

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 202
Finance

(Senator Lee, *et al.*)

Economic Matters

Consumer Protection - Credit Report Security Freezes - Notice and Fees

This bill prohibits a consumer reporting agency from charging a consumer or a protected consumer's representative a fee for a placement, removal, or temporary lift of a security freeze.

At any time that a consumer is entitled to receive a summary of rights under the federal Fair Credit Reporting Act or the Commercial Law Article, a consumer reporting agency must provide notice to the consumer with specified information, including the consumer's right to request a placement, temporary lift, or removal of a security freeze (as modified under the bill).

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations. The Commissioner of Financial Regulation can handle additional complaints with existing resources.

Local Effect: The bill's imposition on businesses of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential minimal.

Analysis

Current Law: For consumer protection purposes, State law defines a "consumer" as an individual. A "protected consumer" is an individual younger than age 16 at the time a security freeze request is made, or an incapacitated or protected person for whom a

guardian or conservator has been appointed. A “security freeze” is defined as a restriction placed on a consumer’s consumer report at the request of the consumer that prohibits a consumer reporting agency from releasing the report (or any information derived from the report) without the authorization of the consumer.

A consumer reporting agency may charge a reasonable fee (of up to \$5) for each placement, temporary lift, or removal of a security freeze. A consumer reporting agency may not charge a fee for a security freeze to a consumer who has obtained a report of alleged identity fraud or for a minor younger than age 16 for whom a consumer report already exists. In addition, a consumer reporting agency may not charge a fee for a placement of a security freeze if the consumer has not previously requested one.

State law also allows a protected consumer’s representative to request a security freeze for an individual who is younger than age 16 at the time of request, or for an incapacitated person or a protected person for whom a guardian or conservator has been appointed. The Department of Human Resources is authorized by State law to request a security freeze for a child placed in foster care.

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.

Any consumer reporting agency or user of consumer information which willfully fails to comply with the aforementioned requirements that apply to a consumer is liable to that consumer for any actual damages sustained by the consumer, punitive damages that may be allowed by the court, and for a successful action by the consumer to enforce any liability, the costs of the action, as well as reasonable attorney’s fees, as specified. If the consumer reporting agency is negligent in compliance with the aforementioned requirements, the reporting agency is liable to the consumer for actual damages sustained, and, for a successful action by the consumer to enforce any liability, costs of the action and reasonable attorney’s fees. The statute of limitations to bring a civil action is generally two years from the date that the liability arises. For an allegation that a consumer reporting agency or other defendant materially and willfully misrepresented information that is required to be disclosed to a consumer, as specified, the statute of limitations for a civil action is within two years after discovery of the misrepresentation.

Background: A consumer report (sometimes called a credit report) contains key financial information about a consumer, including credit history, bill repayment history, and the status of the consumer's credit accounts. A consumer report includes detailed information about how often a consumer makes payments on time, how much credit is available to the consumer, and whether debt or bill collectors are collecting on money owed by the consumer. A lender uses information contained in the consumer report to determine whether to extend credit to a consumer and, if so, what interest rate to charge.

Many other types of companies also use consumer reports to make decisions about conducting business with consumers. For example, insurance companies, apartment rental companies, and utility companies often request a consumer report in order to decide whether to conduct business with a consumer. In some cases, prospective employers require applicants to release consumer report information as part of the hiring process.

A security freeze restricts access to a consumer report. Because most creditors need to see a consumer report before they will open a new account, they are unlikely to extend credit with a security freeze in place. Thus, a security freeze makes it more difficult for identity thieves to open new accounts in another person's name. Consumers with an active security freeze on their consumer reports must temporarily lift the freeze in order to allow third parties (*e.g.*, a credit card company, mortgage lender, prospective employer, etc.) access to their reports.

A security freeze does not affect a consumer's credit score (a three-digit number calculated from information contained in a consumer report and a representation of a consumer's creditworthiness).

Equifax Data Breach

Equifax, one of the United States' main credit reporting agencies, experienced a significant data breach in spring 2017. According to the Federal Trade Commission (FTC), 143 million American consumers' sensitive personal information was exposed in the data breach. FTC reports that "hackers accessed people's names, Social Security numbers, birth dates, addresses and, in some instances, driver's license numbers. They also stole credit card numbers for about 209,000 people and dispute documents with personal identifying information for about 182,000."

Given the catastrophic nature of the Equifax breach, more consumers are investigating the requirements and costs of placing, lifting, and removing credit security freezes. States have the authority to determine the cost for the placement, lifting, or removal of a security freeze. In some states, consumers incur no cost for the placement, lifting, or removal of a security freeze. In most other states, the cost ranges from \$3 to \$10 for each placement, lift, or removal at each credit reporting agency.

Additional Information

Prior Introductions: None.

Cross File: HB 710 (Delegates Carey and Lisanti) - Economic Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Consumer Financial Protection Bureau; Federal Trade Commission; CNBC.com; Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2018
md/kdm Third Reader - March 19, 2018
Revised - Amendment(s) - March 19, 2018

Analysis by: Eric F. Pierce

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