

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 369
Finance

(Senator DeGrange)

Consumer Protection - Identity Fraud - Blocking of Information in Credit Reports

This bill authorizes a consumer to request that a consumer reporting agency permanently block information identified by the consumer as erroneous because of a violation of the State's criminal identity (ID) fraud statute.

Fiscal Summary

State Effect: Because federal law offers greater protection than the bill, it is assumed that any complaints received by the Commissioner of Financial Regulation because of the bill could be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A consumer may make the request authorized by the bill by sending proof of identification and a copy of an expungement order or a police report concerning the consumer's claim to be a victim of ID fraud.

Generally, within 30 days after receiving proof of the consumer's ID and a copy of an expungement order or a police report, the agency must permanently block information identified by the consumer as erroneous and promptly notify the consumer of the block's effective date. A consumer reporting agency may decline or rescind a block if: (1) the

agency, acting in good faith, reasonably believes that the consumer misrepresented relevant facts; (2) the consumer agrees that the information should not be blocked; or (3) the consumer knew or should have known that the block was part of a scheme in which money, goods, or services were obtained.

A consumer must be notified within 30 days if a block on information is declined or rescinded. A consumer may make another request for a block based on different circumstances.

The commissioner must impose a civil penalty of \$500 for each violation of the bill's blocking and notification requirements.

Current Law: In addition to being regulated by the State, consumer reporting agencies are regulated by the Federal Trade Commission under the Fair Credit Reporting Act (FCRA). The federal Fair and Accurate Credit Transactions Act of 2003 (FACTA) amends various provisions of FCRA. Although treatment of information concerning ID theft is not governed by the State, FACTA has addressed the issue. Generally under FACTA, a consumer reporting agency must block the reporting of any information in a consumer's file that the consumer identifies as information resulting from an alleged ID theft no later than four business days after the date the agency received: (1) appropriate proof of the consumer's identity; (2) a copy of an ID theft report; (3) the identification of the relevant information by the consumer; and (4) a statement by the consumer that the information does not relate to any transaction by the consumer.

After receiving the request, the consumer reporting agency must promptly notify the person who furnished the information that: (1) the information may be a result of ID theft; (2) an ID theft report has been filed; (3) a block has been requested; and (4) the block's effective date.

A consumer reporting agency may decline to block information or rescind a block of information if the agency reasonably determines that: (1) the information was blocked in error or the block was requested in error; (2) the block or request was based on a material misrepresentation of fact by the consumer; or (3) the consumer obtained possession of goods, services, or money as a result of a blocked transaction. If a block is declined or rescinded, the agency must notify the consumer within five business days after the information is reinserted into the consumer's report. The federal standards do not apply to consumer reporting agencies that are resellers under specified conditions.

Background: Generally and with specified exceptions, FCRA as amended by FACTA does not preempt state regulation of the collection, distribution, or use of any information on consumers or for the prevention or mitigation of ID theft, except to the extent that

those laws are inconsistent with the federal Act, and then only to the extent of the inconsistency.

Additional Information

Prior Introductions: HB 255 of 2004 included a provision similar to this bill. It received an unfavorable report from the Judiciary Committee.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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