

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 Rules

BILL: SB 1302

INTRODUCER: Senator Brandes

SUBJECT: Consumer Report Security Freezes

DATE: February 21, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1302 prohibits consumer reporting agencies (CRAs) from charging fees for placing, removing, or temporarily lifting a security freeze on a consumer report. A security freeze prevents a CRA from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the consumer's express authorization. Currently, Florida law permits a CRA to charge a consumer up to \$10 to institute a credit freeze.

II. Present Situation:

Data Breaches and Identity Theft

In recent years, data breaches¹ have increased in frequency, scale, sophistication, and severity of impact; as a result, identity theft has been rampant. In late 2013, Target experienced a data breach that provided cybercriminals with access to 41 million customer payment card accounts² (customer name, credit or debit card number, and the card's expiration date) and contact information for more than 60 million Target customers.³ In 2017, Equifax, one of the three major CRAs in the United States, reported that the sensitive personal information of an estimated 143

¹ A data breach occurs when a cybercriminal successfully infiltrates a data source and extracts sensitive information. This can be done physically by accessing a computer or network to steal local files, or by bypassing network security remotely. See TRENDMICRO, *Data Breaches 101* (Oct. 23, 2015) available at

<https://www.trendmicro.com/vinfo/us/security/news/cyber-attacks/data-breach-101> (last visited Feb. 9, 2018).

² Target to pay \$18.5M for 2013 data breach that affected 41 million consumers, (May 23, 2017), available at <https://www.usatoday.com/story/money/2017/05/23/target-pay-185m-2013-data-breach-affected-consumers/102063932/> (last visited Feb. 9, 2018).

³ Federal Trade Commission, *Are you affected by the recent Target hack?* <https://www.consumer.ftc.gov/blog/2013/12/are-you-affected-recent-target-hack> (last visited Feb. 9, 2018).

million American consumers⁴ was disclosed in a data breach earlier that year. The cybercriminals accessed the names, Social Security numbers, birth dates, and addresses and, in some instances, consumers' driver's license numbers. They also accessed credit card numbers of about 209,000 consumers and dispute documents with personal identifying information of about 182,000 consumers.⁵

In response to identity theft, or as a precautionary action, consumers may place a security freeze on their credit reports. Such a freeze can help stop identity thieves from opening new accounts under a stolen identity by preventing new creditors from accessing a credit file.⁶

Consumer Reports and Consumer Reporting Agencies

Consumer reports include any written, oral, or other communication of any information by a CRA on a consumer's credit worthiness, credit standing, credit capacity, general reputation, personal characteristics, or mode of living.⁷ Consumer reports generally list a consumer's name, address, Social Security number, credit cards, loans, debts, and history of timely bill payment.⁸ Information contained in such reports is used as a factor in establishing a consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes; and other purposes authorized under federal law.⁹

CRAs assemble or evaluate consumer credit information or other information on consumers and furnish consumer reports to third parties.¹⁰ CRAs may provide consumer credit reports and credit scores to lenders, retail stores, employers, residential real estate management companies, payment processors, retail stores, debt buyers and collectors, insurance companies, communications and utility companies.¹¹ The three largest consumer-reporting agencies are Equifax, Experian, and TransUnion.¹²

Federal Fair Credit Reporting Act (FCRA)

The federal Fair Credit Reporting Act (FCRA) governs the collection and use of consumer report information and establishes the framework for the credit reporting system in the United States.¹³ The FCRA prevents the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; improving the accuracy and integrity of consumer

⁴ Equifax, *Cybersecurity Incident and Important Consumer Information*, available at <https://www.equifaxsecurity2017.com/frequently-asked-questions/> (last visited Feb. 9, 2018). Subsequently, on October 2, 2017, Equifax announced that approximately 2.5 million additional U.S. consumers were potentially impacted.

⁵ Federal Trade Commission, *the Equifax Data Breach: What to Do*, <https://www.consumer.ftc.gov/blog/2017/09/equifax-data-breach-what-do> (last visited Feb. 9, 2018).

⁶ Consumer Finance Protection Bureau, *Credit Reports and Scores*, available at <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/key-terms/#security-freeze> (last visited Feb. 9, 2018.)

⁷ See 15 U.S.C. 1681a(d).

⁸ See 15 U.S.C. 1681c.

⁹ See 15 U.S.C. 1681b.

¹⁰ See 15 U.S.C. 1681a(f).

¹¹ Consumer Financial Protection Bureau (CFPB), *List of Consumer Reporting Companies*, pgs. 4-5 (2016). http://files.consumerfinance.gov/f/201604_cfpb_list-of-consumer-reporting-companies.pdf (last visited Feb. 9, 2018).

¹² See note, CFPB 10 at pg. 8.

¹³ 15 U.S.C. s. 1681 *et seq.*

reports; and promoting the efficiency of the nation's banking and consumer credit systems.¹⁴ The FCRA regulates the practices of CRAs (e.g., Equifax, Experian, TransUnion, etc.) that collect and compile consumer information into consumer reports, which are often referred to as credit reports.¹⁵ Both the Federal Trade Commission and the Consumer Financial Protection Bureau provide education regarding, and enforcement of, the FCRA.¹⁶

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA, to add a number of provisions to help consumers and businesses combat identity theft; mitigate the damage when identity theft occurs; and establish a national fraud alert system.¹⁷ The FACT Act allows a consumer or the consumer's representative to assert a good-faith suspicion to a CRA that he or she has been or is about to become the victim of identity theft.¹⁸ The CRA must then, at no charge to the consumer, place an initial fraud alert on the consumer's credit report for at least 90 days.¹⁹ A consumer or the consumer's representative can also file for an extended fraud alert that lasts up to 7 years if an identity theft report is submitted to the CRA.²⁰ While fraud alerts help make a consumer more aware of activity related to his or her consumer report, they do not prevent a potential creditor from obtaining the consumer report and may not prevent the opening of new credit accounts.²¹

Florida

Identity Theft

The Florida Department of Agriculture and Consumer Services' Division of Consumer Services (division) regulates 18 specific industries and serves as a clearinghouse for consumer complaints regarding unregulated issues. The division also focuses on consumer education to protect consumers from unfair or unsafe business practices.²² The division and the Florida Attorney General's Office provide consumer resources to help prevent and to respond to identity theft in Florida.²³

¹⁴ Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 1 (July 2011), available at <http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcra-report.pdf>. (last visited Feb. 9, 2018)

¹⁵ *Id.*

¹⁶ See 15 U.S.C. §1681a (v); Federal Trade Commission, *Fair Credit Reporting Act*, <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited Feb. 8, 2018). Although the Dodd-Frank Act transferred most of the rulemaking responsibilities under the FCRA to the Consumer Financial Protection Bureau, enforcement authority was retained entirely by the FTC.

¹⁷ P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 4, 2003), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg1952.pdf>. (last visited Feb. 9, 2018).

¹⁸ 15 U.S.C. s. 1681c-1(a)(1).

¹⁹ *Id.*

²⁰ 15 U.S.C. s. 1681c-1(b).

²¹ 15 U.S.C. ss. 1681c-1 and 1681m(e).

²² Florida Department of Agriculture and Consumer Services, *Division of Consumer Services*, <https://www.freshfromflorida.com/Divisions-Offices/Consumer-Services> (last visited Feb. 9, 2018). See also, Florida Department of Agriculture and Consumer Services, *Consumer Resources*, <https://www.freshfromflorida.com/Consumer-Resources/> (last visited Feb. 9, 2018).

²³ *Id.* See also, Florida Office of the Attorney General, *Identity Theft*, <http://myfloridalegal.com/identitytheft> (last visited Feb. 9, 2018).

In Florida, cases of identity theft can be prosecuted under s. 817.568, F.S. Identity theft is punishable by a third degree felony, up to a first degree felony, depending on the presence of aggravating circumstances, including the number of victims harmed and the pecuniary value amassed by the perpetrator.²⁴

Florida Consumer Report Security Freeze Law

In 2006, Florida enacted legislation to allow a consumer to freeze access to his or her consumer report to prevent anyone from trying to open a new account or new credit under his or her name.²⁵ The consumer can place the security freeze by written request via certified mail to a CRA; the consumer must send a separate request to each CRA.²⁶ With some exceptions, a security freeze prohibits the CRA from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the consumer's express authorization.²⁷ Additionally, while a security freeze is in effect, a CRA may not change a consumer's name, address, date of birth, or social security number in a consumer report without first sending written confirmation of the change to the consumer.²⁸

A CRA must place a security freeze within 5 business days after receiving a request and must provide the consumer with a unique personal identification number (PIN) or password for the consumer to use to authorize removal of a security freeze.²⁹ A CRA may charge a fee up to \$10 to institute, temporarily lift, or remove a security freeze, or to reissue a lost PIN or password.³⁰ However, a CRA may neither charge a consumer 65 years or older for the institution or removal of a security freeze, nor charge a victim of identity theft *any fee*.³¹

2014 Keeping I.D. Safe (KIDS) Act

Florida's 2006 law did not contain a mechanism for freezing the credit for individuals who do not have an existing credit report. To address this issue, the Florida Legislature passed the Keeping I.D. Safe (KIDS) Act in 2014.³² The KIDS Act allows a third party to place a security freeze on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate) by submitting a request and sufficient proof of authority and identification to the CRA.³³ A CRA has up to 30 days after it

²⁴ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine; a second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine; a first degree felony is punishable by up to 30 years and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

²⁵ Ch. 2006-124, Laws of Fla.

²⁶ Section 501.005(2), F.S.

²⁷ Section 501.005(1), (12), and (15), F.S. Subsection 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide consumer reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified persons. Subsection 501.005(15), F.S., allows for the release of information otherwise protected by a security freeze to a check services company, a deposit account information service company, a consumer reporting agency that acts only as a reseller of credit information, and a fraud prevention services company.

²⁸ Section 501.005(14), F.S.

²⁹ Section 501.005(3), (4), F.S.

³⁰ Section 501.005(13)(a), (c), F.S.

³¹ Section 501.005(13)(b), F.S.

³² Ch. 2014-66, Laws of Fla.

³³ Section 501.0051, F.S.

confirms the authenticity of the security freeze request to place the freeze.³⁴ Otherwise, the KIDS Act credit freeze operates in the same manner as the credit freeze provided for in s. 501.005, F.S.

Like the traditional security freeze, the CRA must provide a unique PIN to the protected consumer's representative, and may charge a fee of up to \$10 to place or remove the freeze, or to reissue a lost PIN.³⁵ However, a representative of a protected consumer who is a victim of identity theft is exempt from such fees.³⁶

State Survey of Laws Relating to Consumer Report Security Freezes

Most states allow CRAs to charge fees for placing a security freeze, which generally range from \$2 to \$10.³⁷ Among the states that do not allow such fees, the majority allow some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report. Indiana and South Carolina prohibit all fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 501.005, F.S., to prohibit CRAs from charging a consumer fee for the following actions:

- Placing a security freeze on a consumer report;
- Temporarily lifting a security freeze on a consumer report; and
- Removing a security freeze on a consumer report.

The CRA may charge a reasonable fee, not to exceed \$10, to replace a consumer's original personal identification number or password. This charge applies to victims of identity theft, who are not subject to such a fee under current law.

Section 2 amends s. 501.0051, F.S., to similarly prohibit such fees when a representative places, removes, or temporarily lifts a security freeze on a protected consumer's consumer report.

Section 3 provides an effective date of July 1, 2018.

³⁴ Section 501.0051(4), (5), F.S.

³⁵ Section 501.0051(9)(a) and (b), F.S.

³⁶ Section 501.0051(9)(c), F.S.

³⁷ Equifax, *What are the security freeze fees in my state?*, <https://help.equifax.com/s/article/What-are-the-security-freeze-fees-in-my-state> (last visited Feb. 9, 2018); Experian, *Security Freeze*, <https://www.experian.com/blogs/ask-experian/credit-education/preventing-fraud/security-freeze/> (last visited Jan. 4, 2018); TransUnion, *Credit Freeze Information by State*, <https://www.transunion.com/credit-freeze/credit-freeze-information-by-state> (last visited Feb. 9, 2018). See also, National Conference of State Legislatures, *Consumer Report Security Freeze State Laws* (Sept. 1, 2017), available at <http://www.ncsl.org/research/financial-services-and-commerce/consumer-report-security-freeze-state-statutes.aspx> (last visited Feb. 9, 2018).

³⁸ *Id.*

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:

The elimination of the security freeze fees could potentially increase the utilization of security freezes and reduce identity theft. Consumers and their representatives will no longer pay fees of up to \$10 related to placing, removing, or temporarily lifting a security freeze on a consumer report.

Consumer reporting agencies will no longer collect such fees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 501.005 and 501.0051 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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