

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 897

(Senator Klausmeier)

Finance

Economic Matters

Consumer Protection - Security Freezes - Children in Foster Care Settings

This bill requires a consumer reporting agency to place a security freeze for a protected consumer within 30 days after receiving an electronically transmitted request from the Department of Human Resources (DHR). The placement of a security freeze prohibits an agency from releasing the protected consumer's consumer report, any information derived from the consumer report, or any record created for the protected consumer. The exclusive remedy of a violation of the bill's provisions is a complaint filed with the Commissioner of Financial Regulation. The bill requires the Department of Juvenile Services (DJS) to perform a specified study and report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee by December 1, 2013.

The bill authorizes a consumer reporting agency to charge a reasonable fee, of up to \$5, for each placement or removal of a security freeze for a protected consumer under the bill's provisions.

Fiscal Summary

State Effect: General and federal fund expenditures for DHR may increase in FY 2014 and subsequent years to account for the fee, if charged by a consumer reporting agency. DJS can perform the study with existing budgeted resources. Revenues are not affected.

Local Effect: The bill does not materially affect local governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions: The bill defines “local department” as (1) a local department of social services created or continued in a county of the State or in Baltimore City under § 3-201 of the Human Services Article or (2) in Montgomery County, the Montgomery County Department of Health and Human Services.

“Protected consumer” means an individual who (1) is in the custody of a local department and (2) has been placed in a foster care setting.

The bill defines “record” as a compilation of information that (1) identifies a protected consumer; (2) is created by a consumer reporting agency solely for the purpose of complying with the bill; and (3) may not be created or used to consider the protected consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for a specified purpose.

“Representative” means a person, including a local department, who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

Regardless of whether the consumer reporting agency does or does not have a file pertaining to a protected consumer, the bill defines “security freeze” as a restriction that (1) is placed on the protected consumer’s record in accordance with the bill and (2) prohibits the agency from releasing the protected consumer’s record except as provided by the bill. However, if the agency does have a file, the bill also defines “security freeze” as a restriction that prohibits the agency from releasing any information derived from the protected consumer’s consumer report except as provided by the bill.

“Sufficient proof of identification” is defined as information or documentation that identifies a protected consumer or a representative of a protected consumer.

Placement and Removal of Security Freeze: If a consumer reporting agency does not have a file pertaining to a protected consumer when the agency receives the aforementioned request for a security freeze from DHR, the agency must create a record for the protected consumer. If the agency has a file pertaining to the protected consumer, the local department must act as the protected consumer’s representative to resolve any issues with the file.

The security freeze for a protected consumer must remain in effect until either the protected consumer or DHR requests the removal of the security freeze. Such a request

must be submitted to the agency at the address or other point of contact in the manner specified by the agency. Specified documents must accompany the request. In the case of a request by the protected consumer, the request must be accompanied by (1) proof that the authority of DHR to act on behalf of the protected consumer is no longer valid and (2) sufficient proof of identification of the protected consumer. If DHR submits the request, the bill requires that it be accompanied by sufficient proof of identification of the protected consumer. Upon receiving a valid request, the agency must remove the security freeze within 30 days. The bill also authorizes an agency to remove a security freeze or delete a record of a protected consumer if the security freeze was placed or the record was created because of a material misrepresentation of fact by either the protected consumer or the protected consumer's representative.

DHR Responsibilities: The bill requires DHR to electronically transmit, on the bill's October 1, 2013 effective date, to each consumer reporting agency (1) a list containing the names of the children who are in the custody of a local department of social services and the Montgomery County Department of Health and Human Services who have been placed in a foster care setting and (2) a request for a security freeze for the consumer record of each child on the list. If a consumer agency has a file pertaining to a protected consumer when the agency receives the aforementioned list, each agency must delete any information from the file and place a security freeze on the protected consumer's consumer record.

Additionally, at least annually, DHR must electronically transmit to each consumer reporting agency a list of children who are in custody of a local department and have been placed in a foster care setting for the first time. DHR must request a security freeze for each child on the list on behalf of the protected consumer. To facilitate compliance in transmitting the list, DHR may enter into an agreement with a consumer reporting agency.

Upon the entry of an order for the adoption of a child who was in the custody of a local department, DHR must provide notice to the adoptive parent of the statutory authorization of an adoptive parent to request a security freeze by an agency. DHR must also provide a specified notice to a protected consumer who becomes an adult.

Required Study: The bill requires DJS to determine whether it is practical, appropriate, and necessary for the department to request a security freeze for each child in its custody. DJS must report its recommendations and findings to the Senate Finance Committee and the House Economic Matters Committee.

Current Law: Chapters 208 and 209 of 2012 (SB 295/HB 555) establish a procedure for a "protected consumer's representative" to request that a consumer reporting agency place a security freeze on the protected consumer's consumer report. A "protected

consumer” is (1) an individual younger than age 16 or (2) an incapacitated person or a protected person for whom a guardian or conservator has been appointed.

The laws require a consumer reporting agency to place a security freeze for a protected consumer if the agency receives such a request from the protected consumer’s representative. The agency must place the freeze within 30 days of receipt of the request. A consumer reporting agency is prohibited from releasing the protected consumer’s consumer report, any information derived from the report, or any record created for the protected consumer, unless a security freeze is removed, with certain exceptions.

The laws establish a similar procedure for a protected consumer or the representative to request the agency to remove the security freeze. The agency must remove the freeze within 30 days after receiving the request. The agency may also remove a security freeze for a protected consumer or delete a record of a protected consumer if the freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer’s representative.

A consumer reporting agency may not charge a fee for any service related to a security freeze other than its placement and removal. Additionally, an agency may not charge a fee for the placement and removal of the security freeze in a case of reported identity theft or for a minor for whom a consumer report already exists.

Any consumer who has reason to believe that a violation of a law regulating consumer credit reporting has occurred may file a complaint with the Commissioner of Financial Regulation. Upon receipt of the complaint, the commissioner may hold a hearing on the complaint, issue an order for compliance, and, if after a hearing the commissioner finds a pattern and practice of violation, issue cease and desist orders. If a consumer reporting agency ignores a cease and desist order or other order for compliance, the commissioner may impose a civil penalty of up to \$100 for each violation. Additionally, the commissioner may petition the circuit court of any county to aid in the enforcement of any of the aforementioned enforcement powers of the commissioner.

Background: The Federal Trade Commission has noted that personal information for children in foster care is often circulated widely within schools and social services networks, which leaves the children particularly vulnerable to identity theft. According to the Children’s Law Center of Minnesota, the children may become victims at the hands of their foster care providers or family members who still have access to their personal information. These children often have no knowledge that they are victims of identity theft until they are adults and age out of the foster care system to start an independent life, only to find that they are unable to secure a car loan, an apartment lease, or a student loan through no fault of their own.

In an attempt to address this issue, the federal Child and Family Services Improvement Act requires that every foster child who has reached age 16 must receive a free consumer report each year until the child is discharged from care. The children must also receive assistance in interpreting and resolving any inaccuracies within the report.

The California Office of Privacy Protection conducted a year-long study of the credit of 2,110 foster youth ages 16 and 17 in Los Angeles County. The credit checks revealed that 104 of these children had discrepancies in their reports. According to officials, the children had 247 accounts that could have caused them problems in the future. The average account balance was \$1,810; however, one child had a home loan of \$217,000 taken out in the child's name. In some cases, simple error was to blame for the credit report discrepancies.

In fiscal 2012, the District Court reports the following charges for identity fraud:

<u>Charge</u>	<u>Total</u>
Obtaining personal identifying information without consent to obtain things or services	763
Assumption of another to avoid prosecution, payment of debt, or to get a thing or benefit	1,527

State Expenditures: General and federal fund expenditures for DHR may increase in fiscal 2014 and subsequent years to account for the fee that may be charged by a consumer reporting agency for the placement and removal of a security freeze. This estimate assumes that consumer reporting agencies impose the fee on DHR. There are approximately 5,800 children in foster care in the State. If a consumer reporting agency charges \$5 for each security freeze placed for a child in foster care, DHR expenditures may increase by at least \$29,000 in fiscal 2014, which reflects the required placement of security freezes on all children in foster care on the bill's October 1, 2013 effective date. Additionally, 3,705 children exited foster care in 2012 and 2,952 entered foster care in 2012. If subsequent years are similar, expenditures may increase by an additional \$25,000 in fiscal 2014 and by approximately \$33,000 each subsequent year as additional children enter and exit the foster care system.

Additional Information

Prior Introductions: None.

Cross File: HB 1297 (Delegate Zucker, *et al.*) - Economic Matters.

Information Source(s): Howard and Montgomery counties; Baltimore City; Department of Human Resources; Judiciary (Administrative Office of the Courts); California Office of Privacy Protection; Children’s Law Center of Minnesota; Federal Trade Commission; *U.S. News and World Report*; *California Bar Journal*; GPO.gov; Wisconsin Department of Children and Families; Yahoo! News; Natural Resource Center for Youth Development; Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2013
mlm/kdm Revised - Updated Information - March 11, 2013
Revised - Senate Third Reader - March 29, 2013
Revised - Enrolled Bill - April 11, 2013

Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510