

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 493 Security of Protected Consumer Information

SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Fitzenhagen

TIED BILLS: **IDEN./SIM. BILLS:** CS/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	13 Y, 0 N, As CS	Bauer	Cooper
3) Regulatory Affairs Committee	14 Y, 0 N, As CS	Collins	Hamon

SUMMARY ANALYSIS

Currently, Section 501.005, F.S. provides consumers with procedures to request “security freezes” on consumer records that may have been compromised as a result of identity theft. Security freezes prohibit consumer reporting agencies (Equifax, Experian, and TransUnion) from releasing a credit report, subject to specified exemptions. However, this procedure presumes that the consumer has an existing credit file and history, and may not address the issue of identity theft committed against minors and other persons who may be represented by a guardian, and who do not have a credit history or are unable to request security freezes on their own. 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. 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. A recent study estimated that 142,000 instances of identity fraud are perpetrated on minors in the United States each year.

CS/HB 493 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, 744, or 914, 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 also requires consumer reporting agencies to provide consumers with a written summary of rights under the newly created s. 501.0051, F.S.

The bill has no fiscal impact on state or local funds. The bill may have a positive impact on the private sector by providing additional safeguards for minors under age 16 and other persons represented by a guardian or advocate.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Credit reports and credit reporting agencies

Credit reporting agencies (also known as credit bureaus) are entities that collect and disseminate information about consumers to be used for credit evaluation and other permissible purposes, such as employment or background checks for professional licenses. The three major credit reporting companies in the U.S. are Equifax, TransUnion, and Experian.

Current federal law and security freezes

In 1970, Congress enacted the federal Fair Credit Reporting Act (FCRA), which regulates the collection, dissemination, and use of consumer credit information, is enforced by the Federal Trade Commission, and provides a private cause of action for consumers. 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, Congress passed the Fair and Accurate Credit Transactions Act (FACTA) to enhance FCRA and to require credit bureaus to provide one free report every 12 months. FCRA (as amended by FACTA) also states that a consumer, or any individual acting on behalf of or as a personal representative of a consumer, may assert a good-faith suspicion that he or she has been a victim of identity theft. This requires the credit bureau to place an "initial fraud alert" on the consumer's credit file for at least 90 days and for no charge.¹ According to the FTC, this initial fraud alert makes it harder for identity thieves to open more accounts in a consumer's name, since the existence of a fraud alert requires businesses to verify a consumer's identity before issuing credit.² In addition, FCRA requires credit bureaus to block the reporting of information contained in a credit file resulting from an alleged identity theft.³ Consumers can also file an identity theft report (which consists of an affidavit and a police report) to the 3 credit bureaus in order to obtain an extended fraud alert placed on the credit report.

Both FCRA and FACTA provide that states may enact laws with respect to the collection, distribution, or use of any information on consumer, or for the prevention or mitigation of identity theft, so long as these state laws are not inconsistent with the federal acts.⁴ Security freeze legislation, which goes beyond fraud alerts by blocking access to a consumer's credit file, is one example of allowable state laws.⁵

As of October 16, 2011, forty-seven states (including Florida) and the District of Columbia have enacted laws requiring credit bureaus to provide consumers the option to place security freezes on

¹ 15 U.S.C. §1681c-1.

² FTC Consumer Information: Place a Fraud Alert, <http://www.consumer.ftc.gov/articles/0275-place-fraud-alert> (last accessed on March 4, 2013).

³ 15 U.S.C. §1681c-2.

⁴ 15 U.S.C. §1681t(1).

⁵ After the FACT Act: What States Can Still Do to Prevent Identity Theft, http://www.consumersunion.org/pub/core_financial_services/000756.html (last accessed March 4, 2013).

their credit reports.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.

Current Florida law

Florida consumers have a statutory right to have security freeze placed on their consumer reports by sending a written request by certified mail to a credit reporting agency.⁷ 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.⁸ 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.⁹ 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.

Identity Theft & Children

⁶ Consumers Union's Guide to Security Freeze Protection, at http://www.consumersunion.org/campaigns/learn_more/003484indiv.html (last accessed March 4, 2013).

⁷ Section 501.005, F.S.

⁸ Section 501.005(1), F.S. Additionally, 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.

⁹ See, generally: s. 501.005(17), Florida Statutes.

A recent study by AllClear ID, based on 27,000 American children, found that more than 10% of children are victims of identity theft, mostly among children ages 5 and younger.¹⁰ While the current statutory security freeze process may be commonly used by adults, it is often not able to be utilized by minor consumers and consumers who are represented by a guardian or other advocate. Unlike the average adult, most minors and consumers represented by a guardian or other advocate do not have existing credit files. While parents typically apply for a Social Security number for their child shortly after birth, credit bureaus do not create credit files until an individual uses his or her Social Security number to apply for credit for the first time. When a credit file is created for a first-time credit applicant, the credit bureaus will verify the Social Security number, but not the name and date of birth assigned to it when issued. 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.¹¹ In addition, even when parents do detect that their child's identity has been compromised, consumer reporting agencies generally do not administer security freezes for consumers who do not have existing credit files. As a spokesman for TransUnion and Equifax explained, a security freeze "applies to a credit file, not a social security number."¹²

In addition, s. 817.568, F.S., addresses criminal use of personal identification and includes a provision specifically addressing minors:

- (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.

Effect of Proposed Changes

The bill creates s. 501.0051, F.S., to authorize a representative of a minor consumer younger than sixteen years of age, or a guardian or other advocate of a consumer pursuant to chs. 39, 393, 744, or 914, 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, 744, or 914, 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." Except as noted below, the following definitions are identical to the current definitions in s. 501.005, F.S.

- "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.

¹⁰ AllClear ID Alert Network, Child Identity Theft: Report 2012, available on <https://www.allclearid.com/child/child-id-theft-statistics-2012> (last accessed March 4, 2013).

¹¹ *Id.*

¹² <http://bucks.blogs.nytimes.com/2011/09/21/why-its-not-easy-to-freeze-your-childs-credit-file/> (Last accessed on February 7, 2013).

- “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 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 business 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 \$500 administrative fine, issued pursuant to ch. 120, F.S., by the Department of Agriculture and Consumer Services.
- Anyone who obtains a record or report under false pretenses, or knowingly without a permissible purpose, is liable to: 1) the representative and the protected consumer for the greater of \$1,000 or the actual damages sustained by the protected consumer as a result of the failure, 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 requires consumer reporting agencies to provide consumers with written summary of rights, including the right to sue under the new statute. 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.

Differences between CS/HB 493 and current law

The following differences are noted between the bill and current s. 501.005, F.S.:

- Current law allows adults to temporarily lift a security freeze, but the bill does not.
 - According to the industry proponents, this is because minors generally do not have the same need to temporarily lift a security freeze as adults do. An adult may request to temporarily lift a security freeze to open a new credit account or loan.¹³
- Current law requires credit reporting agencies to *place a freeze* within 5 days of confirming that a request for a freeze is valid. However, the bill requires credit reporting agencies to place a freeze on a protected consumer's record within 30 days after confirming that a request for a freeze is valid.
- Current law requires credit reporting agencies to *remove* a freeze within 3 days of confirming the validity of a request. However, the bill requires credit reporting agencies to remove a freeze on a protected consumer's record within 30 days after confirming that request to remove a freeze is valid.
 - According to industry proponents, the difference in the time periods to place or to remove security freezes for adults and for protected consumer is due to the additional time needed to verify the proof of authority of a protected consumer's representative.¹⁴
- Current law requires a request for a security freeze to be submitted to a credit reporting agency in writing by certified mail. The bill requires that a protected consumer's representative to submit the request in the manner prescribed by the agency.
 - According to industry proponents, not all credit reporting agencies currently have the capability to accept requests for security freezes electronically, although those capabilities are in development. As a practical matter and for the time being, credit reporting agencies will likely require requests for to be submitted by certified mail.¹⁵
- Current law provides civil remedies for punitive damages, attorney's fees, and actual damages for a credit reporting agency's negligent failure to comply with s. 501.005, F.S. The bill provides for a recovery of the greater of \$1,000 or the actual damages sustained by the protected consumer, when an individual obtains a record under false pretenses or knowingly without a permissible purpose.

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; creates written disclosure requirements for consumer reporting agencies pertaining to consumer rights associated with a security freeze, and includes a disclaimer involving protected consumer security freezes.

Section 2: provides an effective date of September 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹³ Meeting with industry proponents and DOACS, on March 25, 2013.

¹⁴ *Id.*

¹⁵ *Id.*

1. Revenues:

None.

2. Expenditures:

None. The Department of Agriculture and Consumer Services anticipates using existing resources to investigate alleged violations of the provisions of this bill.

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:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2013, the Insurance & Banking Subcommittee considered and adopted one amendment, and reported the bill favorably as a committee substitute. The amendment:

- Set the Department of Agriculture and Consumer Services' authority to impose an administrative fine on consumer reporting agencies at \$500, instead of up to \$500.
- Clarified the civil remedy under the new statute.
- Increased the actual damages that a protected consumer's representative may recover against identity thieves.

- Created mandatory disclosures specifically within the new statute for protected consumer security freezes.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

On April 9, 2013, the Regulatory Affairs Committee considered and adopted one strike-all amendment, and reported the bill favorably as a committee substitute. The strike-all amendment:

- Adds a person represented by a guardian or other advocate pursuant to ch. 914, F.S., to the definition of a “protected consumer,” as is consistent with other provisions of the newly-created section;
- Eliminates superfluous language when referencing the defined term “security freeze;”
- Applies the provisions of the newly-created section to both a consumer record and a consumer report, in the event that a person has an existing credit file; and
- Eliminates the requirement that a consumer record be released within thirty days after receiving a request to do so and that a consumer report be released within three business days after receiving a request to do so, and instead requires that a consumer reporting agency authorize the removal of the security freeze on a consumer record within thirty days after receiving a request to do so.

The analysis is drafted to the committee substitute.