⁸

A credit history can be established by a minor because of a parent adding their minor as a joint account holder. According to Experian's website, minors may request a copy of their credit report after age of 14.⁹ When a minor reaches the age of 18, the credit history becomes available for access by authorized persons. However, parents or legal guardians may request a credit history for their minors by providing sufficient documentation that they are the parent or guardian.

In addition to the penalties and remedies under s. 501.005, F.S., relating to credit reports and credit freezes, s. 817.568, F.S., addresses criminal use of personal identification. In regards to minors, the section provides:

(6) Any person who willfully and without authorization fraudulently uses 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 commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) 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, who willfully and fraudulently uses personal identification information of that individual commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

III. Effect of Proposed Changes:

Section 1 creates s. 501.0051, F.S., to establish a process to allow the institution of a credit freeze for a person younger than 16 years of age or a person represented by a guardian or other advocate. Definitions for the terms "consumer reporting agency," and "consumer report," are created, which are identical to the definitions in s. 501.005, F.S. The term, "protected consumer," is defined to mean a person younger than 16 years of age at the time a security freeze request is made or a person represented by a guardian or other advocate pursuant to chapter 39,¹⁰ chapter 393,¹¹ or chapter 744,¹² F.S. A record is defined to mean 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 "representative" of a protected consumer also includes a guardian appointed pursuant to s. 914.17, F.S.

⁸ See Experian website at <http://www.experian.com/ask-experian/20110914-credit-reports-not-established-based-on-age.html>.

⁹ *Ibid.*

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 guardianship.

The definition of credit freeze is similar to the current definition found in s. 501.005, F.S., except that it also includes a notice that is 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., section. A record is created if a consumer does not have a credit report or file.

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 credit-reporting agency and providing sufficient proof of identification, and paying the agency a \$10 fee, as authorized under this section. The representative would submit a request to a consumer-reporting agency in the manner prescribed by the consumer-reporting agency. The fee is waived if the representative submits at the time of the freeze request, a copy of a valid investigative report or 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 days of the request. The consumer-reporting agency is required to send a written confirmation of the security freeze within 10 days after creating the security freeze. Once the security freeze is in effect, a credit-reporting agency is not authorized to change the name, address, date of birth, and the social security number without sending written confirmation to the consumer within 30 days after the change is posted to the protected consumers' record. The credit-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 fails to retain the personal identifier and an identifier must be reissued.

The section also delineates the procedures and documents required of the representative or protected consumer for the removal of the credit 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 sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid.

Certain persons and specified reasons are allowed to access a consumer record that is subject to a credit 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.

The section requires a credit-reporting agency that violates a security freeze by releasing such information without proper authorization to notify the representative of the protected consumer within 5 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 requirements of this section would be subject to an administrative fine of up to \$500 issued

pursuant to ch. 120, F.S., by the Department of Agriculture and Consumer Services. A person who obtains a record under false pretenses or knowingly without a permissible purpose is liable to the representative and protected consumer for actual damages in an amount of at least \$100 but not more than \$1,000. A person who obtains a record under false pretenses or knowingly without a permissible purpose is liable to the credit-reporting agency for actual damages sustained by the credit-reporting agency or \$1,000, whichever is greater. These provisions are also provided under s. 501.005, F.S.

Section 2 amends s. 501.005, F.S., to require credit-reporting agencies to disclose the availability of credit freezes on a protected consumer's record. This written disclosure would provide notice of the availability of the credit freeze for protected consumers. Specifically, the notice provides, 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. 914,¹³ 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.

Section 3 provides that this act would take effect September 1, 2013.

Other Potential Implications:

The bill does not provide the same remedies and penalties as found in the security freeze provisions of s. 501.005, F.S. Section 501.005, F.S., requires a consumer-reporting agency that fails to comply with the security freeze provisions 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 allows for the recovery of the cost of the action and reasonable attorney fees. Section 501.005, F.S., also 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 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. 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 credit 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 would also allow 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.

¹³ Chapter 914, F.S., relates to witnesses and criminal proceedings.

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:

With the increasing incident 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 would provide additional safeguards and deter identity theft.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services will incur indeterminate administrative costs in adopting rules and investigating alleged violations of the provisions of this bill. However, the department anticipates using existing resources to administer the new duties.

VI. Technical Deficiencies:

A protected consumer is defined to mean, “a person younger than 16 years of age at the time a security freeze request is made or a person represented by a guardian or other advocate pursuant to ch. 39, ch. 393, or ch. 744, F.S.” However, the written disclosure relating to the availability of a credit freeze that would be required under s. 501.005, F.S., references 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.

VII. Related Issues:

Pursuant to s. 501.005, F.S., a request for a credit freeze must be submitted in writing by certified mail to the credit-reporting agency. However, SB 566 provides that the 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 credit-reporting agency to place a credit freeze on a credit record within 30 business days after confirming authenticity of such a request. Section 501.005, F.S., relating to credit freezes on credit reports, requires a credit-reporting agency to place a freeze within 5 business days after receiving a request for a credit freeze on a credit report.

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

None.

B. Amendments:

None.